

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

IN THE MATTER OF THE CLAIM OF

ARON ROZIN

Claim No. CU -2730

Decision No. CU -584

Under the International Claims Settlement
Act of 1949, as amended

AMENDED PROPOSED DECISION

Under date of November 1, 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 \$135,835.34, was presented by ARON ROZIN, based upon the asserted ownership and loss of land, bank deposits, and stock interests in two Cuban corporations. Claimant has been a national of the United States since naturalization on January 16, 1950.

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.

Claimant asserts that he sustained losses on December 6, 1961 in Cuba as follows:

90% interest in 18 plots of land	\$ 69,715.94
Bank deposits	1,750.00
100% stock interest in Centram Optical, S.A.	44,369.40
50% stock interest in Optica Baya, S.A.	<u>20,000.00</u>
Total claim	<u>\$135,835.34</u>

The record includes certificates evidencing claimant's ownership of 185 shares of Optica Baya, S.A. with a par value of 100 pesos for each share, and 25 shares of Centram Optical, S.A. with a par value of 1,000 pesos for each share (hereafter referred to as Baya and Centram, respectively); balance sheets for Baya as of June 30, 1960 and November 30, 1960; a balance sheet for Centram as of June 30, 1960 and a profit and loss statement for Centram covering the half-year period ending June 30, 1960; documents indicating the purchase of 18 plots of land in East Havana, Cuba from Alamar Development Co., Havana, Cuba; receipts from the First National Bank of New York, Havana, Cuba Branch; affidavits from claimant and his accountant; and a copy of a report from sources in Cuba.

On the basis of all of the evidence of record, the Commission finds claimant owned interests in land and bank deposits and stock interests in two Cuban corporations, as further discussed below. According to his affidavit of December 4, 1968, claimant left Cuba in October 1961.

Pursuant to Law 989, published in the Official Gazette on December 6, 1961, the Government of Cuba confiscated all goods and chattels, rights, shares, stocks, bonds and other securities, including bank deposits, of persons who left Cuba. In the absence of evidence to the contrary, the

Commission finds that all of claimant's properties in Cuba were confiscated by the Government of Cuba on December 6, 1961, and concludes that claimant thereby sustained losses within the meaning of Title V of the Act.

The record shows that the two corporations, Baya and Centram, were organized under the laws of Cuba and that neither of these entities qualifies as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180.)

Land

The record includes statements, receipts and other documentation establishing that claimant acquired a 90% interest in 18 plots of land in East Havana, Cuba, from Alamar Development Co. It appears that the purchase price of \$77,462.16 (for 100%) was paid in full, and that no mortgages or liens encumbered the property on December 6, 1961, the date of loss.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission

has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider: i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant asserts a loss of \$69,715.94 on account of his interest in said plots of land, which amount is precisely 90% of the purchase price of the land. Accordingly the Commission finds that the value of claimant's 90% interest in the said land on December 6, 1961 was \$69,715.94.

Bank Deposits

The Commission finds on the basis of copies of three receipts from the First National City Bank of New York, Havana, Cuba, Branch, that claimant had on deposit with said bank on December 6, 1961 the aggregate amount of \$1,792.35. It is noted that while claimant set forth a loss of \$1,750.00 for these bank deposits in his official claim form, he asserted a loss of "slightly over the amount of \$1,790.00" in his affidavit of December 4, 1968.

Centram Optical, S.A.

Claimant asserts ownership of all of the outstanding capital stock of Centram Optical, S.A., a Cuban corporation, and in support thereof has submitted certificates establishing that he owned 25 shares of capital stock of this corporation with a par value of \$25,000.00. The only evidence of record of the value of this corporation on the date of loss is its balance sheet as of June 30, 1960, certified to be correct by a Cuban accountant as well as by claimant. That balance sheet shows the financial condition of Centram as of June 30, 1960 as follows:

Assets

Current Assets

Cash	279.74	
First National City Bank	9,861.28	
Retirement Fund	1,876.22	
Eastern R.R. Stock	100.00	
Accounts Receivable	27,631.97	
Commissions Receivable	70.70	
Inventory	25,765.00	
Samples	5.74	
Unexpired Insurance	100.00	
Deposits	<u>72.00</u>	
Total Current Assets		65,762.65

Fixed Assets

Furniture and Fixtures	4,108.72	
Less Reserve for Depreciation	<u>1,661.48</u>	
Net Furniture and Fixtures		2,447.24
Exclusive Representations		<u>30,000.00</u>
Total Assets		<u>98,209.89</u>

Liabilities and Capital

Current Liabilities

Accounts Payable	18,007.07	
Other Accounts Payable	<u>121.02</u>	
Total Accounts Payable		18,128.09
Accounts Due Executives		127.09
Long-term Obligations		<u>17,400.00</u>
Total Liabilities		35,655.18

Capital

Authorized	50,000.00	
Less Not Issued	<u>25,000.00</u>	
In Circulation	25,000.00	
Plus Subscriptions	<u>16,000.00</u>	
Total Capital	41,000.00	
Surplus	<u>21,554.71</u>	
Total Capital and Surplus		<u>62,554.71</u>
Total Liabilities and Capital		<u>98,209.89</u>

On November 20, 1968 claimant appeared at the offices of the Commission with his accountant and discussed the various elements of this claim with a member of the Commission's staff. With respect to the balance sheet of Centram, claimant was asked the nature of the asset "Exclusive Representations" in the amount of 30,000.00 pesos, and clarification of the fact that the capital of Centram appeared to be 41,000.00 pesos whereas claimant, who owned 25,000.00 pesos thereof, was asserting a 100% stock interest in Centram.

Claimant stated that the 30,000.00 pesos represented additional inventory although the balance sheet of Centram already contained an asset item "Inventory" in the amount of 25,765.00 pesos.

According to claimant's affidavit of December 4, 1968, the item, "Exclusive Representations," was in fact additional inventory which was kept in reserve. No other evidence was submitted to substantiate the assertion that the 30,000.00 pesos represented additional inventory.

In the absence of sufficiently probative evidence, the Commission finds that the item "Exclusive Representations" in the amount of 30,000.00 pesos did not represent an asset of Centram on the date of loss.

With respect to claimant's asserted 100% stock interest in Centram, claimant has stated that the 16,000 pesos, appearing in the balance sheet as additional subscriptions of capital stock, actually represented the balance of a debt due him from Centram. The record includes an affidavit, dated February 1, 1968, from an accountant employed by claimant, reciting that claimant attempted to sell Centram in 1954 for \$44,369.40, his original investment; that claimant was to receive \$25,000.00 in cash and the balance was to be recorded on the books of Centram as a personal loan; and indicating that the transaction was not consummated when the purchasers were unable to raise the cash, which required the re-transfer of the shares of stock to claimant.

In claimant's affidavit of December 4, 1968, he repeated the substance of the above statements, adding that out of the balance of \$19,369.40

(over and above the \$25,000.00 which was to have been paid in cash, and which was the subject of the re-transfer of the stock of Centram in that amount), an amount of \$16,000.00 was shown in the capital account as a subscription while \$3,369.40 was paid to him over a period of time. Thus, it appears that when the purported sale took place, not only was the \$25,000.00 in stock transferred to the purchasers but the balance assertedly due claimant was recorded as a loan. However, the shares of stock were re-transferred to him when the sale was cancelled, but the capital account was not restored to status quo.

The Commission has carefully considered all of the evidence of record, taking into account the basis of valuation most appropriate to the property and equitable to the claimant, and finds that the values for the Centram properties as reflected in the June 30, 1960 balance sheet are the most appropriate basis of valuation, except for the following adjustments:

1. The item "Exclusive Representations" in the amount of 30,000 pesos is found not to constitute an asset of Centram on the date of loss; and
2. Claimant's interest in Centram is found to be 61% on the date of loss.

The Commission therefore finds that the value of Centram on the date of loss was as follows:

Total Assets	68,209.89
Less Liabilities	<u>35,655.18</u>
Net Worth	32,554.71 pesos

Accordingly, the Commission finds that claimant's 61% interest in the net worth had a value of 19,858.37 pesos, equivalent to \$19,858.37.

Optica Baya, S.A.

On the basis of the evidence of record, the Commission finds that claimant owned a 50% stock interest in Baya on the date of loss.

The record contains two balance sheets for Baya, dated June 30, 1960 and November 30, 1960, respectively, audited by the same accountant who prepared the balance sheet for Centram. The balance sheet as of November 30, 1960, closest to the date of loss, reflects the following:

Assets

Current Assets

Cash on hand and in banks		4,870.72	
Accounts Receivable		41.40	
Cash withheld for taxes		52.52	
<u>Inventories</u>			
Optical Department	23,892.20		
Photo Department	430.43		
Hearing-aid Department	<u>7,880.64</u>		
Total Inventories		32,203.27	
Advances to Employees		1,400.00	
Advance deposits on purchases		596.87	
Guaranty deposits		553.33	
Unexpired Insurance		<u>300.00</u>	
Total Current Assets			40,018.11

Fixed Assets

	<u>Cost</u>	<u>Depreciation</u>	<u>Net</u>	
Testing instruments	3,058.58	298.74	2,759.84	
Machinery	2,122.50	402.50	1,720.00	
Furniture & Fixtures	<u>397.00</u>	<u>67.12</u>	<u>329.88</u>	
Totals	5,578.08	768.36		4,809.72
Commercial Items				10,000.00

Deferred Charges (Amortized)

Administrative Expenses		2,313.43	
Store Alterations		<u>13,464.54</u>	
Total Deferred Charges			<u>15,777.97</u>
Total Assets			<u>70,605.80</u>

Liabilities and Capital

Current Liabilities

Suppliers		17,056.79	
Fees Payable		450.00	
Taxes and Levies		<u>335.80</u>	
Total Liabilities			17,842.59

Capital

Authorized		50,000.00	
Unissued		<u>13,000.00</u>	
Total Issued Capital			37,000.00

Surplus

Opening Balance		16,393.35	
Less Loss		<u>630.14</u>	
Net Surplus			<u>15,763.21</u>
			<u>70,605.80</u>

At the conference held on November 20, 1968, claimant was asked the nature of the listed assets "Commercial Items," "Administrative Expenses" and "Store Alterations." Claimant indicates that "Store Alterations" in the amount of 13,464.54 pesos represents a depreciated capital investment in improving the premises of Baya; and further, that the "Commercial Items" constituted additional inventory; and that "Administrative Expenses" represented the ordinary expenses in forming a corporation including lawyer's fees, registration fees and other such related expenses.

The Commission holds that these administrative expenses do not constitute asset values for the purpose of certifying a loss under Title V of the Act. The assertion that "Commercial Items" constituted additional inventory is not supported by evidence of record, whereas inventories of 32,203.27 pesos already appear in Baya's balance sheet of November 30, 1960. The Commission finds that the items "Administrative Expenses" and "Commercial Items" in the amounts of 2,313.43 and 10,000.00 pesos, respectively, did not constitute assets of Baya on the date of loss.

Accordingly, the Commission concludes that the valuation most appropriate to the property and equitable to claimant is the balance sheet of Baya as of November 30, 1960 with the adjustments, noted above:

Total Assets	58,292.37
Less Liabilities	<u>17,842.59</u>
	40,449.78 pesos

Accordingly, the Commission finds that claimant's 50% interest in Baya on the date of loss had a value of 20,224.89 pesos, equivalent to \$20,224.89.

The Commission therefore finds that the aggregate amount of claimant's losses within the meaning of Title V of the Act was as follows:

Land (90% interest)	\$ 69,715.94
Bank deposits (100% interest)	1,792.35
Centram (61% interest)	19,858.37
Baya (50% interest)	<u>20,224.89</u>
Total	<u>\$111,591.55</u>

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.

CERTIFICATION OF LOSS

The Commission certifies that ARON ROZIN 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 Hundred Eleven Thousand Five Hundred Ninety-one Dollars and Fifty-five Cents (\$111,591.55) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

JAN 23 1969

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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OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF

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Under the International Claims Settlement
Act of 1949, as amended

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Decision No. CU -

584

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 \$135,835.34, was presented by ARON ROZIN, and is based upon the asserted ownership and loss of land, bank deposits, and stock interests in Cuban corporations. Claimant has been a national of the United States since his naturalization on January 16, 1950.

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).)

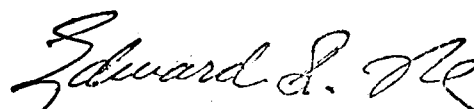
Other than his own statements as set forth in the claim form, filed on May 1, 1967, together with balance sheet information relating to two Cuban corporations and real estate purchase information, claimant did not file sufficient probative evidence to establish a claim under the Act.

By Commission letter dated July 21, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim. In reply to this letter, on August 22, 1967, the Commission was advised that claimant was absent from the United States, but was due to return in 10 days. Accordingly, by letter of August 29, 1967, the Commission indicated that unless the previously requested additional evidence was submitted by October 1, 1967, it might become necessary to determine the claim on the basis of the existing record at that time. No evidence has since been submitted.

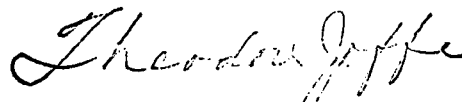
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary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

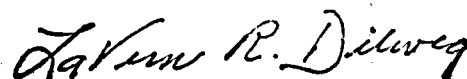
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Edward D. Re, Chairman



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).)

CU- 2730