

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

IN THE MATTER OF THE CLAIM OF

SWEET PAPER SALES CORPORATION

Claim No. CU-1874

Decision No. CU -1671

Under the International Claims Settlement
Act of 1949, as amended

Petition to reopen; Proposed Decision dated and entered April 10, 1968; Final Decision entered October 16, 1968.

Counsel for claimant: _____ Curry and Shamas

AMENDED FINAL DECISION

Under date of October 16, 1968, the Commission entered its Final Decision denying this claim for lack of proof. Subsequently, supporting evidence was submitted on behalf of claimant.

Upon consideration of the new evidence, the Commission amends the decision in this matter as follows:

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.

The record shows that claimant was organized under the laws of New York; and that at all pertinent times all of its outstanding capital stock was owned in equal shares by Samuel Scheck and Henrietta Scheck, husband and wife. The evidence establishes that Samuel Scheck was a United States national from birth until his death in 1971. Therefore, 50% of claimant's outstanding capital stock was owned by a United States national at all pertinent times. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Commission finds on the basis of the evidence of record that claimant owned 2,585 shares of stock in Cia. Papalera Flamingo, S.A. (Flamingo), a Cuban corporation, which was nationalized by the Government of Cuba on October 24, 1960 pursuant to Law 851.

Since Flamingo was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. 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.)

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.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is the balance sheet for Flamingo as of December 31, 1959, a copy of which was submitted.

That balance sheet shows that Flamingo owned assets in Cuba aggregating \$341,278.05, after deleting goods in transit in the amount of \$11,329.78 because that asset could not have been taken by Cuba. It further appears

that its liabilities aggregated \$76,860.34. The Commission therefore finds that the net worth of Flamingo on October 24, 1960 was \$264,417.71. Since Flamingo had 2,635 shares of outstanding capital stock, each share of stock had a value of \$100.3483, and claimant's 2,585 shares of stock had an aggregate value of \$259,400.36.

The Commission has decided that in certifications of loss 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.

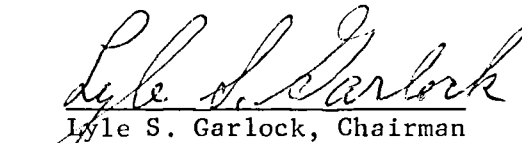
Accordingly, the following Certification of Loss will be entered.

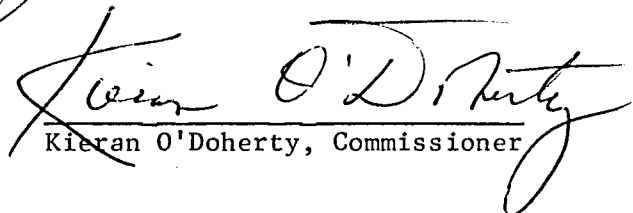
CERTIFICATION OF LOSS

The Commission certifies that SWEET PAPER SALES CORPORATION 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 Hundred Fifty-Nine Thousand Four Hundred Dollars and Thirty-Six Cents (\$259,400.36) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, 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 or 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.

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WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

SWEET PAPER SALES CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1874

Decision No. CU-1671

Appeal and objections from a Proposed Decision dated and entered April 10, 1968. No oral hearing requested.

Hearing on the record held

FINAL DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$254,000.00, was presented by SWEET PAPER SALES CORPORATION and is based upon the asserted loss of its equity in Flamingo Paper Corporation, S.A., located at Cotorro, Cuba, and stated to have been wholly owned by claimant.

Insufficient supporting evidence having been submitted, the Commission issued its Proposed Decision on April 10, 1968 denying this claim on the ground that claimant did not meet the burden of proof in that it failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba.

Claimant's objections were set forth in a letter dated April 23, 1968 and signed by Mr. Samuel Scheck as President of claimant on behalf of himself and his wife, assertedly the sole stockholders of claimant and in turn of Flamingo Paper Corporation, S.A. In that letter, it was stated that the shares of stock could not be found, but that proof of ownership was available from Hudson Pulp & Paper Corporation of New York, New York, and from claimant's accountant in New York. It was further asserted that in excess of \$100,000 of debts due from the Cuban concern to the Hudson Corporation was paid by Mr. and Mrs. Scheck personally.

Copies of the letter of April 23, 1968, in which the foregoing statements appear, were sent by Mr. Scheck to both the Hudson Pulp & Paper Corporation and to the accountant.

However, no further evidence has been received either from Mr. or Mrs. Scheck, from the Hudson Pulp & Paper Corporation, or from the accountant.

The Commission has reexamined all the evidence of record in this claim and finds that it is insufficient to warrant favorable action.

Full consideration having been given to the entire record, including claimant's objections, it is

ORDERED that the Proposed Decision be and it is hereby affirmed.

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

OCT 16 1968

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

Theodore Jarfe

Theodore Jarfe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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IN THE MATTER OF THE CLAIM OF

SWEET PAPER SALES CORPORATION

Under the International Claims Settlement
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Claim No. CU - 1874

Decision No. CU
1671

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 \$254,000.00 was presented by SWEET PAPER SALES CORPORATION based upon the asserted loss of the inventory of merchandise, accounts receivable, cash in bank, machinery and other assets of Cia Papelera Flamingo, S.A. or Flamingo Paper Corporation of Cuba, of which all of the issued and outstanding stock is stated to have been owned by SWEET PAPER SALES CORPORATION at all times pertinent to this

claim. Claimant states that it is a national of the United States within the meaning of Section 502(1)(B) of the Act.

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.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

By Commission letter of September 13, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Evidence in response to this correspondence was not received.

On October 30, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and claimant was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

Thereafter, an affidavit in letter form, dated January 3, 1968, was submitted by Samuel Scheck and Henrietta Scheck, President and Secretary respectively, of claimant corporation and assertedly President and Secretary-Treasurer, respectively, of Cia Papelera Flamingo, S.A. or Flamingo Paper Corporation, in which both officers stated that SWEET PAPER SALES CORPORATION is a New York State corporation, that said corporation's stock was and is wholly owned by Henrietta and Samuel Scheck but they were unable to locate the shares of stock of Flamingo

Paper Corporation. Enclosed within the January 3, 1968 affidavit-letter and submitted for the record in this claim are photostatic copies of purported balance sheets dated December 31, 1957 and December 31, 1959 of Flamingo Paper Corporation. In a letter dated February 28, 1968, Henrietta Scheck submitted a copy of Samuel Scheck's birth certificate establishing that Samuel Scheck is a United States citizen by birth, and stating that her "citizenship papers" number is No. 543709. However, officers of claimant corporation have not submitted evidence which established SWEET PAPER SALES CORPORATION'S ownership of Cia Papelera Flamingo, S.A., the loss of the assets thereof and the value of property for which claim is made. Further information and evidence in support of this claim has not been submitted.

The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interest in property which has been nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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. Reg. 412-13 (1967).)

CU- 1874