

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

IN THE MATTER OF THE CLAIM OF

ANTONIO JAVIERRE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -7530

Decision No. CU 5725

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo:
Dewey, Ballantine, Bushby, Palmer & Wood - By William C. Bush, Esq.

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 ANTONIO JAVIERRE and is based upon the asserted loss of a stock interest. Claimant stated he has been a national of the United States since his naturalization in 1938.

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:

(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.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

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) (1969).)

Claim is based on loss arising from asserted ownership of 1,000 shares of Atlantica del Golfo Sugar Company, said to have been acquired subsequent to August 6, 1960, the date of loss.


By Commission letter of March 20, 1968, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letters of June 5, 1968 and April 30, 1969, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter.

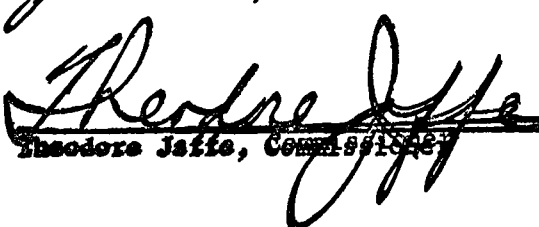
On November 3, 1969 and April 24, 1970, claimant was again invited to submit the suggested evidence and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba and the date of acquisition and consideration paid, as required by the Act. 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

SEP 23 1970


Lyle S. Carlock, Chairman


Theodore Jaffe, 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).)

shares of Francisco Sugar Company.
ines a "national of the United States
entity which is organized under the
: any State, the District of Columbia,
ico, if natural persons who are citizens
tly or indirectly, 50 per centum or more
k or other beneficial interest of such

the Commission by the Francisco Sugar
isco Sugar Company was incorporated under
ersey. The Vice President of the Francisco
Commission that over 50 per cent of the
ion is owned by United States citizens,
ited States national within the purview
of Section 502(1)(B) of the Act.

Section 505(a) of the Act provides that

A claim under section 503(a) of this title
based upon an ownership interest in any
corporation, association, or other entity
which is a national of the United States
shall not be considered . . .

The Commission concludes that since this item of claim is based
on a stock interest in a corporation which qualifies as a United States
national, the Commission is precluded, under Section 505(a) of the Act
from considering this item of claim. Accordingly, so much of the claim
as is based on stock issued by Francisco Sugar Company is hereby denied.

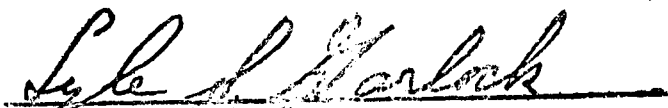
The Commission has decided that in certification of losses on claims
determined pursuant to Title V of the International Claims Settlement Act
of 1949, as amended, interest should be included at the rate of 6% per annum
from the date of loss to the date of settlement (see Claim of Lisle
Corporation, Claim No. CU-0644), and it is so ordered in this case.

CERTIFICATION OF LOSS


The Commission certifies that OSCAR C. WALTON 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 Four Hundred Twenty-six Dollars and Five Cents (\$ 426.05) with interest 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

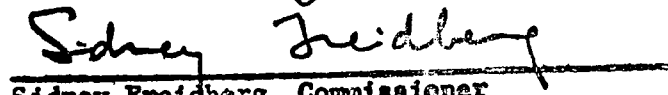
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Kyle S. Garlock, Chairman



Theodore Jaffe, Commissioner



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 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.

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