

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

IN THE MATTER OF THE CLAIM OF

GRACEDALE FABRICS INCORPORATED

Claim No. **CU-1337**

Decision No. **CU -721**

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant: Sherman and Citron
By: Cecil A. Citron

Appeal and objections from a Proposed Decision entered November 22, 1967.
No oral hearing requested; hearing on the record.

Hearing on the record held on April 24, 1968

FINAL DECISION

The Commission issued its Proposed Decision in this claim on November 22, 1967 denying the claim for failure to submit the suggested evidence. Claimant corporation objected to the Proposed Decision, and thereafter submitted additional evidence and information in support of this claim. The evidence having been examined by the Commission, it is

ORDERED that the Proposed Decision of the Commission be, and the same is amended to read as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$51,029.81, was presented by GRACEDALE FABRICS INCORPORATED based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant corporation is a national of the United States.

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(a) 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.

Evidence of record discloses that claimant GRACEDALE FABRICS, INCORPORATED, sold merchandise in the amount of \$51,029.81 to various firms in Havana, Cuba. The record further discloses that, although such merchandise was apparently sold by claimant, the various accounts had been assigned to, were owned by, and were payable to Heymann Mercantile Co., Inc., and James Talcott, Inc.

Under the aforesaid provisions of the Act it is apparent that in order to establish a compensable claim, the claimant must establish ownership of the property in question at time of the asserted loss, and ownership of the claim therefor continuously from time of loss to filing claim with this Commission. In the instant claim, the claimant assigned its rights in the claim to the Heymann Mercantile Company and James Talcott, Inc. prior to filing this claim, indicating that such account or sum payable by the Cuban consignee was assigned to and owned by the assignee. Thus, while claimant may have been the creditor at the time of loss, it was not the owner of the claim at the time of filing claim herein. (See Claim of Michael Vasti, Claim No. CU-2145.)

Heymann Mercantile Company and James Talcott, Inc. have filed individual claims with the Commission (FCSC Claim Nos. CU-3393 and CU-495, respectively) and their interests in the losses asserted herein will be determined in their respective claims.

Full consideration having been given to the objections of the claimant, and the entire record, including claimant's objections, having been reviewed, and general notice of the Proposed Decision having been given by posting for 30 days, it is

ORDERED that the Proposed Decision, as amended herein, be and the same is hereby affirmed as the Final Decision of the Commission in this claim.

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

MAY 1 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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Under the International Claims Settlement
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Claim No. CU -1337

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721

Counsel for claimant:

Sherman and Citron
By Cecil A. Citron

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$51,029.81, was presented by GRACEDALE FABRICS, INCORPORATED, and is based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant stated that more than 50% of its stock was held by nationals of the United States; however, no evidence has been submitted to establish the nationality of the stockholders in claimant corporation.

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).)

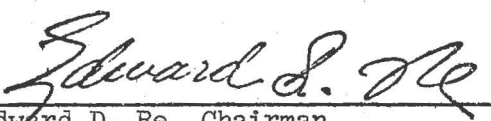
Claimant asserts the loss of payment for merchandise shipped to Cuba. However, no documentary evidence was submitted in support of this claim, filed on April 6, 1967. Accordingly, by Commission letter of July 31, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. No evidence in response to this correspondence has been received to date.

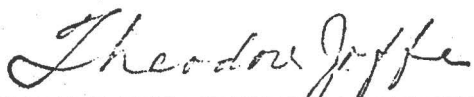
On October 5, 1967, counsel were invited to submit any evidence available to them within 30 days from that date, and they were informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. Thereafter, by letter of October 13, 1967 the Commission made additional suggestions to claimant, through counsel, concerning the submission of supporting evidence in this matter. No evidence has since been submitted.

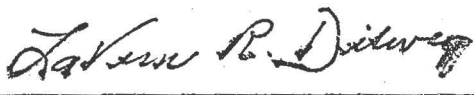
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary 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

22 NOV 1967


Edward D. Re, Chairman


Theodore Jaffe, Commissioner


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).)

CU-1337