

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

IN THE MATTER OF THE CLAIM OF

GREVATT BROS., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1244

Decision No. CU 4158

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by GREVATT BROS., INC. in the amount of \$15,889.72 based upon the asserted loss of payment for merchandise shipped to Cuba, and an interest in a Cuban enterprise.

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 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in the State of New York and that at all times between December 31, 1917 and presentation of this claim on March 28, 1967, all of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of claimant's invoices, drafts, notices of payment received by collecting Cuban banks and other records reflecting the sale of goods to various consignees in Cuba, and charges for freight, shipping and other attendant fees. Claimant states that it has not received the funds.

There follows a listing of items documented by claimant, including the dates items were due or were paid:

<u>Consignee</u>	<u>Date Paid or Due</u>	<u>Amount</u>
M. Ferrer y Cia.	January 28, 1960	\$ 208.95
Publicidad Objectiva, S.A.	February 28, 1960	845.00
	March 10, 1960	591.91
	May 11, 1960	547.47
	June 8, 1960	263.96
	June 21, 1960	407.87
	June 29, 1960	6,323.90
	July 28, 1960	1,116.90
	August 15, 1960	508.33
	October 28, 1960	1,373.50
	December 8, 1960	505.30
	April 7, 1961	<u>1,071.57</u>
	Total	\$13,764.66

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that the aforesaid sums totalling \$13,764.66 were lost as a result of intervention by the Government of Cuba, and that, in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts. The Commission further finds that in those instances in which payments were made by Cuban consignees, the losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days of notification of payments made to claimant corporation.

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).)

A portion of this claim is asserted for the loss of a stock interest in Inversiones and Inmuebles, S.A. Claimant has not submitted probative evidence of this loss. Therefore the Commission finds that claimant has not met the burden of proof in that it has not established its ownership

of such a stock interest which has been nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this portion of the claim is denied.

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 as follows:

<u>FROM</u>	<u>ON</u>
January 28, 1960	\$ 208.95
February 28, 1960	845.00
March 10, 1960	591.91
May 11, 1960	547.47
June 8, 1960	263.96
June 21, 1960	407.87
June 29, 1960	6,323.90
July 28, 1960	1,116.90
August 15, 1960	508.33
October 28, 1960	1,373.50
December 8, 1960	505.30
April 7, 1961	<u>1,071.57</u>
Total	\$ 13,764.66

CERTIFICATION OF LOSS

The Commission certifies that GREVATT BROS., INC. 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 Thirteen Thousand Seven Hundred Sixty-four Dollars and Sixty-six Cents (\$13,764.66) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

NOV 7 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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.

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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