

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

IN THE MATTER OF THE CLAIM OF

FRENKEL & CO., INC.
GEORGE P. FRENKEL
and
LEO S. FRENKEL

Claim No. CU-2924
Claim No. CU-2925
Claim No. CU-2926

Decision No. CU - 6085

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Baer & Marks
By John T. Buckley, Esq.

Appeal and objections from Proposed Decision entered March 3, 1971, no oral hearing requested.

Hearing on the record held September 22, 1971.

FINAL DECISION

Under date of March 3, 1971, the Commission issued its Proposed Decision on these three related claims in which it proposed Certifications of Loss as follows, plus interest:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>FRENKEL & CO., INC. (Claim No. CU-2924)</u>		
Bank account in Cuba	December 6, 1961	\$23,764.87
Debt due from Seguros Frenkel de Cuba, S.A. (Seguros), a Cuban corporation	September 15, 1960	<u>1,920.00</u>
	Total	<u>\$25,684.87</u>
<u>GEORGE P. FRENKEL (Claim No. CU-2925)</u>		
50% stock interest in Seguros	October 24, 1960	\$ 638.37
Debt due from Seguros	October 24, 1960	<u>4,739.40</u>
	Total	<u>\$ 5,377.77</u>
<u>LEO S. FRENKEL (Claim No. CU-2926)</u>		
50% stock interest in Seguros	October 24, 1960	\$ 638.27
Debt due from Seguros	October 24, 1960	<u>4,739.40</u>
	Total	<u>\$ 5,377.77</u>

Counsel for claimants objected to the method employed by the Commission in evaluating the stock interests of GEORGE P. FRENKEL and LEO S. FRENKEL. The Commission had determined that the values of these two claimants' stock interests in Seguros should be based upon the net worth of that Cuban corporation as shown by its balance sheet as of October 26, 1960 after certain adjustments. Counsel urges the Commission to employ the "going concern value" of Seguros or, in the alternative, to find the value of Seguros by capitalizing its average annual net earnings. Copies of the audited balance sheet for Seguros as of December 31, 1959 and the accompanying report of the auditor were submitted in support of the objections. No objections were filed with respect to the Claim of Frenkel & Co., Inc., Claim No. CU-2924.

Upon consideration of the objections in light of the entire record, the Commission finds that the valuation most appropriate to the stock interests in Seguros and equitable to the claimants is the result obtained by capitalizing the average annual net earnings of Seguros at 10%. The record shows that Seguros earned an aggregate net profit of \$36,545.41 for the years 1956 through 1958 and \$643.63 for 1959. Accordingly, its average annual net earnings were \$9,297.26. The Commission therefore finds that the value of Seguros on October 24, 1960, the date of loss was \$92,972.60, and the 50% stock interests therein owned by GEORGE P. FRENKEL (Claim No. CU-2925) and LEO S. FRENKEL (Claim No. CU-2926) each had a value of \$46,486.30. The Commission reaffirms its finding that Seguros owed each of these two claimants the amount of \$4,739.40 on the date of loss.

Accordingly, the Certifications of Loss in favor of GEORGE P. FRENKEL and LEO S. FRENKEL are set aside and the following Certifications of Loss shall be entered in their favor, and in all other respects the Proposed Order of October 13, 1961 as amended herein is affirmed.

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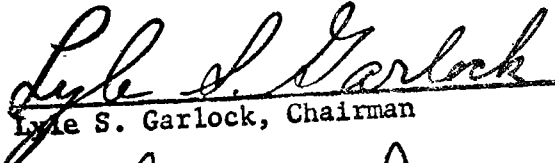
CERTIFICATIONS OF LOSS

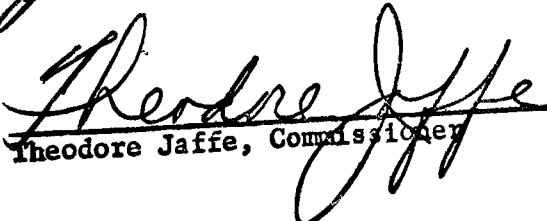
The Commission certifies that GEORGE P. FRENKEL suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-one Thousand Two Hundred Twenty-five Dollars and Seventy Cents (\$51,225.70) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission certifies that LEO S. FRENKEL 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 Fifty-one Thousand Two Hundred Twenty-five Dollars and Seventy Cents (\$51,225.70) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

SEP 22 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

FRENKEL & CO., INC.
GEORGE P. FRENKEL
and
LEO S. FRENKEL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2924
Claim No. CU-2925
Claim No. CU-2926

Decision No. CU 6085

Counsel for claimants:

Baer & Marks
By John T. Buckley, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, were presented by FRENKEL & CO., INC., GEORGE P. FRENKEL and LEO S. FRENKEL based upon the asserted losses of certain personal properties in Cuba. FRENKEL & CO., INC., GEORGE P. FRENKEL and LEO S. FRENKEL are claiming \$25,684.87, \$49,657.74 and \$49,657.73, 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(1)(B) of the Act defines the term "national of the United States" as 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.

The record shows that FRENKEL & CO., INC. was organized under the laws of New York, and that at all pertinent times all of its outstanding capital stock was owned by GEORGE P. FRENKEL and LEO S. FRENKEL, nationals of the United States since birth. The Commission holds that FRENKEL & CO., INC. is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimants assert the following losses:

FRENKEL & CO., INC. (CU-2924)

Bank account with the Trust Company of Cuba, Havana, Cuba	\$23,764.87
Debt due from Seguros Frenkel de Cuba, S.A., a Cuban Corporation	<u>1,920.00</u>
Total	<u>\$25,684.87</u>

GEORGE P. FRENKEL (CU-2925)

50% stock interest in Seguros Frenkel de Cuba, S.A.	<u>\$49,657.74</u>
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LEO S. FRENKEL (CU-2926)

50% stock interest in Seguros Frenkel de Cuba, S.A.	<u>\$49,657.73</u>
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Claim No. CU-2924

Bank Account

The record shows that FRENKEL & CO., INC. (FRENKEL) had conducted an insurance business in Cuba in conjunction with the related Seguros Frenkel de Cuba, S.A. (Seguros), a Cuban corporation. As a result of those operations FRENKEL had accumulated a bank account at the Trust Company of Cuba, Havana, Cuba. After the nationalization of Seguros, discussed below, FRENKEL ceased its operations in Cuba.

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On the basis of a copy of a statement as of June 30, 1960 from the Trust Company of Cuba, the Commission finds that FRENKEL's bank account had a favorable balance in the amount of \$23,764.87, the Cuban peso being on a par with the United States dollar.

On December 6, 1961, Cuba published Law 989 in its Official Gazette which effected a confiscation of all assets, shares, real property, personal property and other property rights of persons who left Cuba or American firms no longer doing business in that country. In the absence of evidence to the contrary, the Commission finds that the bank account of FRENKEL was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; and Claim of Boger & Crawford, Claim No. CU-0037.) It is concluded that FRENKEL sustained a loss in the amount of \$23,764.87.

Debt Due From Seguros

The Commission finds on the basis of an extract from FRENKEL's records and affidavits of an officer of FRENKEL having personal knowledge of the facts that as a result of FRENKEL's business operations in Cuba, Seguros was indebted to FRENKEL in the amount of \$1,920.00. It further appears that prior to September 30, 1960 Seguros had drawn a check in the amount of \$1,920.00 payable to FRENKEL and had attempted to transfer these funds to FRENKEL through a local bank. However, the funds were never transferred as a result of action by the Cuban Government and FRENKEL never received any amount on account of that debt.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of FRENKEL, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government

of Cuba in the contractual rights of FRENKEL, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that FRENKEL's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the loss of \$1,920.00 occurred on September 15, 1960.

Claim No. CU-2925 and Claim No. CU-2926

Stock Interests

Based upon copies of stock certificates and affidavits from the former Vice President of Seguros and from an attorney who had represented Seguros in Cuba, the Commission finds that GEORGE P. FRENKEL and LEO S. FRENKEL jointly owned all of the outstanding capital stock of Seguros, which was engaged in the insurance brokerage business in Cuba.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution No. 3 pursuant to Law 851, which listed as nationalized Seguros Frenkel de Cuba, S.A.

Since Seguros was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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.

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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". This phraseology does not differ from the international legal standard that would normally prevail in the valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimants assert that Seguros had a value of \$99,315.47 on the basis that the value of an insurance brokerage business is approximately 1-3/4 times one year's net commissions, which is said to have been \$56,758.54 for the year ending September 30, 1960. They further state that the net commissions earned by Seguros for the three years prior to the fiscal year ending September 30, 1960 were approximately the same.

It appears that Seguros was organized in Cuba in 1956. In view of claimants' valuations, the Commission suggested the submission of evidence to support the asserted method of evaluation, as well as copies of all balance sheets and other financial statements for Seguros for the several years of Seguros' existence. With respect to the asserted valuation, claimants submitted an affidavit from one of the attorneys of record, in which he states that he is familiar with the methods of valuing an insurance brokerage business for the purpose of purchase or sale; and that the value of such a business is based on the average net commissions over a period of 3 to 5 years, capitalized at 1-1/2 to 1-3/4 times.

With respect to the suggested financial statements, counsel stated in a letter of October 27, 1970 that the financial statements for the years 1956 through 1958 are not available. However, counsel submitted the following financial statements for Seguros: (a) copies of the balance sheet as of December 31, 1959 and the profit and loss statement for the year ending December 31, 1959; (b) copies of the balance sheet as of September 30, 1960 and the profit and loss statement for the period January 1, 1960 through September 30, 1960; and a copy of a trial balance as of October 26, 1960

from which a balance sheet as of that date and a profit and loss statement for the period January 1, 1960 through October 26, 1960 were constructed.

It appears from the balance sheet as of December 31, 1959 that Seguros had an apparent net worth of \$11,189.04. The profit and loss statement for 1959 shows net income from commissions of \$56,260.90, and a net profit for the year of \$643.63. The balance sheet as of September 30, 1960 shows an apparent net worth of \$36,479.80, and the accompanying profit and loss statement indicates net commissions of \$56,758.54 and a net profit of \$25,290.76 for the period January 1, 1960 to September 30, 1960. The trial balance and the constructed balance sheet as of October 26, 1960 indicate an apparent net worth of \$29,156.74, net commissions of \$56,919.43 and a net profit of \$17,967.70 for the period January 1, 1960 to October 26, 1960.

Upon consideration of the entire record, the Commission finds no valid ground for ignoring Seguros's total operations and evaluating it as an enterprise on the basis of its net income from commissions only.

As indicated above, the net commissions for 1959 were \$56,260.90, but the net earnings were only \$643.63. For the period January 1, 1960 to September 30, 1960, the net commissions were \$56,758.54 and the net earnings rose to \$25,290.76. However during the period January 1, 1960 to October 26, 1960, the net commission were \$56,919.43, but the net earnings for that entire period were \$17,967.70, indicating a loss during the month of October 1960. The Commission finds that the method suggested by claimants is not appropriate for the purpose of evaluating Seguros under Title V of the Act.

Insofar as earnings are concerned, one method of evaluating an enterprise is to capitalize its average annual net earnings demonstrated over a period of years preceding the date of evaluation. Where warranted, the Commission has applied that method of evaluation in making determinations under Title V of the Act. (See Claim of Garcia & Diaz, Claim No. CU-0940; and Claim of Intercontinental Hotels, Claim No. CU-2521.) However, the Commission finds that method inappropriate here because there is no evidence to establish Seguros's net earnings for the years prior to 1959.

On the basis of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimants is that shown by the balance sheet as of October 26, 1960, closest to the date of loss. That balance sheet shows the financial condition of Seguros as follows:

<u>ASSETS</u>	
Cash on hand and in banks	\$ 17,716.48
Accounts Receivable:	
Insureds	\$78,011.63
Frenkel y Cia., New York - running account	18,080.00
Subscribers to shares of stock	<u>9,800.00</u>
	105,891.63
Guarantee deposit	50.00
Office furniture and equipment, less depre- ciation of \$906.41	2,596.29
Automotive equipment, less depreciation of \$382.50	2,167.50
Organization expenses	<u>1,021.51</u>
Total Assets	<u>\$129,443.41</u>

LIABILITIES AND CAPITAL

Liabilities:	
Commissions payable	\$19,685.45
Accounts and bills payable	71,122.42
Dividends payable	<u>9,478.80</u>
Total Liabilities	\$100,286.67
Capital:	
100 shares of stock at \$100.00 per share	10,000.00
Surplus	1,189.04
Profit for period Jan. 1, 1960 to Oct. 26, 1960	<u>17,967.70</u>
Total Capital	<u>29,156.74</u>
Total Liabilities and Capital	<u>\$129,443.41</u>

The Commission inquired concerning the nature of two of the accounts listed above as assets; namely, the running account and the receivables due from subscribers in the amounts of \$18,080.00 and \$9,800.00, respectively. In both cases, the accounts appear to be debts due from the three claimants herein which, obviously, could not have been taken by the

Government of Cuba. The Commission's inquiries were answered by an affidavit of November 20, 1970 from Carlos Berstene, former Vice President of Seguros. In an earlier affidavit Mr. Berstene states that he had supervised the operations of Seguros on a daily basis including its books and records, and that he is familiar with such books and records. Affiant's response to the first inquiry was that he does not know the meaning of the "running account", and that he is not aware that FRENKEL & CO., INC. owed any money to Seguros. With respect to the second inquiry, affiant states that he recalls that GEORGE P. FRENKEL and LEO S. FRENKEL each owned 50 shares of stock of Seguros that was fully paid for, and that he believes that the \$9,800.00 shown in the balance sheet as being due to Seguros has no reference to the shares issued to GEORGE P. FRENKEL and LEO S. FRENKEL.

Upon consideration of the entire record and in the absence of more convincing evidence, the Commission finds that the two accounts, listed as receivables in the aggregate amount of \$27,880.00, did not constitute assets of Seguros that were taken by the Government of Cuba. The Commission therefore finds that the assets of Seguros aggregated \$101,563.41 on October 24, 1960, the date of loss. Since the liabilities of Seguros amounted to \$100,286.67, the Commission finds that the net worth of Seguros on October 24, 1960, was \$1,276.74. Therefore the values of GEORGE P. FRENKEL's and LEO S. FRENKEL's stock interests in Seguros were \$638.37 each on the date of loss.

Debts Due From Seguros

The Commission has held that debts of a nationalized Cuban enterprise owed to an American claimant are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

As shown by the above balance sheet, Seguros owed \$9,478.80 to its stockholders for declared dividends. The Commission finds GEORGE P. FRENKEL

and LEO S. FRENKEL were each owed a debt of \$4,739.40 by Seguros on October 24, 1960, the date of loss, and concludes that they sustained losses in those amounts.

Claimants' losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>FRENKEL & CO., INC. (Claim No. CU-2924)</u>		
Bank account	December 6, 1961	\$23,764.87
Debt due from Seguros	September 15, 1960	<u>1,920.00</u>
	Total	<u>\$25,684.87</u>

<u>GEORGE P. FRENKEL (Claim No. CU-2925)</u>		
Stock interest	October 24, 1960	\$ 638.37
Debt due from Seguros	October 24, 1960	<u>4,739.40</u>
	Total	<u>\$ 5,377.77</u>

<u>LEO S. FRENKEL (Claim No. CU-2926)</u>		
Stock interest	October 24, 1960	\$ 638.37
Debt due from Seguros	October 24, 1960	<u>4,739.40</u>
	Total	<u>\$ 5,377.77</u>

The Commission has decided that in certifications of loss 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 as follows:

<u>FROM</u>	<u>ON</u>
<u>FRENKEL & CO., INC. (Claim No. CU-2924)</u>	
September 15, 1960	\$ 1,920.00
December 6, 1961	<u>23,764.87</u>
Total	<u>\$25,684.87</u>

<u>GEORGE P. FRENKEL (Claim No. CU-2925)</u>	
October 24, 1960	<u>\$ 5,377.77</u>

<u>LEO S. FRENKEL (Claim No. CU-2926)</u>	
October 24, 1960	<u>\$ 5,377.77</u>

CERTIFICATIONS OF LOSS


The Commission certifies that FRENKEL & CO., INC. 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 Twenty-Five Thousand Six Hundred Eighty-Four Dollars and Eighty-Seven Cents (\$25,684.87) with interest at 6% per annum from the respective dates of loss to the date of settlement;

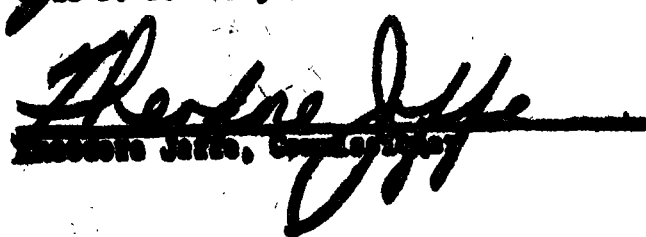
The Commission certifies that GEORGE P. FRENKEL suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Thousand Three Hundred Seventy-Seven Dollars and Seventy-Seven Cents (\$5,377.77) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission certifies that LEO S. FRENKEL 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 Five Thousand Three Hundred Seventy-Seven Dollars and Seventy-Seven Cents (\$5,377.77) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

MAR 9 1971


Louis S. Corlock, Chairman


Theodore Jaffe, 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 or 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 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. 31.5(e) and (g), as amended (1970).)

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