

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

In the Matter of the Claim of	:	
	:	
EFIM GOLODETZ	:	Claim No. CU-1816
	:	
LEO ELIASH	:	Claim No. CU-1818
	:	
LEO ELIASH, JOACHIM GINZBERG, EFIM GOLODETZ, MARC L. GINZBERG, OSCAR GINZBERG, DAVID GINZBERG and ISAAC SUDER d.b.a. INTERCONTINENTAL AFFILIATES	:	Claim No. CU-1819
	:	
JOACHIM GINZBERG, EFIM GOLODETZ, LEO ELIASH, OSCAR GOLODETZ, MARC L. GINZBERG and DAVID GINZBERG d.b.a. M. GOLODETZ & CO.	:	Claim No. CU-1820
	:	
Under the International Claims Settlement Act of 1949, as amended	:	Decision No. CU 6763

Counsel for claimants:

Lucas, O'Connell, Friedman
and Mann
By Joseph B. Friedman, Esq.

PROPOSED DECISION

These claims against the Government of Cuba were filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amounts of \$12,868.58 (EFIM GOLODETZ, Claim No. CU-1816), \$192,584.90 (LEO ELIASH, Claim No. CU-1818), \$604,379.33 (INTERCONTINENTAL AFFILIATES, Claim No. CU-1819), and \$887,488.00 (M. GOLODETZ & CO., Claim No. CU-1820), are based upon asserted losses of certain personal property in Cuba, including stock interests in West Indies Trading Company, a Cuban corporation hereafter called Wintrade.

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.

With respect to the nationality of claimants, the record shows the following:

EFIM GOLODETZ (Claim No. CU-1816) has been a national of the United States since January 28, 1946.

Claim No. CU-1818 was filed by Trust #1 (claimants' designation) which was created as an irrevocable trust pursuant to an agreement of October 3, 1950 with Simon Golodetz, a copy of which is of record. The agreement named four beneficiaries, two of whom were British nationals and two American nationals. By indenture of March 7, 1966, the trustees duly transferred title to 900 shares of stock in Wintrade to LEO ELIASH, one of the beneficiaries, who has been a national of the United States since February 3, 1943. (See Claim of Namarib Company, Claim No. CU-1817.) Those 900 shares of stock constitute the sole basis of Claim No. CU-1818. Pursuant to paragraph "THIRD" of the trust agreement, that transfer of March 7, 1966 effectively terminated the trust insofar as the 900 shares of stock are concerned. Accordingly, LEO ELIASH has been substituted as

CU-1816, CU-1818,
CU-1819, CU-1820

claimant in place of Trust #1. This claim presents an issue involving the provisions of Section 504(a) of the Act, which issue is discussed in detail below.

INTERCONTINENTAL AFFILIATES (Claim No. CU-1819) is a partnership organized under the laws of New York. In addition to LEO ELIASH and EFIM GOLODETZ its partners are: JOACHIM GINZBERG, MARC L. GINZBERG, OSCAR GOLODETZ, DAVID GINZBERG and ISAAC SUDER, nationals of the United States since April 4, 1927, September 9, 1929, January 28, 1946, April 13, 1934 and August 12, 1924, respectively. On the date of loss in 1960, as indicated hereafter, the partners of INTERCONTINENTAL AFFILIATES were LEO ELIASH, JOACHIM GINZBERG, EFIM GOLODETZ, and Simon Golodetz, the last named person having been a national of the United States from June 19, 1944 until his death on October 19, 1963.

In 1963, MARC L. GINZBERG, OSCAR GOLODETZ, DAVID GINZBERG and ISAAC SUDER were admitted as new partners of INTERCONTINENTAL AFFILIATES. The estate of Simon Golodetz, deceased, was reimbursed by the partnership for the deceased's interest in the partnership. Simon Golodetz's sole heirs were his nephews, Oscar Golodetz and Arnold Golodetz, the sons of EFIM GOLODETZ, and nationals of the United States since January 28, 1946. The transfers of interests in the partnership and ownership of interests in the 2,820 shares of stock in Wintrade, the sole basis of Claim No. CU-1819, were at all pertinent times among nationals of the United States. The Commission holds that INTERCONTINENTAL AFFILIATES is a national of the United States within the meaning of Title V of the Act. (See Claim of The Cuban Plantation Company, Claim No. CU-0093.)

The status of the partnership, M. GOLODETZ & CO. (Claim No. CU-1820), is discussed hereafter.

Claimants assert the following losses:

Claim No. CU-1816 - EFIM GOLODETZ

60 shares of stock in Wintrade

\$12,868.58

CU-1816, CU-1818,
CU-1819, CU-1820

Claim No. CU-1818 - LEO ELIASH

900 shares of stock in Wintrade \$192,584.90

Claim No. CU-1819 - INTERCONTINENTAL AFFILIATES

2,820 shares of stock in Wintrade \$604,379.33

The above three claimants have computed their claims on the basis of one asset of Wintrade, certain raw sugar, as follows:

377,943 bags of sugar (250 lbs. each bag) at \$0.0325 per pound	\$3,070,787.00
Less a bank loan for which the sugar was security	<u>2,183,299.00</u>
Net equity	<u>\$ 887,488.00</u>

These claimants then determined the amounts of their claims on the basis of their proportionate interests in Wintrade which had 4,140 shares of outstanding capital stock on the date of loss. The fourth claimant, M. GOLODETZ & CO., bases its claim on the asserted ownership of the 377,943 bags of sugar, and therefore claims the total equity therein, \$887,488.00.

Ownership of the Sugar

The first issue presented by these claims is whether the 377,943 bags of sugar were owned by Wintrade or by M. GOLODETZ & CO. Obviously, if Wintrade owned the sugar on the date of loss, it follows that the Claim of M. GOLODETZ & CO. must be denied and if the reverse is true, the other three claims must be denied. Counsel for claimants agrees with the foregoing but offers no assistance in resolving the issue beyond stating that the claimants will abide by any decision of the Commission in this respect. However, it is noted that the record contains correspondence from counsel and claimants from which it is clear that Wintrade was at all times regarded as the owner of the sugar.

This issue can be better understood in the light of certain background information. Customarily Wintrade would purchase sugar from various mills in Cuba. The sugar would be stored in warehouses and would be pledged as security for loans obtained generally from the Chase Manhattan Bank, Cuban

Branch. The amounts thus borrowed by Wintrade would be used to pay for the sugar. Subsequently the sugar would be sold to M. GOLODETZ & CO. After delivery of the sugar to M. GOLODETZ & CO. payment would be made to Wintrade which, in turn, would pay the creditor bank and liquidate its debt.

In the instant case, Wintrade acquired title to 377,943 bags of sugar in Cuba. As stated by counsel in his letter of May 11, 1971, Wintrade borrowed \$2,350,000.00 on April 6, 1960 from Chase Manhattan Bank, Cuban Branch, and pledged the sugar as security for the loan. It appears from JOACHIM GINZBERG's affidavit of November 24, 1965, that early in 1960 Cuba commenced interfering with Wintrade's sugar operations. As a result, Wintrade was unable to either sell the sugar to M. GOLODETZ & CO. or otherwise dispose of it.

On September 17, 1960, the Government of Cuba nationalized the Cuban Branch of the Chase Manhattan Bank by the issuance of Resolution No. 2 pursuant to Law 851. The record shows that on October 14, 1960 Wintrade was required by Cuban authorities and actually did pay \$2,350,000.00 to the National Bank of Cuba, an agency of the Government of Cuba, to liquidate the loan of April 6, 1960 from the Chase Manhattan Bank. On the same date, October 14, 1960, Wintrade secured a loan from the National Bank of Cuba in the amount of \$2,183,299.25 and pledged the 377,943 bags of sugar as security.

The record includes an unsigned copy of a loan and pledge agreement to that effect. The agreement with the National Bank of Cuba, which was actually executed and contained identical provisions as in the proposed agreement, is not available. However, the record contains a copy of a letter of January 17, 1962 from the National Bank of Cuba to Wintrade advising it of the following: As of January 11, 1962 the balance of the October 14, 1960 loan secured by the sugar was reduced to \$349,731.00; and on January 12, 1962 the Cuban Ministry of Industry Consolidated Sugar Enterprise paid that balance to the National Bank of Cuba as final liquidation of the loan.

Upon consideration of the entire record, the Commission finds that the 377,943 bags of sugar belonged to Wintrade on the date of loss, and that M. GOLODETZ & CO. had no interest therein. Accordingly, the claim of M. GOLODETZ & CO., Claim No. CU-1820, based upon the asserted ownership and loss of the 377,943 bags of sugar is denied in its entirety.

Nationalization

As already noted, Cuba commenced interfering with Wintrade's sugar operations early in 1960. On October 14, 1960 the Cuban Government compelled Wintrade to liquidate its debt to Chase Manhattan Bank and to secure a loan from the National Bank of Cuba, pledging the sugar as security. From that date until 1962, Cuba sold the sugar. The said letter of January 17, 1962, from the National Bank of Cuba, indicates not only that the debt secured by the sugar had been reduced to \$349,731.00, but also that only 77,718 bags of sugar remained as security for that reduced balance of the loan. It is clear that the rest of the original 377,943 bags of sugar had been sold by Cuba, and by January 12, 1962 all of the sugar had been sold. Claimants state that Cuba took the sugar between October 14, 1960 and January 12, 1962.

On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that Wintrade's 377,943 bags of sugar were taken by the Government of Cuba on October 14, 1960.

Since Wintrade was organized under the laws of Cuba, it 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 that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Stock Interests in Wintrade

The evidence establishes and the Commission finds that claimants owned the following stock interests in Wintrade:

EFIM GOLODETZ (Claim No. CU-1816) - 60 shares of stock at all pertinent times.

LEO ELIASH (Claim No. CU-1818) - 900 shares of stock since March 7, 1966.

INTERCONTINENTAL AFFILIATES (Claim No. CU-1819) - 2,820 shares of stock at all pertinent times.

It appears from the record that all stock certificates remained in Cuba and are unavailable.

As quoted above, the express provisions of Section 504(a) of the Act limits the allowance of any claim against Cuba to the extent only that the claim has been owned by a national or nationals of the United States from the date it arose until the date of filing with the Commission.

The foregoing provisions of Section 504(a) of the Act present an issue with respect to Claim No. CU-1818, Claim of LEO ELIASH.

Pursuant to an agreement of October 3, 1950, an irrevocable trust was created by the late Simon Golodetz. Insofar as Claim No. CU-1818 is concerned, the trust res consisted of 900 shares of stock in Wintrade. Four beneficiaries were named by the grantor, two of whom being American nationals and two being British nationals.

Paragraph "THIRD" of the agreement conferred upon the Trustees authority to pay the net profit and income from the trust property "for the benefit of such of the Beneficiaries and in such proportions as the Trustees in their absolute discretion shall determine, in at least annual instalments." The trust was to terminate on the death of the survivor of DAVID GINZBERG and OSCAR GOLODETZ. However, if all of the beneficiaries predeceased said survivor, the trust was to terminate, and the balance of all income and principal was to be paid "in equal shares per stirpes to the issue of the Beneficiaries named herein surviving the Survivor."

On the other hand, if the survivor predeceased any surviving beneficiary, the trust was to terminate and the balance of all income and principal was to be paid by the Trustees "to and among such of the Beneficiaries and in such proportions as the Trustees in their absolute discretion shall duly nominate, direct and appoint by deed." The agreement further provided that if the Trustees failed to make such payment within 120 days after the death of the survivor, the Trustees were to pay the balance "in equal shares per stirpes to such of the Beneficiaries as shall survive the Survivor and to the issue surviving the Survivor of such of the Beneficiaries as shall not survive the Survivor."

The Trustees were further authorized "to pay to or use and apply for the benefit of any Beneficiary such portion or portions of the principal as the Trustees in their absolute discretion may deem proper." Upon doing so, the trust was to terminate pro tanto, but was to apply only to the remaining principal and income. Provision was also made for the replacement of any Trustee due to death, resignation or incapacity.

The record shows that no part of the trust principal (900 shares of stock in Wintrade) was ever distributed prior to March 7, 1966 when all of the 900 shares were duly transferred to LEO ELIASH, a national of the United States. The question thus presented is the identity of the owner or owners of the 900 shares of stock from October 14, 1960, the date of loss, to March 7, 1966, so that it is clear whether the 900 shares of stock or any part thereof were owned by nationals of the United States at all pertinent times in conformity with the prerequisites of Section 504(a) of the Act.

This issue was discussed with counsel for claimants who contended that the trust property at all times was owned by nationals of the United States. Accordingly, the Commission suggested the submission of evidence in support of counsel's contention. Counsel's response was in the form of a detailed letter of May 11, 1971.

Counsel proceeds with his argument by reciting that the Trustees - EFIM GOLODETZ, JOACHIM GINZBERG and Alexander Golodetz - have been United States nationals at all pertinent times. He states that pursuant to the trust agreement the Trustees had "absolute and unfettered discretion" to distribute the income and the corpus to any one or more of the four beneficiaries. Counsel adds that the only beneficiary to whom the income was ever distributed is LEO ELIASH, an American, and that as of March 7, 1966 LEO ELIASH became the owner of the 900 shares of stock in Wintrade.

Based upon the foregoing, counsel contends that the two British beneficiaries never owned either a legal or equitable interest in the 900 shares of stock at any time. In effect, counsel contends that from October 14, 1960 until March 7, 1966 the 900 shares were owned by the Trustees.

In support of his contentions, counsel states that paragraph "Tenth" of the trust provides that the trust shall be construed according to the law of New York and cites a New York case as controlling in resolving the issue, namely, Hamilton v. Drogo, 241 N.Y. 401, 404, 150 N.E. 496 (1926).

According to counsel, the trust involved in that New York case conferred upon the trustees absolute discretion to pay income from the trust to any one of several named beneficiaries to the exclusion of any other. The case thus involved the question "whether the Court could interfere with the trustees' discretion and compel them to allot income to a 'beneficiary' to whom they had decided not to make such an allotment." Counsel states that the court held unequivocally that the decision of the trustees was final and could not be changed by the courts. Counsel construes the decision to mean that the "beneficiary" in question had no legal or equitable interest in the income unless and until the trustees made an allotment to him.

On the basis of that decision, counsel contends that the 900 shares of stock in Wintrade were owned by nationals of the United States at all pertinent times. He states that the Trustees herein in their discretion had allotted income from the trust only to LEO ELIASH, an American, and that prior to the date of filing with the Commission the Trustees had distributed the 900 shares to LEO ELIASH. Accordingly, counsel concludes that the two British beneficiaries never owned any legal or equitable interest in the shares of stock. He therefore urges the Commission to find that the 900 shares were at all pertinent times owned by nationals of the United States.

Upon consideration of the entire record, the Commission is constrained to reject counsel's contentions. The Commission finds that the Hamilton v. Drogo case stands for the proposition that a court may not substitute its discretion for that of trustees in whom absolute discretion is vested; nor may the court compel such trustees to exercise their discretion in a certain manner. However, that case does not support counsel's contention that the two British beneficiaries had no legal or equitable interest in the 900 shares of stock.

As noted above, the agreement of October 3, 1950 provided that the Trustees in their sole discretion could distribute the income and corpus to any one or more of the beneficiaries. There is nothing in that agreement to authorize the Trustees to distribute any part of the income or the corpus to themselves under any conditions. It is therefore clear beyond peradventure of doubt that none of the Trustees owned any interest, legal or equitable, in any income or principal of the trust property, and the Commission so finds. The Trustees merely held the bare legal title to the 900 shares of stock, and their sole interest therein was to distribute the income and the principal of the trust property to one or more of the beneficiaries pursuant to the provisions of the agreement.

The Commission notes the statements of claimants and counsel that the only person to whom income from the trust was ever allotted is LEO ELIASH.

The record in Claim No. CU-1818 includes copies of accounting reports concerning the trust for the fiscal period October 1, 1959 to September 30, 1960.

However, and in any event, the status of the income from the trust has no bearing on ownership of the corpus of the trust. The Commission has held consistently that the beneficial owner of the claim, and not the ostensible or nominal holder, is the proper party claimant in a proceeding under the International Claims Settlement Act of 1949, as amended. (See the Claim of Florida National Bank and Trust Co. at Miami, Adm. c.t.a. of the Estate of Francisco Hidalgo Gato, Deceased, Claim No. CU-0587; and see also Settlement of Claims by FCSC 45 (September 14, 1949 to March 31, 1955); FCSC Dec. & Ann. 312, 389, 589-593 (1968).)

Upon full consideration of this matter, the Commission finds that on October 14, 1960, the date of loss, and from that date until March 7, 1966, the equitable interest in the 900 shares of stock in Wintrade was owned by the beneficiaries in equal shares. Since there were four beneficiaries, including two British nationals - Michael Golodetz and Lionel Golodetz - the Commission finds that a 50% interest in the trust property was beneficially owned by nonnationals of the United States.

Accordingly, the Commission finds that 450 of the 900 shares of stock in Wintrade, upon which LEO ELIASH's claim is based, were beneficially owned by nonnationals of the United States on October 14, 1960, the date of loss. Pursuant to the express provisions of Section 504(a) of the Act, the portion of LEO ELIASH's claim based upon said 450 shares of stock in Wintrade cannot be considered. Therefore, this portion of his claim is denied. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

Valuation

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

It is noted that no claim is being made for any other asset of Wintrade, except the 377,943 bags of sugar. Counsel's memorandum accompanying his letter of May 12, 1971, and statements from the claimants, indicate that Wintrade owned other assets in Cuba. It appears, however, that claimants have no evidence to establish either the precise nature of such property or its value, and therefore have made no claim for such other assets of Wintrade. The record shows that Wintrade owned certain assets in the United States, which could not have been taken by the Government of Cuba. In connection with such assets, the record indicates that application was made by claimants to the Foreign Assets Control, United States Treasury Department, to unblock such assets which was granted in part.

It further appears from the evidence of record that Wintrade owned a 100% stock interest in Atlantic Warehouse & Transportation Co., a Cuban corporation; and that INTERCONTINENTAL AFFILIATES (Claim No. CU-1819) owned a 100% stock interest in West Indies Commercial Co., S.A., also a Cuban corporation, both of which corporations were assertedly taken by the Government of Cuba. However, no claims are being made for these stock interests due to the lack of evidence.

Accordingly, the only asset of Wintrade to be considered in reaching its net worth is the sugar.

The record shows that each of the 377,943 bags of sugar contained 250 pounds. The evidence also establishes that the Cuban authorities had fixed the price of sugar intended for foreign consumption at \$0.0325 per pound which is the amount being claimed.

On the basis of the evidence of record, the Commission finds that each bag of sugar had a value of \$8.125 and that the aggregate value of the 377,943 bags on October 14, 1960 was \$3,070,786.88. However, as already indicated, Wintrade owed a debt of \$2,183,299.25 in connection with the sugar. Therefore, Wintrade's equity in the sugar amounted to \$887,487.63. Since Wintrade had 4,140 shares of outstanding capital stock on the date of loss, each share had a value of \$214.369. Accordingly, claimants sustained the following losses:

EFIM GOLODETZ - Claim No. CU-1816

60 shares \$12,862.14

LEO ELIASH - Claim No. CU-1818

450 shares \$96,466.05

INTERCONTINENTAL AFFILIATES - Claim No. CU-1819

2,820 shares \$604,520.58

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 in the instant case, it is so ordered.

CERTIFICATIONS OF LOSS

The Commission certifies that EFIM GOLODETZ 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 Twelve Thousand Eight Hundred Sixty-two Dollars and Fourteen Cents (\$12,862.14) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement;


CU-1816, CU-1818,
CU-1819, CU-1820

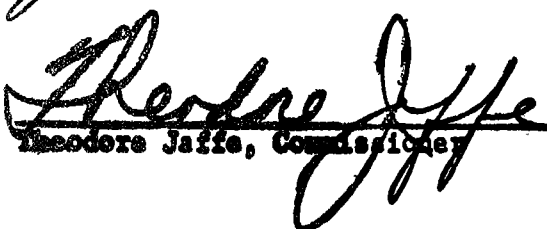
The Commission certifies that LEO ELIASH suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Ninety-six Thousand Four Hundred Sixty-six Dollars and Five Cents (\$96,466.05) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement; and

The Commission certifies that LEO ELIASH, JOACHIM GINZBERG, EFIM GOLODETZ, MARC L. GINZBERG, OSCAR GINZBERG, DAVID GINZBERG, and ISAAC SUDER d.b.a. INTERCONTINENTAL AFFILIATES 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 Six Hundred Four Thousand Five Hundred Twenty Dollars and Fifty-eight Cents (\$604,520.58) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

AUG 11 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: EFIM GOLODETZ, JOACHIM GINZBERG, LEO ELIASH, MARC L. GINZBERG, OSCAR GOLODETZ and DAVID GINZBERG are claimants in Claim No. CU-1817.

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 (1970).)

CU-1816, CU-1818,
CU-1819, CU-1820