

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

IN THE MATTER OF THE CLAIM OF

SCHARFMAN BROTHERS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1407

Decision No. CU 804

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 SCHARFMAN BROTHERS, INC. in the amount of \$7,216.24 based upon the asserted loss of payment for merchandise shipped to Cuba.

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 503(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) of the Act defines the term "national of the United States" as "(B) 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."

Evidence of record discloses that claimant corporation was organized in the State of New York in 1961, and is successor in interest to Scharfman Brothers, a partnership comprised of William B. Scharfman and Saul Scharfman. At the time of incorporation the two partners became and remain the only stockholders in claimant corporation. They have been nationals of the United States since their birth in the United States. The Commission holds that both claimant corporation and its predecessor are and were nationals of the United States within the meaning of Section 502(1) of the Act.

The record contains a copy of a letter addressed to the Commission from Manufacturers Hanover Trust Company and dated March 29, 1967. This letter states that the bank's records disclose that certain collections sent to Cuba on behalf of claimant were paid in local currency by the Cuban drawees. These collections are identified by the bank's reference number, amount, and the date on which the bank was advised that payment in local currency had been made:

<u>BANK NO.</u>	<u>AMOUNT</u>	<u>DATE LOCAL CURRENCY PAYMENT ADVISED</u>
10/53817	\$ 623,66	January 20, 1960
10/54193	1,471.23	February 29, 1960
10/54261	604.03	March 23, 1960
10/50584	287.69	April 5, 1960
10/54186	1,039.57	May 4, 1960
10/55232	1,215.71	June 23, 1960
10/50583	287.69	August 18, 1960
10/50582	287.70	December 27, 1960

The bank's letter also lists its collection No. 10/53697 in the amount of \$1,398.96 but no date of payment in local currency is listed. The claimant has submitted a copy of its invoice No. 7685-8608 of September 29, 1959, which reflects the sale and shipment of I. Leon & Cia. of Havana, Cuba, of goods totalling \$1,398.96. The terms of the invoice are stated as "60 day sight". Claimant has also submitted bank correspondence which shows that the draft, under the bank's No. 10/53697 had been accepted by the drawee. The maturity date of the accepted draft was December 12, 1959. Claimant states that it has not received the funds.

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 into 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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary the losses occurred on the days after Manufacturers Hanover Trust Company was informed that payments had been made in local currency, as to the paid drafts. With respect to the draft drawn against I. Leon & Cia., under the bank's collection No. 10/53697, the Commission finds that the loss occurred on December 12, 1959, the maturity date of the draft.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

On \$1,398.96 from December 12, 1959

On \$ 623.66 from January 21, 1960

On \$1,471.23 from March 1, 1960

On \$ 604.03 from March 24, 1960

On \$ 287.69 from April 6, 1960

On \$1,039.57 from May 5, 1960

On \$1,215.71 from June 24, 1960

On \$ 287.69 from August 19, 1960

On \$ 287.70 from December 28, 1960

CERTIFICATION OF LOSS

The Commission certifies that SCHARFMAN BROTHERS, INC. 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 Seven Thousand Two Hundred Sixteen Dollars and Twenty-Four Cents (\$7,216.24) 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

7 DEC 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered on the final decision on July 9, 1967

John H. ...

John H. ...
Clerk of the Commission

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).)