

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

IN THE MATTER OF THE CLAIM OF

EBERT & CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0335

Decision No. CU **458**

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,152.00, was presented by EBERT & CO., INC. and is based upon the asserted loss of certain merchandise shipped to Cuba. Claimant states that at all times since May 31, 1946, more than fifty percent of the outstanding capital stock was owned by United States nationals and that at the time of loss and the presentation of the claim to the Commission, all of the outstanding capital stock was owned by two persons.

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 by 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.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The claimant states that it shipped 1,200 watch bands to Cia. Mercantil La Sucursal, S.A., Havana, Cuba, and that the consignee paid the local bank in pesos. Claimant states further that the Cuban bank was awaiting a dollar reimbursement release from the appropriate Cuban Exchange authorities, but that no permission had been granted. By Commission letter of July 12, 1966, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of October 14, 1966, the Commission again requested the submission of the necessary evidence to establish this claim under the Act. On January 20, 1967, additional suggestions were made to claimant concerning the submission of supporting evidence. No response has been received to these letters.

On August 17, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and it was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has been submitted.

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The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

OCT 18 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on **21-NOV-1967**

Francis Macfarland
Clerk of the Commission

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).)

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