

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

IN THE MATTER OF THE CLAIM OF

ROSS A. BALLINGER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-7163

Decision No. CU - 4705

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo: Dewey, Ballantine, Bushby,
Palmer & Wood

By William C. Bush, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in an unstated amount, was presented by ROSS A. BALLINGER and is based upon the asserted loss of a stock interest in the Atlantica del Golfo Sugar Company. 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.

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 consideration 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).)

Claim is based on loss in connection with asserted ownership of 500 shares of Atlantica del Golfo Sugar Company. Claimant indicated that he acquired the stock in question prior to August 6, 1960, the date of loss.

By Commission letters of December 13, 1968, January 7, 1969, and November 13, 1969, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Specifically, it was suggested that claimant submit the stock certificates which represented his ownership interest in the Atlantica del Golfo Sugar Company. Claimant did not respond to Commission correspondence or submit supporting evidence.

By Commission letter of February 3, 1970, claimant, ROSS A. BALLINGER, was informed that if the suggested evidence was not received within forty-five days from that date, it might become necessary to determine his claim on the basis of the existing record. An additional letter was written to claimant by the Commission dated February 6, 1970. Claimant returned

Commission letter of February 6, 1970, with a notation stating that the stock in question was "disposed on the open market some time back".

Ownership of stock interest in a foreign corporation on the date of nationalization vests in the owner two items of property, namely, an interest in the net worth of the corporation and an interest in any claim for the nationalization. The sale of the shares in the nationalized corporation may effect transfer of either or both interests, depending upon the intention of the parties to the transaction. The burden of proving the nature of the transaction rests with the claimant.

In the instant claim claimant has not alleged that he retained any interest in a claim for the nationalization of the corporation in question nor does the record establish that any such interest was retained. Therefore, in the absence of evidence to the contrary, the Commission concludes that when claimant sold his stock, he transferred all rights incident thereto. (See Claim of Harry M. Mitgang, Claim No. CU-2649.)

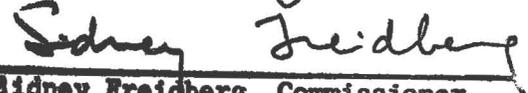
Accordingly, and for the foregoing reasons, this claim is denied.
The Commission deems it unnecessary to determine other elements of this claim.

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

1 APR 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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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