

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

IN THE MATTER OF THE CLAIM OF

LOU SCHARE

Claim No. CU -1232

Decision No. CU-577

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

Epstein & Furman
By Bernard Furman, Esq.

Appeal and objections from a Proposed Decision entered on November 1, 1967.

Hearing on the record held on June 23, 1971

FINAL DECISION

Under date of November 1, 1967, the Commission issued its Proposed Decision denying this claim inasmuch as claimant had not sustained the burden of proving that he had lost a bank account and other sums for the dishonoring of a purchase contract for cocoa butter within the meaning of Title V of the International Claims Settlement Act of 1949, as amended.

Claimant objected to the decision and requested an oral hearing. Oral hearings were scheduled for five different occasions at claimant's request. Claimant was advised through his attorneys by letter of June 25, 1968 that the oral hearing was rescheduled for the final time to July 23, 1968. Claimant did not appear on that occasion and claim was noted for a hearing on the record.

Since the issuance of the Proposed Decision, claimant has submitted a copy of a bank statement, dated February 27, 1959, indicating a withdrawal of 4,748.23 Cuban pesos on February 9, 1959, leaving a balance of 1,383.45 Cuban pesos in claimant's account in the Havana branch of The Royal Bank of Canada.

Other documentation of record concerning the account consists of a letter from Banco Nacional of Cuba dated August 12, 1960 to The Royal Bank authorizing the transfer to claimant of up to 400 pesos for his expenses. There is no evidence of record indicating other withdrawals.

Based upon the evidence of record, the Commission now finds that claimant owned a bank account in Cuba in the claimed amount of \$800.00, the Cuban peso having been determined to have the same value as the dollar.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, and securities of persons who had left the country.

Based on the foregoing, the Commission finds that claimant's bank account in Cuba was taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

The Commission has decided that in certifications of loss 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.


The Certification as stated below will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed.

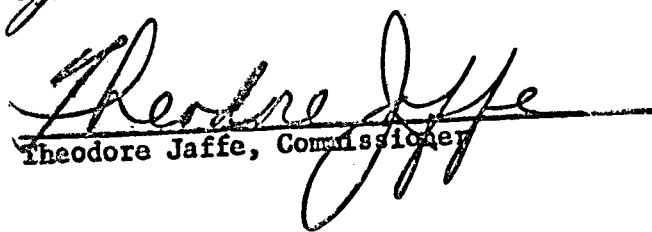
CERTIFICATION OF LOSS

The Commission certifies that LOU SCHARF 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 Dollars (\$800.00) with interest thereon at 6% per annum from December 6, 1960 to the date of settlement.

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

JUL 6 1971


Lyle S. Garlock, Chairman


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.

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

IN THE MATTER OF THE CLAIM OF

LOU SCHARF

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1232

Decision No. CU

577

Counsel for claimant:

Epstein and Furman

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 \$8,800.00, was presented by LOU SCHARF and is based upon the asserted loss of proceeds from a bank account and expenses occasioned by the dishonor of two contracts. Claimant stated that he 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 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 avers that he had \$800.00 on deposit with the Royal Bank of Canada, Havana, Cuba, which he has been unable to obtain; that he sustained out-of-pocket losses for replacement of goods, in the amount of \$8,000.00, occasioned by the nationalization of two Cuban companies, "Estrella" and "Ambrosia", and their subsequent dishonor of confirmed contracts for the sale of "cocoa-butter"; that the loss of the property, claimed herein, arose "immediately after the accession of Fidel Castro to control of Cuba".

The record contains a copy of a letter to the Banco Nacional de Cuba, dated August 17, 1961, written on behalf of claimant by his attorneys, which copy was forwarded to the Department of State. Such letter contains an itemization of losses claimed against the Banco Nacional and the Government of Cuba, in the total amount of \$7,960.00, consisting of (1) deposit of \$1,300.00 held in an account at the Chase Manhattan Bank, Havana, (2) deposit of approximately \$1,200.00 held

in an account at the Royal Bank of Canada, Havana, and (3) damages in the amount of \$5,460.00 resulting from the dishonor of contracts for the purchase of cocoa-butter, entered into with La Estrella Industrial, S.A. and La Ambrosia Industrial, S.A.

With the exception of the foregoing statements by or on behalf of the claimant, the record contains no evidence concerning ownership by a national of the United States of the property, subject of this claim, or of the loss and value thereof.


By Commission letter of March 30, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish the instant claim under the Act. No evidence in response to this correspondence has been received to date. On September 1, 1967, counsel was invited to submit the suggested evidence 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. A copy of the foregoing letter was forwarded to the claimant. 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 of rights and interests in property which was nationalized, expropriated

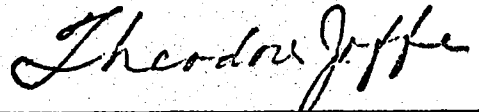
or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

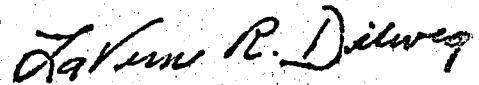
NOV 1 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissicner



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, 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).)