

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

FREDERIC SAMUELS

Claim No. CU -0263

Decision No. CU -3761

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Alvin D. Lurie, Esq.

Petition to reopen; Proposed Decision dated and entered July 23, 1969; Final Decision entered June 2, 1971.

AMENDED FINAL DECISION

Under date of June 2, 1971, the Commission entered its Final Decision on this claim certifying a loss in favor of claimant in the amount of \$62,242.08 plus interest. That certification included \$61,278.08 for claimant's 375 shares of stock in Cia. Tabacalera de Rancho Boyeros, S.A. (Rancho), a Cuban corporation, and \$964.00 for certain tangible personal property in Cuba.

A portion of the claim for 150 shares of stock in Rothschild-Samuels-Duignan, S.A. (RSD), a Cuban corporation, was denied as being not certifiable pursuant to Title V of the Act. RSD's balance sheet as of September 30, 1960 showed that its assets and liabilities aggregated \$838,528.26 and \$101,390.12, respectively, thus indicating an apparent net worth of \$737,138.12. It further appeared that RSD's stockholders had recovered \$757,451.09 representing certain accounts receivable of RSD.

Section 506 of the Act provides that the Commission shall reduce the amount of any claim by all amounts received by the claimant on account of the same loss or losses. Inasmuch as the amount recovered exceeded the apparent net worth of RSD, the Commission concluded that no amount could be certified with respect to the stock interest in RSD.

In the related Claim of Cecile C. Samuels, et al; Claim No. CU-0234, the Commission found that RSD owned an asset in the nature of goodwill which was not recorded on its books and records. The Commission determined that this asset had a value of \$473,818.27, and that each share of RSD had a value of \$111.6183 on September 15, 1960, the date of loss.

Accordingly, the Commission has reopened this matter on its own motion and amends the decision on this claim as follows:

The Commission finds that claimant's 150 shares of stock in RSD had a value of \$16,742.75, and concludes that he sustained a loss in that amount on September 15, 1960.

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Stock interest in Rancho	October 24, 1960	\$61,278.08
Tangible personal property	September 15, 1960	964.00
Stock interest in RSD	September 15, 1960	<u>16,742.75</u>
	Total	<u>\$78,984.83</u>

The Commission reaffirms its holding that interest shall be allowed, and it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
September 15, 1960	\$17,706.75
October 24, 1960	<u>61,278.08</u>
Total	<u>\$78,984.83</u>

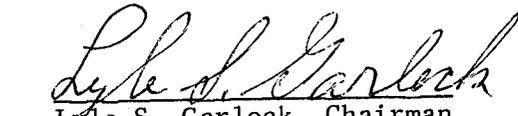
Accordingly, the Certification of Loss in the Proposed Decision of July 23, 1969 which was affirmed by the Final Decision of June 2, 1971 is set aside and the following Certification of Loss will be entered, and in all other respects the Final Decision, as amended herein, is affirmed.

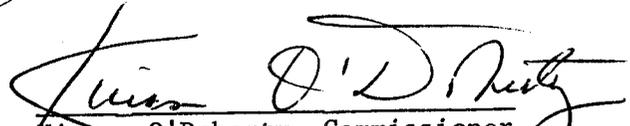
CERTIFICATION OF LOSS

The Commission certifies that FREDERIC SAMUELS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-Eight Thousand Nine Hundred Eighty-Four Dollars and Eighty-Three Cents (\$78,984.83) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Amended Final
Decision of the Commission

JUN 30 1972
U.S. DEPARTMENT OF JUSTICE


Lyle S. Garlock, Chairman


Kieran O'Doherty, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
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IN THE MATTER OF THE CLAIM OF

FREDERIC SAMUELS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0263

Decision No. CU-3761

Counsel for claimant:

Alvin D. Lurie, Esq.

Appeal and objections from a Proposed Decision entered on July 23, 1969.
No oral hearing requested; hearing on the record.

Hearing on the record held on May 19, 1971

FINAL DECISION

The Commission issued its Proposed Decision in this claim on July 23, 1969, certifying a loss of \$62,242.08 for loss of claimant's personal property, including a stock interest in a Cuban corporation known as Cia. Tabacalera de Rancho Boyeros, S.A., hereafter referred to as Tabacalera, and for certain equipment and personal effects. A portion of the claim asserted for loss of 150 shares of capital stock of Rothschild-Samuels-Duignan, S.A., or R-S-D, also a Cuban corporation, was denied for the reason that certain accounts receivable of this corporation were recovered subsequent to nationalization of the Cuban firm, which, coupled with the liabilities of that firm, exceeded the assets, resulting in an absence of net worth or certifiable loss within the meaning of Title V of the Act.

Claimant objected, through counsel, and submitted a Brief of Objections, dated August 1, 1969, certain balance sheets and computations concerning earnings and going concern value of R-S-D. Claimant stated that the

Commission improperly limited the evaluation reached with respect to the shares of Tabacalera to a consideration of the fixed assets of the firm rather than considering the fair market value of such assets; and that additional evidence would be submitted to show a higher value of these assets. Further, claimant submitted computations and arguments to establish that the Commission failed to consider the goodwill of R-S-D, stated to be between \$100,000.00 and \$200,000.00.

The Commission made additional suggestions to claimant, through counsel, in letter of August 26, 1969, toward the submission of evidence in support of the claim, including data concerning the fixed assets of Tabacalera. However, claimant has not responded to this letter and evidence of record fails to support a higher evaluation of such assets. On the contrary, evidence available to the Commission indicates that the fixed assets are properly evaluated in the balance sheet of September 30, 1960, which is the basis for the Commission's finding of value in the Proposed Decision.

The Commission has also considered the objections of the claimant concerning the evaluation of his stock interest in R-S-D and finds that claimant has failed to establish that the Cuban firm of R-S-D had a certifiable loss of goodwill within the meaning of Title V of the Act.

Full consideration having been given to the objections of the claimant and the entire claim and general notice of the Proposed Decision having been given by posting for 30 days, it is

ORDERED that the Proposed Decision be and the same is hereby entered as the Final Decision of the Commission in this claim.

Dated at Washington, D.C.,
and entered as the Final
Decision of the Commission

JUN 2 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

FREDERIC SAMUELS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0263

Decision No. CU

3761

Counsel for claimant:

Alvin D. Lurie, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by FREDERIC SAMUELS in the total amount of \$138,325.67, based upon the asserted ownership and loss of certain stock interests and personal property. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The record contains claimant's affidavit to the effect that he was the owner of 375 shares of capital stock of Cia. Tabacalera de Rancho Boyeros, S.A. which he acquired by purchase at the time the enterprise was formed in 1957; and that he was the owner of 150 shares of stock of Rothschild-Samuels-Duignan, S.A. which he acquired in 1957 and 1958. The record also contains a letter from Lee Samuels, father of claimant, wherein he stated that the claimant owned the said stock. In addition the record contains a statement by the Interventor of Rothschild-Samuels-Duignan dated November 16, 1960 that items seized included 150 shares of stock in that corporation belonging to FREDERIC SAMUELS.

The Commission finds on the basis of the evidence of record that FREDERIC SAMUELS owned at all pertinent times, 375 shares of capital stock of Cia. Tabacalera de Rancho Boyeros, S.A. and 150 shares of capital stock of Rothschild-Samuels-Duignan, S.A.

Cia. Tabacalera de Rancho Boyeros, S.A. and Rothschild-Samuels-Duignan, S.A. were incorporated in Cuba and thus would not qualify as nationals of the United States under Section 502(1)(B) of the Act which defines the term "national of the United States" as including a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. Under these circumstances it has been held that a stockholder may maintain a claim for the value of his stock interest.

The record shows and the Commission finds that Rothschild-Samuels-Duignan, S.A. was intervened by the Government of Cuba on September 15, 1960, by Resolution 20260; and that Cia. Tabacalera de Rancho Boyeros, S.A. was nationalized on October 24, 1960 by Resolution No. 3 pursuant to Law No. 851.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

In determining the value, if any, of the interests owned by claimant in Cia. Tabacalera de Rancho Boyeros, S.A. and Rothschild-Samuels-Duignan, S.A., the Commission has considered claimant's assertions, and balance sheets for the respective companies dated September 30, 1960.

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation. The September 30, 1960 balance sheets for the respective enterprises are set out below.

CIA. TABACALERA DE RANCHO BOYEROS, S.A.

A S S E T S

CURRENT ASSETS:

Cash on hand	\$ 200.00
First National of Boston	279.60
Royal Bank of Canada	1,269.81
Accounts receivable	22,519.69

FIXED ASSETS:

Land	16,802.62
Buildings-net	66,795.36
Furniture and fixtures-net	18,093.35
Machinery and equipment-net	43,021.18
Tools	57.40
Deposit	1,000.00
Deferred charges and prepaid expenses	<u>6,198.18</u>
TOTAL ASSETS	<u>\$176,237.19</u>

LIABILITIES AND CAPITAL

LIABILITIES:

Accounts payable	\$ 83,947.00
Taxes payable	<u>3,232.68</u>
TOTAL LIABILITIES	\$ 87,179.68

CAPITAL AND SURPLUS:

Capital stock	\$ 54,500.00
Surplus	<u>34,557.51</u>
TOTAL	<u>\$176,237.19</u>

The record indicates that Cia. Tabacalera de Rancho Boyeros, S.A. had 545 shares outstanding at the time of loss.

The Commission finds that the net worth of Cia. Tabacalera de Rancho Boyeros, S.A. on the date of nationalization was as follows:

Assets	\$176,237.19
Liabilities	<u>87,179.68</u>
Net Worth	\$ 89,057.51

The claimant asserted that the fair market value of the corporation's fixed assets on the date of nationalization was \$250,000.00, compared to the net book value of \$89,057.51 shown on the above balance sheet, but submitted no evidence in support of this contention.

The Commission therefore finds that the dollar loss sustained in connection with the ownership of a capital stock interest in Cia. Tabacalera de Rancho Boyeros, S.A. was \$163.4082 per share at the time of loss.

Accordingly, the Commission finds that claimant, as the owner of 375 shares, suffered a loss of \$61,278.08 within the meaning of Title V of the Act as a result of the taking of Cia. Tabacalera de Rancho Boyeros, S.A. by the Government of Cuba on October 24, 1960.

ROTHSCHILD-SAMUELS-DUIGNAN, S.A.

A S S E T S

CURRENT ASSETS:

Petty cash		\$ 1,000.00
Cash in banks		4,218.35
Accounts receivable		816,381.68
Inventories		<u>2,004.40</u>

TOTAL CURRENT ASSETS		\$823,604.43
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DEFERRED EXPENSES:

Unexpired insurance		2,230.63
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FIXED ASSETS:

Furniture and furnishings	\$ 17,975.11	
Depreciation	<u>5,806.91</u>	12,168.20

DEPOSITS:

Cuban Electric Co.		<u>525.00</u>
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TOTAL ASSETS		\$838,528.26
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LIABILITIES AND CAPITAL

CURRENT LIABILITIES:

Due to Banco Continental Cubano		\$100,000.00
Due to Enrique Quesada		20.00
Accrued taxes		1,017.43
Accrued expenses		<u>352.69</u>

TOTAL LIABILITIES		\$101,390.12
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CAPITAL:

Capital stock - 4063 shares at \$100.00	\$405,300.00	
Surplus - September 30, 1960	<u>330,838.14</u>	<u>737,138.14</u>

TOTAL		<u>\$838,528.26</u>
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However, claimant states in his affidavit of February 21, 1964, that \$757,451.09 of Accounts Receivable were recovered, subsequent to the seizure

of Rothschild-Samuels-Duignan, S.A., by a newly-formed New York corporation whose stock was held by the stockholders of Rothschild-Samuels-Duignan, S.A., in the same proportionate amounts.

Section 506 of the Act provides:

In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

Accordingly, the extent of the loss suffered as a result of the taking of Rothschild-Samuels-Duignan, S.A. must be adjusted, as follows:

Assets	\$838,528.26	
Less	<u>757,451.09</u>	Recovered
	\$ 81,077.17	
Liabilities	\$101,390.12	

The claimant asserted that the fair market value of his stock interest in this corporation was \$3,691.80, but submitted no data to support this conclusion.

Thus the Commission finds that no loss is certifiable on account of the claimant's stock interest in Rothschild-Samuels-Duignan, S.A. (See Claim of Richard G. Milk and Juliet C. Milk, Claim No. CU-0923, 1967 FCSC Ann. Rep. 63.)

Personal Property

Claimant further contends that he lost certain equipment and other personal effects valued at \$964.00 that were located in the carpentry room of Rothschild-Samuels-Duignan, S.A. at the time of its intervention on September 15, 1960. Claimant submitted a listing of these items of personalty. He also submitted a statement of the Intervenor dated September 19, 1960 wherein certain of the aforementioned items are set forth.

Based upon the entire record, the Commission finds that claimant owned certain personal property which was located in the confines of the enterprise Rothschild-Samuels-Duignan, S.A. and that these items were seized when the enterprise was intervened on September 15, 1960.

In arriving at the value of the personal property, consideration was given to all of the evidence of record and the complete listing of said personal property. The Commission finds, in the absence of evidence to the

contrary, that the value of the personal property was \$964.00. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$964.00 within the meaning of Title V of the Act, as the result of the taking thereof by the Government of Cuba as of September 15, 1960.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
September 15, 1960	\$ 964.00
October 24, 1960	<u>61,278.08</u>
	\$62,242.08

CERTIFICATION OF LOSS

The Commission certifies that FREDERIC SAMUELS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty-two Thousand Two Hundred Forty-two Dollars and Eight Cents (\$62,242.08) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUL 23 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)