

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

IN THE MATTER OF THE CLAIM OF

SOL KARP

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -7553

Decision No. CU - 5786

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

Claimant, SOL KARP, who owned a stock interest in the Cia. Azucarera Atlantica del Golfo, asserts a claim under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Company, in the aggregate amount of \$3,638.80.

In our decision entitled the Claim of Helen M. Drye (Claim No. CU-0807 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$34.056.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Drye decision and that he was an American national at the requisite times.

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.

On the basis of evidence of record, the Commission finds that claimant acquired 1,000 shares of Atlantica stock by purchase on March 14, 1966 for a consideration of \$385,00.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on August 6, 1960. In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47)

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 Commission finds that claimant, as an assignee by purchase, acquired the claim for the loss sustained by the assignor of the claimed securities, but under the limitations provided in Section 507 of the Act (supra), is limited to \$385.00, the actual consideration paid for these 1,000 shares.

Claimant also states that he suffered a loss of \$3,253.80, in connection

with stock of Atlantica del Golfo Sugar Company, and its predecessor, which he outlines as follows:

| | | |
|--|---------------|-----------------|
| March 26, 1958, purchased 200 shares of Cuban Atlantic Sugar | | \$4,916.18 |
| October 8, 1958, purchased 200 shares of Cuban Atlantic Sugar | | <u>2,894.50</u> |
| | Total | \$7,810.68 |
| October 15, 1958, received and sold 14 shares of Central Violeta Sugar | \$ 345.45 | |
| October 24, 1958, received in liquidation of Cuban Sugar | 1,800.00 | |
| March 26, 1961, received and sold 8 shares of Meeres | 390.52 | |
| May, 1958 received | 1,206.99 | |
| February, 1959 received | <u>588.00</u> | <u>4,330.96</u> |
| Cost of 800 shares of Atlantica del Golfo | | <u>3,479.72</u> |
| November 18, 1965 sold the 800 shares | | <u>225.92</u> |
| | LOSS | \$3,253.80 |

At the outset of the discussion of this part of the claim, it may be noted that the records of the Commission reflect that Meeres, Inc., is a Panamanian corporation, wholly owned by Atlantica del Golfo Sugar Company, whose assets consisted of securities of a Canadian company, whose principal asset was an interest in a contract to develop oil properties in Argentina. Its scrip certificates represented dividends declared on November 30, 1959, by Atlantica, at the rate of one share of Meeres common for each 100 shares of Atlantica. The Commission has no record that the Government of Cuba took any action resulting in loss to holders of Meeres stock (or scrip therefor), and the Commission has held that claim based on such items must be denied (see the Claim of Frances T. Matta, Claim No. CU-7717).

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).)

Claimant has submitted no documentary evidence in support of this part of his claim; however, other factors are dispositive of this matter.

According to claimant's own statements, he transferred the stock interests now under consideration subsequent to the date of loss, and prior to filing claim

with the Commission. Therefore, he does not make claim for the loss of his stock interest, but rather, for the difference between the purchase price and the selling price, assertedly a total of \$3,253.80. The question whether a claim for such a loss is compensable under the Act has been considered by the Commission previously.

Ownership of a stock interest in a foreign corporation vests, in the owner, two items of property: an interest in the net worth of the corporation and an interest in any claim for nationalization. Upon a sale of that stock interest, and in the absence of any specific reservation, the seller transfers all rights incident to that stock. Claimant has neither alleged nor proven that he retained any interest in a claim for the nationalization of corporate assets.

Therefore, while claimant may have had a claim for his interest in the nationalized company, he no longer owned a claim after the 1965 sale of his 800 shares of stock. The sole claim owned by him was for his interest in a corporation nationalized by the Government of Cuba; not for any decrease in the value of his stock shares. While claimant may have sustained a loss on the sale of his interest, it was not a loss on which the Commission, under the provisions of the Act, could render a favorable determination.

Since claimant has not established that he retained any interest in a claim for the nationalization of the company, based on the 800 shares and since a claim for the decrease in value of his stock would not be compensable under the Act, this item of claim must be, and is, denied. (See Claim of John A. Stiehler, Claim No. CU-2725, 1967 FCSC Ann. Rep. 70.)

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).

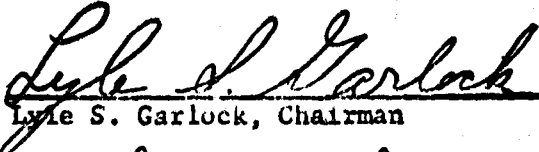
The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from March 14, 1966, the date on which claimant acquired this claim, to the date on which provisions are made for the settlement thereof.

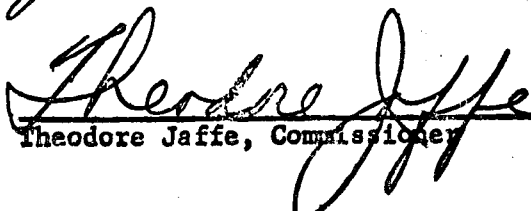
CERTIFICATION OF LOSS

The Commission certifies that SOL KARP 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 Three Hundred Eighty-Five Dollars (\$ 385.00) with interest at 6% per annum from March 14, 1966. to the date of settlement.

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

FEB 3 1971


Lyle S. Garlock, 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. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)