

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

IN THE MATTER OF THE CLAIM OF

MERCANTILE DEVELOPMENT, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0520

Decision No. CU 123

Counsel for claimant:

Selig J. Levitan, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$2,769.89, plus interest, was presented by MERCANTILE DEVELOPMENT, INC. based upon the asserted loss of payment for merchandise shipped to Cuba.

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."

An officer of the claimant corporation has certified that the claimant was organized in the State of New York, and that at all times between September 15, 1960 and presentation of this claim on October 20, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record of this claim discloses that on September 15, 1960, the date of loss of the subject matter claimed, 100 per cent of claimant's 100 shares of outstanding capital stock was owned by two (2) stockholders who were citizens of the United States; and, that between September 15, 1960 and the presentation of this claim on October 20, 1965, 90 percent of claimant's 100 shares of outstanding capital stock was owned by two United States nationals with the remaining 10% of said shares of stock being owned by stockholders who assertedly are nationals of Switzerland.

The record contains copy of claimant's Invoice No. 7293 of August 3, 1960 reflecting the sale to Antonio Ma. Salazar of Havana, Cuba, of goods totalling \$2,460.00, as to which freight, shipping and other attendant fees increased the total to \$2,769.89.

Additionally, the record includes letters dated September 29, 1960 and April 4, 1961 from The Chase Manhattan Bank of New York City, New York, to claimant, in which it is stated that the collection of \$2,769.89 was paid by the consignee (Antonio Ma. Salazar), and that The Chase Manhattan Bank was still awaiting a dollar reimbursement release from the appropriate Cuban Government agency. Claimant states that it 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 transfers of funds, in this and similar cases, 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.)

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 30, 1960 as to \$2,769.89, the day after the collection was acknowledged by The Chase Manhattan Bank.

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 September 30, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that MERCANTILE DEVELOPMENT, INC. 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 Two Thousand Seven Hundred Sixty-Nine Dollars and Eighty-Nine Cents (\$2,769.89) with interest thereon at 6% per annum from the date 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

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

Thomas M. Anderson
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).)