

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

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IN THE MATTER OF THE CLAIM OF

DEAK AND CO., INC.

Claim No. CU -0381

Decision No. CU -981

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$23,857.28 was presented by DEAK AND CO., INC. based upon the ownership and loss of certain bank accounts in 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 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.

An officer of the claimant corporation has certified that the claimant was organized in the State of New York and that all times between January 1, 1959, and presentation of this claim on August 23, 1965, more than 50% 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.

Evidence of record discloses that all of claimant's outstanding stock is owned by one person who is a national of the United States.

Claimant contends that it has lost the contents of two bank accounts maintained with Banco Pedroso and Banco Nunez, both of Havana, Cuba. The record establishes that claimant had a balance of 1,000 pesos at Banco Pedroso on August 26, 1959, and a balance of 45,107.28 pesos at Banco Nunez on July 31, 1959. Claimant further states that these accounts became blocked to claimant as a result of subsequent nationalization of the respective banks.

A number of laws and resolutions were issued in Cuba affecting banks, bank accounts and currency. Not all of these enactments and resolutions affect the account of the claimant in Claim No. CU-0381.

Law 568, published in the Cuban Official Gazette on September 29, 1959 forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country. Law 930, published in the Cuban Official Gazette on February 23, 1961, gave the National Bank the power to effect centralization of liquid assets "temporarily" taken from the people. In effect this froze or continued the blocking of bank accounts.

By Law 963, published in the Cuban Official Gazette on August 4, 1961, a currency exchange was effected. Currency was turned in at centers provided and a new currency was provided. There was no change in value. However, each person was to receive 200 pesos in new currency, and all over that amount was placed in a special account in his name. This did not affect bank accounts already in existence. By Law 964, published in the Cuban Official Gazette on August 9, 1961, it was provided that the owners of the deposits created under

Law 963 could draw up to 1,000 pesos, the balance up to 10,000 remained in his special account, and all over 10,000 passed to the State Treasury. There were some minor exceptions. However, Laws 963 and 964 do not affect Claim No. CU-0381 in which the account did not arise from currency exchange.

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. This included such bank accounts as had not been established and confiscated by Laws 963 and 964, supra. From the foregoing, the Commission finds that claimant's above-described bank accounts totalling 46,107.28 pesos, were taken by the Government of Cuba on December 6, 1961. (See the Claim of Floyd W. Auld, FCSC Claim No. CU-0020.)

Upon consideration of the entire record, the Commission finds that on December 6, 1961, claimant's account of 1,000 pesos at Banco Pedroso had a value of \$1,000.00, and that claimant suffered a loss in that amount within Title V of the Act, as a result of the taking of this bank account by the Government of Cuba. Further, the Commission finds that on December 6, 1961, claimant's account of 45,107.28 pesos with the Banco Nunez, had a value of \$45,107.28. However, before the Commission can certify any loss to claimant corporation, another factor must be considered:

Evidence of record discloses that claimant, subsequent to the taking of its bank account, instituted an action against Banco Nunez in the Supreme Court, County and State of New York, for the full amount of its loss. Thereafter, and on April 24, 1962, counsel for the respective parties to that

action entered into a stipulation providing for the payment, by Banco Nunez to claimant, of the sum of \$21,250.00 settling and terminating claimant's action on its bank account. The Final Order discontinuing the action was entered on April 25, 1962.

It is therefore clear from the record that claimant, by settling its action on the bank account, had relinquished any claim it had thereon, prior to the filing of its claim with this Commission. While claimant may have owned a claim prior to the settlement of that action, it no longer had a claim subsequent to April 25, 1962.

Accordingly, and with respect to this portion of the claim, the Commission finds that claimant has not met the burden of proof, in that it has failed to establish its ownership of a claim for the loss of property which was nationalized, expropriated, intervened or otherwise taken by the Government of Cuba. This portion of the claim, therefore, 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 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 on \$1,000.00 from December 6, 1961 to the date on which the provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

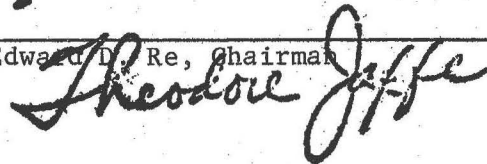
The Commission certifies that DEAK AND CO., INC., suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Dollars (\$1,000.00), with interest thereon at 6% per annum from December 6, 1961, the date of taking, to the date of settlement.

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

JAN 24 1968



Edward D. Re, 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.

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).)