

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

IN THE MATTER OF THE CLAIM OF

HARRY KOLTZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3611

Decision No. CU -155

Appeal and objections from a Proposed Decision entered July 26, 1967.
No oral hearing requested.

Hearing on the record held on May 15, 1968

FINAL 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 \$823.25 was presented by claimant, HARRY KOLTZ, based upon the asserted loss of an ownership interest in Expreso Aereo Interamericano, S. A. Under date of July 26, 1967, the Commission issued its Proposed Decision denying the claim as not being within the scope of the Act inasmuch as the evidence of record reflected that Expreso had been intervened by the Government of Cuba on May 27, 1959, whereas claimant, by his own assertion, had not acquired United States nationality until May 6, 1962.

Claimant objected to the Proposed Decision and submitted additional evidence, including proof of his United States nationality, and stock certificates. Based upon the newly submitted evidence, the Commission now finds that claimant, HARRY KOLTZ, has been a national of the United States since his naturalization on May 6, 1952.

On the basis of evidence of record, including stock certificates and records of purchase, the Commission finds that claimant, HARRY KOLTZ, has been the owner, since prior to May 27, 1959, of 12,200 shares of stock of Expreso Aereo Interamericano, S.A.

The record discloses that Expreso Aereo Interamericano, S.A., was intervened by Cuban Decree No. 1398, published in the Cuban Official Gazette on May 27, 1959 (pursuant to Cuban Law 647). This corporation was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, claimant is entitled to file this claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180.)

The record does not contain any evidence of the value or financial condition of Expreso on the date of loss and claimant has advised that he is unable to furnish such evidence. The evidence of record, however, contains information concerning the market price of a share of Expreso stock on or about the date of loss. Reports from Standard and Poor's Central Inquiry Service and The National Stock Summary for the years 1959 and 1960 reflect the following bid prices:

<u>Date</u>	<u>Bid Price</u>
February 11, 1959	\$.10
March 6, 1959	.10
March 31, 1959	.07
March 31, 1960	.01

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider: i.e., fair market value, book value, going concern value, or cost of replacement.

Based upon all the evidence of record, including the basis of valuation most appropriate to the property and equitable to the claimant, the Commission finds that one share of Expreso stock on the date of loss had the value of seven cents (\$.07). The Commission concludes that claimant suffered a loss on May 27, 1959 in the amount of \$854.00 within the meaning of Title V of the Act.

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).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum on \$854.00 from May 27, 1959 to the date on which provisions are made for the settlement thereof.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

After full consideration of the entire record, including claimant's objections, it is

ORDERED that the following certification of loss be entered.

CERTIFICATION OF LOSS

The Commission certifies that HARRY KOLTZ 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 Eight Hundred Fifty-Four Dollars (\$854.00) 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 Final
Decision of the Commission

MAY 22 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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.

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IN THE MATTER OF THE CLAIM OF

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Decision No. CU **155**

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 \$823.25 was presented by HARRY KOLTZ based upon the asserted nationalization of Expreso Aereo Interamericano, S.A., in which claimant owned a certain ownership interest. Claimant, HARRY KOLTZ, states that he has been a national of the United States since his naturalization on May 6, 1962.

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.

Section 502(1) of the Act defines the term "national of the United States" to mean "(A) a natural person who is a citizen of the United States." The term does not include aliens.

Thus, in order for the Commission to favorably consider claims under Section 503(a) of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

Claimant submitted several receipts issued by his brokers wherein it is reflected that 12,100 shares of stock in Expreso Aereo Interamericano, S.A. were purchased for him on various dates from August 18, 1953 to December 13, 1957.

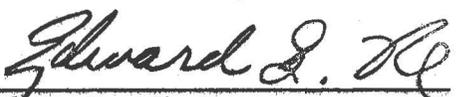
Based upon information available to the Commission from independent sources, it appears that the Government of Cuba, by issuance of Decree 1398 intervened in the affairs of Expreso Aereo Interamericano, S.A., on May 27, 1959, and that the corporation was subsequently nationalized on June 15, 1961.

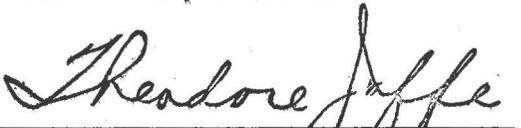
Under the provisions of Sections 502(3), 503(a) and 504(a) of the Act, supra, not only should the claimant herein establish that he was the owner of such stock, he must also establish that some measure depriving him of his interest therein was applied by the Government of Cuba not only after January 1, 1959, but subsequent to May 6, 1962, the date claimant stated that he acquired citizenship of the United States. This he has not done.

Accordingly, for the reasons stated above, the Commission concludes that this claim is not one within the purview of Title V of the Act, supra, and it is denied.

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

JUL 26 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 upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) (1964).)