

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

IN THE MATTER OF THE CLAIM OF

JAY-GRO FABRICS, INC.

Claim No. CU-0801

Decision No. CU 545

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Maxwell E. Lopin & Herman L.  
Wasserman

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 JAY-GRO FABRICS, INC. in the amount of \$3,405.81, and is 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 "nationals 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."

Evidence of record discloses that claimant corporation was organized in the State of New York in 1962, and is the successor in interest to James H. Grossman, doing business as Jay-Gro Fabrics. The said James H. Grossman is the sole stockholder in claimant corporation, and has been a national of the United States since his naturalization on March 2, 1944. The Commission holds that both claimant corporation and its predecessor are nationals of the United States within the meaning of Section 502(1) of the Act.

The record contains a copy of claimant's invoice No. 454 of December 2, 1959 reflecting the sale to Almacenes de Panos de Figurin, of Havana, Cuba, of goods totalling \$1,554.58; and a copy of his invoice No. 1191 of December 10, 1959 reflecting the sale to Finkelman and Company, of Havana, Cuba, of goods totalling \$1,851.23.

Additionally, the record includes a letter of August 16, 1960 from the Manufacturers Trust Company, to claimant's predecessor, in which it is stated, with reference to the collection of \$1,554.58, that the bank was still awaiting a reimbursement release; and another letter dated February 9, 1960, from Finkelman and Company, stating that the collection of \$1,851.23 was paid by them on January 19, 1960. The record also contains correspondence between the foreign freight forwarder for claimant's predecessor, Rediker Bros. Shipping Co. Inc.,

and the Trust Company of Cuba, regarding the request for reimbursement authorization as to the funds paid by Finkelman and Company for the shipment of goods and the forwarder's services. 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 January 20, 1960 as to \$1,851.23, and on August 17, 1960 as to \$1,554.58, the days after the said payments were made or acknowledged.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

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

On \$1,851.23 from January 20, 1960

On \$1,554.58 from August 17, 1960

CERTIFICATION OF LOSS

The Commission certifies that JAY-GRO FABRICS, INC. succeeded to and 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 Three Thousand Four Hundred Five Dollars and Eighty-One Cents (\$3,405.81) 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

NOV 1 1967

in the true  
and correct  
copy of the  
decision on

Correct copy of the decision  
as was entered as the final  
A DEC 1967

*Walter J. [Signature]*  
Clerk of the Commission

*Edward D. Re*  
Edward D. Re, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*LaVern R. Dilweg*  
LaVern R. Dilweg, 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).)

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