

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

IN THE MATTER OF THE CLAIM OF

ANTHONY E. DALESIO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-7290

Decision No. CU-5043

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo:

Dewey, Ballantine, Bushby, Palmer & Wood - By William C. Bush, Esq.

Appeal and objections from a Proposed Decision entered July 1, 1970; Oral Hearing requested.

Claimant appeared in his own behalf pursuant to the Regulations of the Commission (45 CFR §500.1)

FINAL DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ANTHONY E. DALESIO for loss of a stock interest in a Cuban corporation known as Cia. Azucarera Atlantica del Golfo.

By Proposed Decision dated July 1, 1970, the Commission determined that claimant was an American national at times pertinent to his claim; that the aforesaid Cuban corporation was nationalized by the Government of Cuba on August 6, 1960; that a portion of his claim, asserted for the loss of 70 shares of stock of the Cuban corporation, which were purchased before August 6, 1960, came within the purview of a previous decision of the Commission entitled Claim of Helen M. Drye (Claim No. CU-0807, which is incorporated herein by reference); and that claimant suffered a loss with respect to these 70 shares in the total amount of \$2,383.92, at \$34.056 per share, including any outstanding dividends payable to the stockholders of record.

The evidence of record indicated that prior to August 6, 1960 claimant purchased 2,090 shares and subsequent to nationalization of the Cuban corporation, the claimant purchased 3,100 shares of stock. He sold 2,090 shares on November 23, 1966, taking a tax loss on the 2,090 shares which were originally purchased before August 6, 1960.

The Commission determined in the Proposed Decision that with respect to the 3,100 shares, claimant, as an assignee by purchase, acquired the claim for loss sustained by the assignors (sellers) of the stock but under limitations provided in Section 507 of the Act such loss was limited to the consideration paid therefor, or \$1,551.03 (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

With respect to the 2,090 shares purchased before August 6, 1960, but sold in 1966, the Commission determined that when claimant sold these shares he relinquished his interest in the net worth of the corporation and his interest in any claim for the nationalization or other taking of the subject Cuban corporation with respect to these 2,090 shares. Accordingly, the Commission concluded that when claimant sold the 2,090 shares he transferred all rights incident thereto and this portion of the claim was denied. (See Claim of Michael Vasti, Claim No. CU-2145, 1967 FCSC Ann. Rep. 62; and Claim of Harry Mitang, Claim No. CU-2649.)

Claimant filed objections to the Proposed Decision, objecting specifically to the denial of the portion of his claim which was asserted for the loss of 2,090 shares which were sold in November 1966. Claimant stated that he acquired the 2,090 shares before August 6, 1960 and had held the shares continuously until sale; that the sale of the 2,090 shares was only for tax purposes and he had no intention of giving up his claim or ownership to the shares; that one month before sale he purchased a like number of shares and held a total of 4,180 shares in his account, that is, until sale of 2,090 shares on November 23, 1966;

and that he has thus held 2,090 shares continuously from prior to August 1960, the date of nationalization of the Cuban corporation, until the present time. Additionally, claimant submitted evidence, including a 1970 income tax return with canceled check, to establish that he submitted an amended tax return whereby he refunded the sum allowed as a tax loss in the 1966 sale of the 2,090 shares.

At an Oral Hearing held on November 17, 1970, the claimant gave oral testimony and presented his claim, with additional evidence, to the Commission. Argument was made by claimant as to the date of purchase of the 2,090 shares in question, effect of the sale in 1966, continuity of ownership of such shares, and other aspects of his claim.

The Commission has carefully considered the record in this claim and is constrained to find that while claimant may amend his tax return, a matter not within the jurisdiction or discretion of the Commission, such amendment is not sufficient proof to establish that the 2,090 shares in question herein were not, in fact, sold in 1966.

The Commission finds that based upon the evidence of record in this matter the claimant did, in fact, sell in 1966 the 2,090 shares which he purchased before August 1960; that he thereby relinquished his interest in the net worth of Cuban corporation, as represented by these shares, and any claim through them for nationalization or other taking by the Cuban Government; and that such determination is consistent with the intent and meaning of Title V of the Act and the precedents of the Commission. (See Vasti, Mitang, supra.)

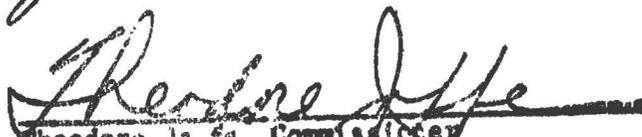
Full consideration having been given to the objections of the claimant and the entire record, including oral testimony and argument, and general notice of the Proposed Decision having been given by posting for 30 days, it is

ORDERED that the Proposed Decision be and the same is hereby entered as the Final Decision of the Commission in this claim.

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

JAN 6 1971


Lyle S. Carlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

ANTHONY E. DALESIO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-7290

Decision No. CU 5043

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

Claimant, ANTHONY E. DALESIO, who owned a stock interest in the Cia. Azucarera Atlantica del Golfo, asserts a claim under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Company.

In our decision entitled the Claim of Helen M. Drye (Claim No. CU-0807 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$34.056.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Drye decision; that he was an American national at the requisite times; that he has been the owner of 70 shares of stock in the Cia. Azucarera Atlantica del Golfo since prior to August 6, 1960, and that he suffered a loss in the amount of \$2,383.92 within the meaning of Title V of the Act in that connection.

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 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.

On the basis of evidence of record, the Commission finds that claimant acquired additional shares of Atlantica stock by purchase, as follows:

<u>PURCHASE</u>	<u>CONSIDERATION</u>
2,090 on October 19, 1966	\$1,107.70
300 on February 8, 1967	118.50
<u>710</u> on February 15, 1967	<u>324.83</u>
3,100	\$1,551.03

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on August 6, 1960. In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant 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. 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 concluded that the securities were continuously so owned. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

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 Commission finds that claimant, as an assignee by purchase, acquired the claim for the loss sustained by the assignors of the claimed 3,100 shares, but under the limitations provided in Section 507 of the Act (supra), is limited to \$1,551.03, the actual consideration paid for these shares.

Claim has also been made for 2,090 shares purchased by claimant prior to August 6, 1960, and sold by him on November 23, 1966.

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.

Under the aforesaid provision 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 this instance claimant sold the 2,090 shares on November 23, 1966, whereas claim was filed with this Commission, on his behalf, by Cia. Azucarera Atlantica del Golfo, on March 15, 1967.

Further, ownership of a stock interest in a foreign corporation on the date of nationalization vests in the owner's 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 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 claimants. In this case, claimant has not asserted that he retained any interest in the claim based on the aforesaid 2,090 shares of Atlantica, 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 the 2,090 shares, he transferred all rights incident thereto.

Accordingly, for the foregoing reasons, so much of the claim as is based on the 2,090 shares of Atlantica stock is denied. (See Claim of Michael Vasti, Claim No. CU-2145, 1967 FCSC Ann. Rep. 62; and Claim of Harry Mitgang, Claim No. CU-2649.)

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).

The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from the dates below:

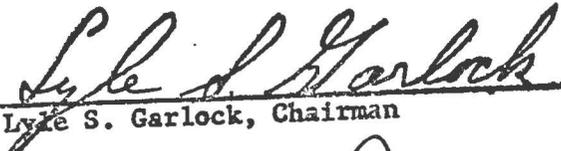
<u>FROM</u>	<u>ON</u>
August 6, 1960	\$2,383.92
October 19, 1966	1,107.70
February 8, 1967	118.50
February 15, 1967	<u>324.83</u>
	\$3,934.95

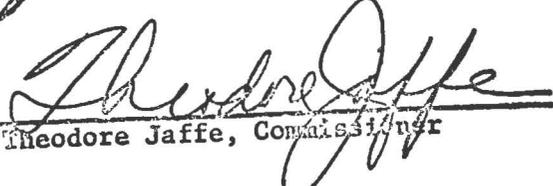
CERTIFICATION OF LOSS

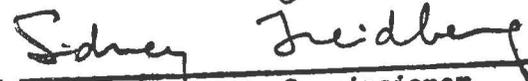
The Commission certifies that ANTHONY E. DALESIO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Nine Hundred Thirty-four Dollars and Ninety-five Cents (\$3,934.95) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

JUL 1 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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 or 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).)