

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

IN THE MATTER OF THE CLAIM OF

CLYDE STONE

Claim No. CU-7951

Decision No. CU-4700

Under the International Claims Settlement  
Act of 1949, as amended

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo:

Dewey, Ballantine, Bushby, Palmer & Wood - By William C. Bush, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision issued April 1, 1970, the Commission denied this claim for failure of proof. Since then, additional evidence has been submitted, and the Proposed Decision is hereby amended.

Claimant, CLYDE STONE, 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 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; that he was an American national at the requisite times; that he has been the owner of 800 shares of stock in the Cia. Azucarera Atlantica del Golfo since

prior to August 6, 1960; and that he suffered a loss in that respect in the amount of \$27,244.80 within the meaning of Title V of the Act. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from August 6, 1960, the date of loss, to the date on which provisions are made for the settlement thereof.

(Drye, supra.)

Claim was also made for an additional 1,600 shares of Atlantica del Golfo stock, also acquired prior to August 6, 1960. However the record discloses that claimant sold these 1,600 shares -- 800 on December 28, 1961 and 800 on December 29, 1961.

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.

Claim was filed by Cia. Azucarera Atlantica del Golfo on behalf of its stockholders on March 15, 1967.

Ownership of stock interest in a foreign corporation on the date of nationalization vests in the owner two items of property, namely, an interest in the net worth of the corporation and an interest in any claim for the nationalization. The sale of the shares in the nationalized corporation may effect transfer of either or both interests, depending upon the intention of the parties to the transaction. The burden of proving the nature of the transaction rests with the claimant.

In the instant claim claimant has not alleged that he retained any interest in a claim represented by 1,600 shares, for the nationalization of the corporation in question nor does the record establish that any such interest was retained. Therefore, in the absence of evidence to the contrary, the Commission concludes that when claimant sold this 1,600 shares of stock, he transferred all rights incident thereto.

Accordingly, and for the foregoing reasons, this part of the claim remains denied. (See Claim of Harry Mitgang and Anna Mitgang, Claim Nos. CU-2649 and CU-3736.)

Accordingly, the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.


CERTIFICATION OF LOSS

The Commission certifies that CLYDE STONE 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-seven Thousand Two Hundred Forty-four Dollars and Eighty Cents (\$27,244.80) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

MAY 6 1970

  
Lyle 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.

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. 31.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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

IN THE MATTER OF THE CLAIM OF

CLYDE STONE

Claim No. CU -7951

Decision No. CU 4700

Under the International Claims Settlement  
Act of 1949, as amended

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 CLYDE STONE and is based upon the asserted loss of a stock interest. Claimant has been a national of the United States since birth.

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).)

Claim is made for loss based on asserted ownership of 2,400 shares of stock of Atlantica del Golfo Sugar Company.

By Commission letter of December 13, 1968, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act.

On November 17, 1969, claimant was invited to submit the suggested evidence within 45 days from that date, 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.


CU-7951

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. 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

1 APR 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freidberg, 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-7951