

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

IN THE MATTER OF THE CLAIM OF

IRVING R. APPLEBAUM
BENNETT R. APPLEBAUM

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0293

Decision No. CU 299

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$13,550.53, was presented by IRVING R. APPLEBAUM and BENNETT R. APPLEBAUM based upon the asserted loss of payment for merchandise shipped to Cuba. Claimants have been nationals of the United States since their birth in New York, New York on July 3, 1912 and December 19, 1916, 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(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, 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.

Section 502(1) of the Act defines the term "national of the United States" as "(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."

Claimants have submitted copies of the minutes of a special meeting of the officers and directors of the Standard Wholesale Grocery Company, held on December 31, 1964, which show that on that date the Standard Wholesale Grocery Company transferred its rights to any claim for the loss of payment for the merchandise shipped to Cuba, which is the subject of this claim to IRVING R. APPLEBAUM and BENNETT R. APPLEBAUM, the President and the Secretary-Treasurer of the Company respectively and the claimants herein, for the consideration of \$13,550.53. (See the Claim of The Lunkenheimer Co., CU-0869.)

An officer of Standard Wholesale Grocery Company has certified that the Company was organized in Florida and that at all times between 1947 and October 3, 1966, all of its outstanding capital stock has been owned.

by the claimants. The Commission holds that Standard Wholesale Grocery Company, claimants' predecessor in interest is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copy of Standard Wholesale Grocery Company's invoice No. 54405 of November 24, 1959, reflecting the sale to Almacenes de Viveres La Defensa, S.A. of Havana, Cuba, of goods totalling \$12,287.00, as to which freight, shipping and other attendant fees increased the total to \$13,550.53.

Additionally, the record includes a letter of July 18, 1960, from The Royal Bank of Canada, to Standard Wholesale Grocery Company in which it is stated that the collection of \$13,550.53 was paid by the consignee Almacenes de Viveres La Defensa S.A. and that the bank was still awaiting a dollar reimbursement release from the Foreign Exchange Control Board a Cuban Government agency. Standard Wholesale Grocery Company states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, 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 the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See The Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

Accordingly, in the instant claim the Commission finds that claimants' predecessor in interest, Standard Wholesale Grocery Company's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on July 19, 1960, as to \$13,550.53, the day after the collection was acknowledged by The Royal Bank of Canada.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement.

CERTIFICATION OF LOSS

The Commission certifies that IRVING R. APPLEBAUM and BENNETT R. APPLEBAUM 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 Thirteen Thousand Five Hundred Fifty Dollars and Fifty-Three Cents (\$13,550.53) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

SEP 20 1967

Edward D. Re

Edward D. Re, Chairman

This is a true and
correct copy of the
Decision of the
Commission

by the decision
made as final

Theodore Jaffe

Theodore Jaffe, Commissioner

20 OCT 1967

Lavern R. Dilweg

Lavern R. Dilweg, 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).)