

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

IN THE MATTER OF THE CLAIM OF

HARRY MITGANG
ANNA MITGANG

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2649
CU-3736

Decision No. CU- 625

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 total amount of \$1,051.25, were presented by HARRY MITGANG and ANNA MITGANG and are based upon the asserted loss of stock interests in Havana Lithographing Company. Claimants have been nationals of the United States since their naturalization on March 9, 1926, and July 30, 1929, respectively.

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).)

Claimants asserted the loss of their ownership interests in Havana Lithographing Company as a result of actions by the Government of Cuba. They asserted their claims for the total amount of \$1,051.25, the total consideration paid for the stock plus commissions and taxes.

By Commission letters of July 11, 1967, and July 18, 1967, claimants were advised as to the type of evidence proper for submission to establish these claims under the Act. Specifically, it was suggested that they submit the stock certificates which represented their ownership interest in Havana Lithographing Company. None of the suggested evidence was submitted.

By Commission letter of August 22, 1967, claimant, HARRY MITGANG, was informed that if the suggested evidence were not received within 45 days from that date, it might become necessary to determine his claim on the basis of the existing record. Claimants, by letter mailed August 26, 1967, advised the Commission that they sold their 800 shares of stock at the end of July, 1967, to Hirsch & Company, stockbrokers, at a selling price of 2 cents per share, and do not own any shares. Hirsch & Company has not filed a claim with the Commission.

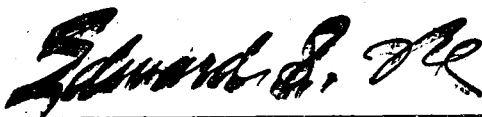
Ownership of stock interest in a foreign corporation on the date of nationalization vests in the owners two items of property, namely, an interest in the net worth of the corporation and an interest in any claim for the nationalization. The sale of the shares in the nationalized corporation may effect transfer of either or both interests, depending upon the intention of the parties to the transaction. The burden of proving the nature of the transaction rests with the claimants.

In the instant claim claimants have not alleged that they retained any interest in a claim for the nationalization of the corporation in question nor does the record establish that any such interest was retained. Therefore, in the absence of evidence to the contrary, the Commission concludes that when claimants sold their stock, they transferred all rights incident thereto.

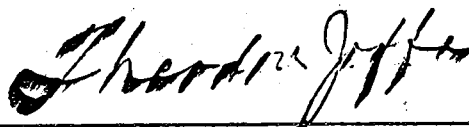
Accordingly, and for the foregoing reasons, these claims are denied. The Commission deems it unnecessary to determine other elements of these claims.

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

15 NOV 1967



Edward D. Re, Chairman



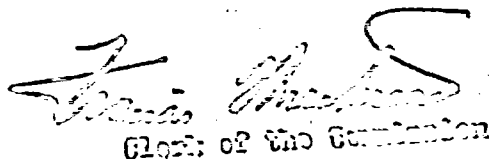
Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

CONFIDENTIAL

This is a true and correct copy of the decision of the Commission which was entered as the Final Decision on _____ A 1967


Gloria of the Commission

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).)

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