

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

IN THE MATTER OF THE CLAIM OF

ROSE ZIVIAN, Trustee

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1925, 3069 &  
CU -3070

Decision No. CU 2905

Counsel for claimant:

Joseph A. Vieson, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amounts of \$63,400.00, \$59,400.00, and \$51,400.00, respectively, plus interest were presented by ROSE ZIVIAN, Trustee under a Trust Indenture dated December 2, 1941, and are based upon three debts assertedly due from the Kingston Mining Corporation, a legal entity organized under the laws of the Republic of 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 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).)

These claims are based upon three debts assertedly due from the Kingston Mining Corporation, a legal entity organized under the laws of the Republic of Cuba, with alleged balances of \$63,400.00, \$59,400.00, and \$51,400.00. In support of the claims, claimant submitted copies of a Trust Indenture dated December 2, 1941, of three notes signed by the Kingston Mining Corporation, and of a document entitled Certificado de Autorizacion (Certificate of Authority). No evidence has been submitted to establish the outstanding balance of the obligations, the nationalization, expropriation, intervention or other taking of the debtor Kingston Mining Corporation, by the Government of Cuba, if that was the case, and the ability of the debtor corporation to meet such indebtedness.

By Commission letters of August 10, June 20, and June 20, 1967, respectively, claimant was advised, through counsel, as to the type of evidence proper for submission to establish these claims under the Act. On

September 14, 1967, counsel was invited to submit the suggested evidence within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to make a determination on the basis of the existing record. Pursuant to counsel's request, the period of time for the submission of evidence was extended until January 1, 1968. On May 20, 1968, counsel was again advised of the type of evidence proper for submission to establish these claims and was advised that if the suggested evidence were not received within 45 days from that date, it might become necessary for the Commission to determine these claims on the basis of the present record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny these claims and they are hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of these claims.

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

AUG 21 1968

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

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Feidberg*  
Sidney Feidberg, 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- 1925, CU-3069  
and CU-3070