

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

IN THE MATTER OF THE CLAIM OF

HUBERT LANDO, JR.

Claim No. CU -1934

Decision No. CU

942

Under the International Claims Settlement
Act of 1949, as amended

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 HUBERT LANDO, JR. in the amount of \$1,252.32 based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant has been a national of the United States since his birth in Puerto Rico.

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.

The record contains various documents which reflect the sale of goods to several Cuban consignees. These documents, together with other pertinent information, are set out below:

(1) A copy of claimant's accounts receivable ledger sheet indicating the sales to Antiga Co., S.A., of Havana, Cuba, on November 20, 1958 and April 23, 1959, under Invoice Numbers 4626, 4627, and 4880, of goods totalling \$493.44, as to which a freight charge increased the total to \$497.61.

(2) A copy of the customer's original order which was used as a worksheet and which shows the value of the goods shipped as \$146.40. The sale was made to Antiga Co., S.A., of Havana, Cuba, under Invoice Number 4875, on April 22, 1959.

(3) A copy of the customer's original order which shows the value of the goods shipped as \$97.80. The sale was made to Sed y Alvarez, Camaguey, Cuba, under Invoice Number 4892, on April 28, 1959.

(4) Copies of advices from the Banco Continental Cubano, Camaguey branch, dated May 30, 1960, indicating that as of that date a draft in favor of the claimant drawn on Sed y Alvarez, Camaguey, Cuba, for \$490.81, remained unpaid. The draft covered merchandise totalling \$398.35, as to which freight and miscellaneous charges increased the total to \$490.81, shipped on May 7, 1959, under Invoice Number 4909.

(5) A copy of a letter from the First National City Bank of New York, Havana branch, to the claimant, dated June 3, 1960, advising that the Cuban consignee had effected a provisional peso deposit on a draft in favor of the claimant on December 10, 1959. The draft, drawn on Antiga Co., S.A., Havana, Cuba, was for \$178.20, the value of goods shipped on November 23, 1959, under Invoice Number 5205. The bank further advised that it was awaiting additional documents from the consignee before presenting this item to the exchange control board.

The total of the above outstanding balances, reduced by several credits is \$1,252.32--the amount of this claim. Claimant states that he 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 not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, 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; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

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 September 29, 1959, the effective date of Law 568, as to \$1,074.12; and on December 11, 1959, the day after the Cuban consignee made a deposit in local currency to cover claimant's draft, as to \$178.20.

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 the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that HUBERT LANDO, JR. 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 One Thousand Two Hundred Fifty-Two Dollars and Thirty-Two Cents (\$1,252.32) 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

JAN 17 1968

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner
CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on FEB 20 1968

John M. ...

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).)

CU-1934