

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

IN THE MATTER OF THE CLAIM OF

LILLIAN A. KELM and
ELEANOR A. FINCH,
EXECUTRICES OF THE ESTATE OF
ADOLPH KELM, DECEASED

Claim No. CU -2788

Decision No. CU
1478

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Robert B. Kelm

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by LILLIAN A. KELM and ELEANOR A. FINCH, EXECUTRICES OF THE ESTATE OF ADOLPH KELM, DECEASED, and is based upon the loss of an unstated amount sustained in connection with the ownership of a stock interest in Central Violeta Sugar Company, S.A. Claimants have been nationals of the United States since their birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Sta. 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 stock certificate No. CU-4088 for 40 shares of capital stock in Central Violeta Sugar Company, S.A. issued to the claimants' deceased predecessor in interest, Adolph Kelm, a national of the United States since his naturalization in September, 1891, who owned the stock prior to October 13, 1960, and until his death on September 20, 1965. All of the beneficiaries under the Last Will and Testament of the late Adolph Kelm have been nationals of the United States since their birth. On the basis of all the evidence of record, the Commission finds that Adolph Kelm, deceased, was the owner of 40 shares of the capital stock issued by Central Violeta Sugar Company, S.A. The shares of stock are evidenced by Certificate No. CO-4088.

Central Violeta Sugar Company, S.A., was incorporated in Cuba and thus would not qualify as a national of the United States under Section 502(1)(B) of the Act which defines the term "national of the United States" as including "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

On October 13, 1960, the Government of Cuba published Law 890, in its Official Gazette, which listed as nationalized Central Violeta Sugar Company, S.A. Accordingly, the Commission finds that Central Violeta Sugar Company, S.A. was nationalized by the Government of Cuba on October 13, 1960.

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The Commission concludes that as a result of the nationalization by the Government of Cuba of the Central Violeta Sugar Company, S.A., the decedent suffered a loss within the meaning of Title V of the Act.

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.

In determining the value of the interest owned by the decedent in Central Violeta Sugar Company, S.A., the Commission has considered claimant's assertions, a 1959 consolidated balance sheet for the company, as published in Moody's Industrial Manual for 1961 (p. 2029), as well as other data pertaining to the sales price of the stock.

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation.

The Commission therefore finds that a net book value of \$8,612,828 was available for distribution, at the time of loss, among the 283,020 shares of capital stock issued by Central Violeta Sugar Company, S.A., and concludes that the dollar loss sustained in connection with the ownership of a capital stock interest in Central Violeta Sugar Company, S.A. was \$30.4318 per share of the capital stock issued and held at the time of loss. (See the Claim of Huntley E. Cox, FCSC Claim No. CU-2944.)

Accordingly, in the instant claim, the Commission finds that the decedent suffered a loss in the amount of \$1,217.27 within the meaning of Title V of the Act, as a result of the nationalization of Central Violeta Sugar Company, S.A. by the Government of Cuba on October 13, 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644.)

The Commission therefore concludes that the amount of the loss sustained shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

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CERTIFICATION OF LOSS

The Commission certifies that LILLIAN A. KELM and ELEANOR A. FINCH, EXECUTRICES OF THE ESTATE OF ADOLPH KELM, DECEASED, succeeded to and 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 Seventeen Dollars and Twenty-Seven Cents (\$1,217.27) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

APR 10 1968

Leonard P. B. Sutton
Leonard P. B. Sutton, 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 MAY 17 1968

Francis Thaddeus

Clerk of the Commission

NOTICE TO TREASURY DEPARTMENT: The above listed certificate may have been returned to claimant and no payment should be made until it is resubmitted.

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).)