

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

IN THE MATTER OF THE CLAIM OF

ESTHER S. JOHNSTON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1285

Decision No. CU

3087

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 ESTHER S. JOHNSTON and is based upon the asserted loss of \$12,725.27, sustained in connection with the ownership of stock interests in Cia. Azucarera Vertientes-Camaguey de Cuba and the Francisco Sugar Company. Claimant has been a national of the United States since birth in the United States.

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.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to August 6, 1960, has been the owner of 800 shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba (Vertientes-Camaguey Sugar Company of Cuba). Evidence of record discloses that the stock in question was purchased by the claimant in 1955-1956 and since that time has been held in her securities account by her broker in San Francisco, California.

The record discloses that Cia. Azucarera Vertientes-Camaguey de Cuba was listed as nationalized in Resolution 1 (pursuant to Law 851), published in the Cuban Official Gazette on August 6, 1960. This corporation was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180.)

In determining the value of the interest owned by claimant in Cia. Azucarera Vertientes-Camaguey de Cuba, the Commission has considered the appraisals by Parajon e Hijo, balance sheets for the years 1957, 1958, 1959 and 1960, the annual reports to stockholders for those years, and

other evidence of record submitted by the Company. On the basis of the entire record, the Commission concludes that the dollar loss sustained by Cia. Azucarera Vertientes-Camaguey on August 6, 1960, was \$66,990,148.48, and the loss per share for each of the 1,443,921 shares of common stock was \$46.3946,

Accordingly, in the instant claim, the Commission finds that claimant as holder of 800 shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba suffered a loss in the amount of \$37,115.68, within the meaning of Title V of the Act, as a result of the nationalization of Cia. Azucarera Vertientes-Camaguey de Cuba by the Government of Cuba on August 6, 1960. (See Claim of Ruth Anna Haskew, Claim No. CU-0849.)

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

Claimant has based a portion of her claim on the asserted loss of 400 shares of stock of the Francisco Sugar Company, a New Jersey corporation,

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

In connection with a claim in such situation it is noted that Section 505(a) of the Act provides:

"A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered . . ."

The record in the Claim of the Francisco Sugar Company on file with the Commission (Claim No. CU-2500), establishes that that corporation qualifies as a United States national within the meaning of Section 502(1)(B) of Title V. If that company's claim is approved then ESTHER S. JOHNSTON, the claimant here, should in due course, receive her proportionate benefits from such an award in accordance with whatever rights she may have as a stockholder of that corporation.

The Commission concludes that since this portion of the claim is based on a stock interest in a corporation which qualifies as a United States national, the Commission is precluded, under Section 505(a) of the Act from considering it. Accordingly, this portion of the claim is hereby denied. (See Claim of Mary F. Sonnenberg, Claim No. CU-0014; 25 FCSC Semiann. Rep. 48 [July-Dec. 1966].)

The Commission deems it unnecessary to make specific findings with respect to other elements of this portion of the claim pertaining to stock interests in the Francisco Sugar Company.

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.

CERTIFICATION OF LOSS

The Commission certifies that ESTHER S. JOHNSTON 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 Thirty-Seven Thousand One Hundred Fifteen Dollars and Sixty-Eight Cents (\$37,115.68) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

SEP 25 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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).)