

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

IN THE MATTER OF THE CLAIM OF

ANDREW BRAUNITZER
VERA BRAUNITZER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1782

Decision No. CU

3006

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 \$728.30, was presented by ANDREW BRAUNITZER and VERA BRAUNITZER and is based upon an asserted loss sustained in connection with the joint ownership of stock issued by Havana Lithographing Company. Claimants have been nationals of the United States since their respective births.

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).)

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 claim is based upon the asserted ownership of 1,500 shares of stock in Havana Lithographing Company. As evidence of their ownership of the stock, claimants have submitted stock certificates representing 1,500 shares in the corporation. Each certificate lists claimants as joint tenants with right of survivorship, and not as tenants in common, and each is dated as issued in 1961 or later. There is no evidence of record which would establish the date or dates upon which claimants acquired the stock.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been owned continuously by a national or nationals of the United States from the date of loss until the date of filing with the Commission. The Commission has found that the loss to the stockholders of Havana Lithographing Company occurred on October 13, 1960, the date upon which the Company was nationalized by the Government of Cuba. (See Claim of Central West Company, Claim No. CU-3440.) It is noted, that claimants have not continuously owned the shares from the date of loss to the date of filing. Further, claimants have submitted no evidence to establish the nationality of the owner of the shares on the date of loss, or to establish continuous United States ownership of the securities until the date on which claimants 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. In many cases, 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 often concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571.)

However, even if such an inference were warranted in this claim, claimants have not established the price paid for the securities. Under the provisions of Section 507(b) of the Act, a limitation is placed on the amount determined due to one who may have acquired a claim subsequent to the date of loss.

By Commission letter of February 28, 1968, claimants were advised as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date. On April 8, 1968, claimants were invited to submit any evidence available to them within 45 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. No evidence has since been submitted.

The Commission finds that claimants have not met the burden of proof in that they have failed to establish a compensable claim under 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 4 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)

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