

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

IN THE MATTER OF THE CLAIM OF

BANKERS & MERCHANTS, INC.

Claim No. **CU** -2662

Decision No. **CU**-578

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Carmel, Cooper, Lopaty & Ellis

Appeal and objections from a Proposed Decision entered November 1, 1967.
No oral hearing requested.

Hearing on the record held April 24, 1968.

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 \$3,064.95, was presented by BANKERS & MERCHANTS, INC. and is based upon the asserted loss of payment for merchandise shipped to Cuba. Under date of November 1, 1967, the Commission issued its Proposed Decision denying the claim for claimant's failure to meet his burden of proof.

Counsel objected to the Proposed Decision on the ground that they were the only attorneys who regularly represent claimant and that they had not received any communication from the Commission until the issuance of the Proposed Decision.

Counsel were furnished with copies of all prior letters from the Commission and were allowed 30 days in which to submit the necessary evidence. On January 11, 1968, the Commission allowed counsel until January 25, 1968 to submit evidence. Counsel did not

reply to this letter, nor was any evidence submitted. On February 19, 1968, counsel were invited to inform the Commission within 5 days whether they intended to submit evidence. No response to this letter has been received to date.

Accordingly, the Proposed Decision is hereby affirmed as the Final Decision of the Commission.

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

MAY 1 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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IN THE MATTER OF THE CLAIM OF

BANKERS & MERCHANTS, INC.

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Act of 1949, as amended

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578

Counsel for claimant:

Lawrence M. Cooper, Esq.

PROPOSED 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 \$3,064.95, was presented by BANKERS & MERCHANTS, INC. and is based upon the asserted loss of payment for merchandise shipped to Cuba.

An officer of claimant corporation has certified that at all times between 1926 and the presentation of this claim more than 50% of the capital stock of claimant corporation was owned by nationals of the United States.

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:

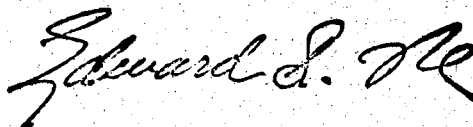
The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Other than a copy of a letter to claimant from the First National Bank of Chicago dated July 25, 1960 stating that their application to Cuban authorities to remit proceeds collected from P. Fernandez y Cia in claimant's behalf in the amount of \$2,863.45 was pending, claimant has submitted no other evidence in support of this claim. By Commission letter of June 23, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date. On August 21, 1967, counsel was invited to submit any evidence available to him 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 existing record. No evidence has since been submitted.

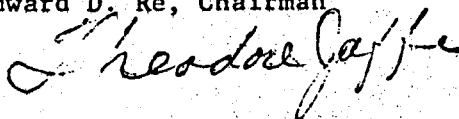
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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

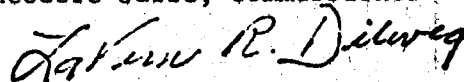
NOV 1 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, 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).)