

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

IN THE MATTER OF THE CLAIM OF

ABRAHAM RESNICK

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0955

Decision No. CU -0897

Counsel for claimant:

Bindeman & Burka
By Leonard W. Burka, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision of January 10, 1968, the Commission denied this claim on the ground that claimant had failed to establish ownership by a United States national of rights and interests in property at the time such property was nationalized, expropriated or otherwise taken by the Government of Cuba. Claimant objected to the Proposed Decision and requested an extension of time for the submission of additional evidence. Claimant's request was granted by the Commission, and evidence relating to the ownership of the property in question was submitted.

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 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.

On the basis of evidence of record, the Commission now finds that claimant is, and since December 20, 1960, has been the owner of 300 shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba (Vertientes-Camaguey Sugar Company of Cuba). The stock in question is represented by certificate No. M 4326. Claimant purchased the stock on the date indicated, for \$850.50.

The record discloses that Cia. Azucarera Vertientes-Camaguey de Cuba was listed as nationalized in Resolution No. 1 (pursuant to Law 851), published in the Cuban Official Gazette on August 6, 1960. 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. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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. Claimant has submitted information to establish the nationality of the owners of the securities on the date of loss, and such evidence tends to establish continuous 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 the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571.)

The Commission finds that claimant, upon his purchase of the securities, succeeded to the loss sustained by the assignors of the claimed securities, and concludes that he succeeded to and suffered a loss in the total amount of \$850.50 as a result of the nationalization of Cia. Azucarera Vertientes-Camaguey de Cuba on August 6, 1960.

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 December 20, 1960, the date on which claimant acquired this claim, to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that ABRAHAM RESNICK succeeded to and 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 Dollars and Fifty Cents (\$850.50) with interest at 6% per annum from December 20, 1960 to the date of settlement.

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

AUG 14 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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 Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

ABRAHAM RESNICK

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0955

Decision No. CU 887

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 \$850.00, was presented by ABRAHAM RESNICK and is based upon an asserted loss sustained in connection with the ownership of stock issued by the Vertientes-Camaguey Sugar Company of Cuba. Claimant has been a national of the United States since his naturalization on March 5, 1935.

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).)

Claimant has submitted evidence of his United States nationality, and has also submitted a stock certificate which reflects his ownership of 300 shares of Vertientes-Camaguey Sugar Company stock upon which the claim is based. The certificate was issued on December 27, 1966. However, no evidence has been submitted to establish either the date of acquisition or the purchase price paid for the shares in question.

By Commission letter of October 2, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. No response to this letter has been received to date. Thereafter by letter of November 2, 1967, claimant was invited to submit any evidence available to him within 45 days from that date, and he was 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 claimant has not met the burden of proof in that he has failed to establish ownership by a United States national of rights and interests in property at the time it was nationalized, intervened, expropriated or otherwise taken by the Government of Cuba. 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

JAN 10 1968

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION
This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on _____

Francis M. ...
Francis M. ...
of the Commission

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).)