

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

IN THE MATTER OF THE CLAIM OF

MICHAEL HANLEY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2118

Decision No. CU -465

AMENDED PROPOSED DECISION

Under date of October 18, 1967 this claim was denied for failure to sustain the burden of proof. Subsequently, additional supporting evidence was submitted.

Upon consideration of the entire record, it is

ORDERED that the Proposed Decision be amended to read as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$6735.52 was presented by MICHAEL HANLEY based upon the asserted loss of bonds of the Cespedes Sugar Company, a Cuban corporation. Claimant has been a national of the United States since his naturalization in New York, New York on September 14, 1917.

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 of 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 the evidence of record, the Commission finds that claimant is, and since August 6, 1960, has been the owner of 15 bonds in the original face amount of \$1,000.00 each, issued by the Cespedes Sugar Company of Cuba, and known as First Mortgage 7½% Sinking Fund Gold Bonds, due September 1, 1939. These securities are bearer bonds issued under Nos. M98, M250, M251, M502, M721, M722, M723, M787, M975, M1293, M1294, M1656, M2674, M2773, and M2886.

On April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On June 4, 1940, a new Cuban Constitution was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness to June 30, 1970 and provided for interest at 1% per annum and amortization by certain annual installments. Each of the bonds in question is over stamped with a legend indicating the foregoing changes in the terms of the bond contract. The record discloses that the last payment of principal and interest on claimant's 15 bonds was as of June 30, 1958.

Under Resolution No. 1 of August 6, 1960, Cespedes Sugar Company was listed as nationalized pursuant to Law 851. Claimant's bonds therefore represented the debt of a nationalized enterprise within the meaning of Section 502(3) of the Act.

The Commission concludes that as a result of the nationalization of the property of the Cespedes Sugar Company of Cuba claimant suffered a loss in connection with his bonds within the meaning of Title V of the Act.

The record shows that on August 6, 1960, the date of loss, the amount of the unpaid indebtedness on claimant's bonds was \$6,876.60, including the principal amounts of \$449.03 and interest in the amount of \$9.41 on each bond for the period July 1, 1958 to August 6, 1960.

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.

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 greater or lesser amount which may be asserted by claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that MICHAEL HANLEY 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 Thousand Eight Hundred Seventy-Six Dollars and Sixty Cents (\$6,876.60) with interest thereon at 6% per annum from August 6, 1960 to the date of settlement.

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

NOV 27 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 amended 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).)

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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 in all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

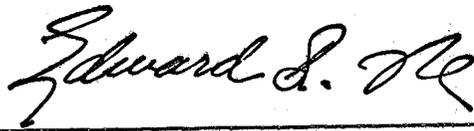
Claimant asserts the ownership of certain bonds of Cespedes Sugar Company of Cuba; however, claimant has submitted no documentary evidence in support of his claim. By Commission letter of July 10, 1967, claimant was advised as to the type of evidence proper for submission to establish his claim under the Act.

On August 22, 1967, claimant was invited to submit any evidence he might have within 45 days from that date, and he was informed, that, absent such evidence it might become necessary to determine the claim on the basis of the present record. Claimant has not responded to the correspondence of the Commission and no evidence has been submitted in support of this claim.

The Commission finds that claimant has not met the burden of proof, in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

OCT 18 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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