

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

IN THE MATTER OF THE CLAIM OF

HENRY KAMINOW, DOING BUSINESS AS
KAMINOW YARNS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0361

Decision No. CU 179

Counsel for claimant:

Kornberg and Borden
By: Selma B. Borden

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 HENRY KAMINOW in the amount of \$6,464.35, as amended, based upon the asserted loss of payment for merchandise shipped to Cuba and a bank account. Claimant, HENRY KAMINOW, has been a national of the United States since his birth in New Jersey on September 16, 1899.

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 502(1) of the Act defines the term "national of the United States" as "(B) 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."

Claimant HENRY KAMINOW submitted a Business Certificate dated June 18, 1952 which reflects that claimant conducted business under the name of KAMINOW YARNS.

The record contains a copy of claimant's invoice No. 7019 dated October 24, 1958 reflecting the sale to Financiera Industrial De Hilazia, S.A., Havana, Cuba, of goods totalling \$1,171.40; a copy of his invoice No. 7255 dated June 22, 1959 reflecting the sale to Alberto Rodriguez of Cuba, of goods totalling \$800.80; and a copy of claimant's invoice No. 7264 dated July 7, 1959 reflecting the sale to Eugenie Llana of Cuba, of goods totalling \$1,882.80. The record also contains a copy of a shipping memorandum No. 6988 dated September 29, 1958, reflecting the shipment of goods to Financiera Industrial De Hilazia, S.A., in the amount of \$1,760.35. Claimant states that he has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban

Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolena Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on September 29, 1959, as to \$1,171.40, \$800.80, \$1,882.80 and \$1,760.35, respectively.

Claimant also contends that he has lost a bank account in Cuba. The record contains a copy of two deposit slips dated June 9, 1959 and September 8, 1959 of the Havana branch of The Royal Bank of Canada, which reflects a total deposit of 849 Cuban pesos.

A number of laws and resolutions were issued in Cuba affecting banks, bank accounts and currency. Not all of these things affect the account of the claimant in Claim No. CU-0361.

Law 568, published in the Cuban Official Gazette on September 29, 1959, referred to above, forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country. Law 930, published in the Cuban Official Gazette on February 23, 1961, gave the National Bank the power to effect centralization of liquid assets "temporarily" taken from the people. In effect this froze or continued the blocking of bank accounts.

By Law 963, published in the Cuban Official Gazette on August 4, 1961, a currency exchange was effected. Currency was turned in at centers provided and a new currency was provided. There was no change in value. However, each person was to receive 200 pesos in new currency, and all over that

amount was placed in a special account in his name. This did not affect bank accounts already in existence. By Law 964, published in the Cuban Official Gazette on August 9, 1961, it was provided that the owners of the deposits created under Law 963 could draw up to 1,000 pesos, the balance up to 10,000 remained in his special account, and all over 10,000 passed to the State Treasury. There were some minor exceptions. However, Laws 963 and 964 do not affect Claim No. CU-0361 in which the account did not arise from currency exchange.

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. This included such bank accounts as had not been established and confiscated by Laws 963 and 964, supra. In the absence of evidence to the contrary, the Commission finds that claimant's above described bank account, totalling 849 pesos, was taken by the Government of Cuba on December 6, 1961. (See the Claim of Floyd W. Auld, FCSC Claim No. CU-0020.)

Further, the Commission finds that on December 6, 1961, claimant's 849 pesos had a value of \$849.00 and that he suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of his bank account by the Government of Cuba as of December 6, 1961.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the respective dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that HENRY KAMINOW, DOING BUSINESS AS KAMINOW YARNS, 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 Six Thousand Four Hundred Sixty Four Dollars and Thirty Five Cents (\$6,464.35) 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

23 AUG 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

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. 412-13 (1967).)

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on SEP 25 1967

Janis Anderson
Clerk of the Commission