

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

IN THE MATTER OF THE CLAIM OF

BERNARD H. RUDERMAN

Claim No. CU- 2558

Decision No. CU **1586**

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Sherman S. Lawrence, Esq.

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 \$6,343.26, was presented by BERNARD H. RUDERMAN and is based upon the asserted loss of a shareholder's interest in Consolidated Development Corporation, American Duralite Corporation, and Continental Tobacco Company. Claimant stated that he has been a national of the United States since his birth in the United States.

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(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."

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 505(a) of the Act provides that:

A claim under Section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered . . .

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 shareholder's interest in Consolidated Development Corporation. Documentation submitted to the State Department by that corporation reflects that it was organized under the laws of the State of Delaware and that more than 50 per centum of its capital stock is owned by United States citizens. Consolidated Development Corporation thus qualifies as a United States national within the purview of Section 502(1)(B) of the Act. (See Claim of Mary F. Sonnenberg, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 [July-Dec. 1966].)

The Commission concludes that since this portion of the claim is based on a stock interest in a corporation which qualifies as a United States national, the Commission is precluded, under Section 505(a) of the Act from considering it. Accordingly, this portion of the claim is hereby denied.

The remaining portions of this claim are for the loss of a shareholder's interest in American Duralite Corporation and Continental Tobacco Company. Claimant stated that American Duralite Corporation was organized under the laws of the State of New York and that the Continental Tobacco Company was organized under the laws of the State of Delaware.

By Commission letter of December 26, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish that these two corporations would not qualify as nationals of the United States under Section 502(1)(B) of the Act. Claimant was further advised that if these corporations did not qualify as nationals of the United States, evidence to substantiate a loss resulting from the actions of the Cuban Government and the amount thereof should be submitted. No evidence in response to this correspondence has been received to date.

On February 15, 1968, counsel 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. Counsel replied that there was no further information available and that the Commission should determine the claim on the basis of the information already submitted.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish, within the purview of the Act, 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 portion of the 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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, 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 **MAY 21 1968**
Francis Holton
Clerk 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).)