

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

IN THE MATTER OF THE CLAIM OF

PAUL E. SPRAGUE

Claim No. CU -3798

Decision No. CU -4216

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on November 26, 1969.
No oral hearing requested; hearing on the record.

Hearing on the record held on March 18, 1970

FINAL DECISION

Under date of November 26, 1969, the Commission issued its Proposed Decision, certifying a loss in favor of claimant in the amount of \$1,273.01, plus interest, for the loss of claimant's stock interest in Fabrica Nacional de Pinturas, S.A., nationalized by Cuba on October 13, 1960, and unpaid dividends.

Subsequently, claimant objected contending that the fair market value of Fabrica Nacional de Pinturas, S.A. exceeded the net worth arrived at by the Commission and submitted a statement in support.

Consideration has been given to the supporting statement of the claimant in the light of the entire record.

The Commission now finds that the valuation most appropriate in this case and equitable to the claimant is the amount resulting from capitalizing the average annual net earnings of the Cuban enterprise

at 10% to arrive at the going concern value. The evidence establishes that such earnings after Cuban taxes for the years ending April 30, 1956 through April 30, 1959 were \$117,750.00, \$230,729.00, \$222,121.00, and \$113,491.00, respectively. Accordingly, the Commission concludes that the average net annual earnings after Cuban taxes of the Cuban enterprise on October 13, 1960, the date of loss, were \$171,023.00, and finds that the value of the Cuban enterprise on the date of loss after deducting the total unpaid dividend of \$124,875.00, was \$1,585,355.00. The Commission thus concludes that the dollar loss sustained in connection with ownership of each share of capital stock of Fabrica Nacional de Pinturas, S.A. was \$7.6173.

SUMMARY

<u>Property</u>	<u>Amount</u>
222 Shares of stock	\$ 1,691.04
Declared Dividend of 60¢ per share	<u>133.20</u>
Total	\$ 1,824.24

It is further

ORDERED that the certification of loss, as restated below, be entered and that the Proposed Decision be affirmed in all other respects.

CERTIFICATION OF LOSS

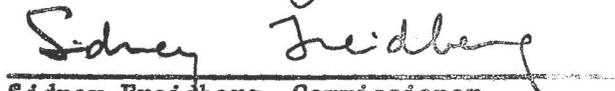
The Commission certifies that PAUL E. SPRAGUE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Eight Hundred Twenty-four Dollars and Twenty-four Cents (\$1,824.24) with interest at 6% per annum from October 13, 1960, to the date of settlement.

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

1 APR 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

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Claim No. CU -3798

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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 \$2,096.75, was presented by PAUL E. SPRAGUE, based upon the asserted loss of a stock interest in a Cuban corporation and a debt owed by a nationalized Cuban enterprise. 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.

Stock Interest

The evidence establishes and the Commission finds that claimant owned 222 shares of capital stock in Fabrica Nacional de Pinturas, S.A. The Commission further finds that Fabrica Nacional de Pinturas, S.A. was nationalized on October 13, 1960 by Law 890 published in the Official Gazette on that date. Since the Cuban firm was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The subject company was engaged in the manufacture, importation, distribution and sale of paints, enamels, varnishes, oils, coloring substances, chemical products, etc.

The company's authorized stock consisted of 400,000 shares of capital stock having a par value of 5 pesos. There were outstanding on the date of loss 208,125 shares of capital stock.

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". This phraseology does not differ from

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the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes a copy of a "Comparative Analysis of Operations" of the company for the period June 1, 1954 through April 30, 1959, which reflects the financial status of Fabrica Nacional de Pinturas, S.A. as of April 30, 1959 in Cuban pesos, which were on a par with United States dollars.

On the basis of all the evidence of record, it appears that the net worth consisting of capital and surplus of Fabrica Nacional de Pinturas, S.A. was \$1,193,469.98. However, on December 21, 1959 a dividend of 60 cents per share was declared to be paid 30 cents per share on December 21, 1959 and 30 cents per share on April 15, 1960. There were 208,125 shares outstanding at that time, the total dividend for which amounts to \$124,875.00. This amount thus is deducted, and the Commission finds that the net worth at the time of nationalization was \$1,068,594.98. The Commission thus concludes that the dollar loss sustained in connection with ownership of each share of capital stock in Fabrica Nacional de Pinturas, S.A. was \$5.1343.

In the instant claim, the Commission concludes that claimant, as holder of 222 shares of capital stock of Fabrica Nacional de Pinturas, S.A., suffered a loss in the amount of \$1,139.81 within the meaning of Title V of the Act, as a result of the nationalization of Fabrica Nacional de Pinturas, S.A. by the Government of Cuba on October 13, 1960.

Debt

As previously stated, Fabrica Nacional de Pinturas, S.A. declared a dividend of 60 cents per share of stock on December 21, 1959. The claimant owned 222 shares of stock in Pinturas, the declared dividend for which amounted to \$133.20. The Commission finds that on October 13, 1960 Fabrica Nacional de Pinturas, S.A. owed the claimant \$133.20 for the dividend declared on December 21, 1959. The Commission therefore finds that claimant suffered a loss of \$133.20 for the loss of dividend within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

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), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that PAUL E. SPRAGUE 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 One Thousand Two Hundred Seventy-three Dollars and One Cent (\$1,273.01) with interest at 6% per annum from October 13, 1960 to the date of settlement.

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

NOV 26 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Friedberg

Sidney Friedberg, 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 for 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 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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