

ORIGINAL DOCUMENTS IN SAFE

Case No. 187

Date of filing: 29. Jan 88

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of Mr Ambari
- Date 29. Jan 88
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** DISSENTING OPINION of _____
- Date _____
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** OTHER; Nature of document: _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

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دیوان داوری دعاوی ایران - ایالات متحدہ

IRAN UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
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Date	29 JAN 1988 تاریخ ۱۳۶۶ / ۱۱ / ۹
No.	187 شماره

In the Name of God

CASE NO. 187
CHAMBER THREE
AWARD NO. 342-187-3

GORDON WILLIAMS,
Claimant,
and
ISLAMIC REPUBLIC OF IRAN,
BANK SEPAH,
and BANK MELLAT (formerly
Bank of Tehran),
Respondents.

DUPLICATE
ORIGINAL
دو نسخه برابر اصل

SEPARATE OPINION OF JUDGE PARVIZ ANSARI

1. I concur in that part of the Award which relates to the letter of credit issued by Bank Sepah and which refrains from awarding costs of arbitration. As to that part of the Award dealing with the letter of credit issued by Bank Mellat, I dissent for the following reasons.¹

¹ I should add that the Claimant's standing to bring this claim is not clear either, and that it is liable to objections, inasmuch as the letters of credit at issue in this claim were issued in the name of K & S Irrigation Company. The only evidence submitted by the Claimant in support of his right to bring claim on behalf of that company in connection with the letters of credit at issue, is the Fictitious Business Name Statement dated 11 December 1979, which is subsequent to the date on which the letters of credit were issued. Therefore, since the date of the registration of the Fictitious Business Name is posterior to that of the letters of credit, in my opinion it has not
(Footnote Continued)

Bank Mellat letter of credit No. SH 546521

2. One point agreed on by both parties to this claim, is that the documents presented to Bank Mellat for collection of the amount of that credit did not conform to the terms of the letter of credit. Nor is it disputed that a bank's obligation to make payment on a letter of credit is limited to the conditions and period of time set forth in the letter of credit.² Therefore, the bank is not obligated to make payment on the letter of credit if the documents presented to it do not conform to the terms thereof. The reason given in the Award for departing from the rule that a bank is not liable where the conditions set forth on a letter of credit have not been met are insufficient and unacceptable, both as to their legal grounds and as to the facts of the case.

3. Nor is the question of whether or not Bank Mellat notified the Claimant of the documents' nonconformity to the terms of the letter of credit a determining factor, given the circumstances of the present Case. Given the letter of credit's expiration date (7 Esfand 1358 [26

(Footnote Continued)

been proved or established that the Claimant has standing to bring the claim arising from the letters of credit (the underlying transaction in the claim) before this Tribunal, even if, in arguendo, we were to accept the Fictitious Business Name Statement as evidence thereof.

² Article 7 of the Uniform Customs and Practice for Documentary Credits (1974 Revision) provides that:

"Article 7: Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit."

February 1980]), and in view of the date when Bank Mellat inspected the documents³, namely 6 Esfand 1358 [25 February 1980], there would obviously have been no chance to correct the documents. Even supposing that the Claimant was unaware of the shipping documents' deficiencies and nonconformity to the terms of the letter of credit, any formal notification by Bank Mellat in this connection could not have reached the Claimant before the letter of credit at issue expired; and even supposing that the documents could be corrected, a fortiori this could not possibly have come about before the letter of credit expired. Therefore, there is no basis for supposing that Bank Mellat injured the Claimant in any way by failing to notify him of the defects in the documents.

4. A further point to which the Award refers in this connection, to the effect that Bank Mellat failed to notify the Claimant that the shipping documents did not conform to the terms of the letter of credit, and the way in which this is interpreted and construed as signifying that Bank Mellat had waived its right to refuse payment due to the defects in the shipping documents is also, even supposing it to be true, no more than an unproven and unsubstantiated presumption. At the same time, it cannot possibly be asserted that such a conclusion can be clearly inferred on the basis of the events of the period under review. In fact, quite the opposite holds true here— namely, the

³ The Bank Mellat date stamps on the backs of the originals of the documents presented by the Claimant at the Hearing conference constitute evidence of this inspection. Yet, the very fact that the Claimant was in possession of these documents makes it most improbable that he was unaware of their deficiencies, because the fact that they were given a Bank Mellat date stamp and returned to the Claimant, or to the person who took out the letter of credit and was acting on the Claimant's behalf signifies that the documents had been rejected.

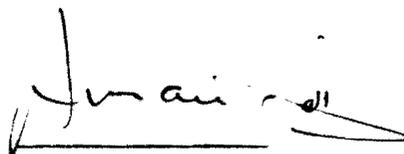
presumption which must inevitably be drawn from Bank Mellat's refusal to honor the letter of credit, is that the Bank did not waive its right to refuse payment in this connection.

5. Nor does the fact that Bank Mellat contacted Bank Markazi for possible authorization and facilitation of payment of the amount of the letter of credit, constitute evidence that Bank Mellat had waived its right to refuse payment if the documents were defective or the letter of credit had expired. In the circumstances where Bank Mellat contacted Bank Markazi, the letter of credit had, in fact, already ceased to be valid. This action on the part of Bank Mellat, apart from demonstrating its complete good faith and cooperation, cannot be construed as meaning that the letter of credit — which as stated above had become invalid or at least no longer entailed obligations on the part of Bank Mellat — had been revalidated; nor can it be deemed to have given rise to any liability on the part of Bank Mellat.

6. In my opinion, Bank Mellat has demonstrated that it was entitled to refuse payment on the aforementioned letter of credit, since the shipping documents failed to conform to the terms thereof, and that it did indeed so refuse. Bank Mellat has also demonstrated that it acted in sufficient good faith, and that although it was under no obligation to do so it was prepared, under the existing circumstances, to transfer the funds for the letter of credit via the European banks, provided that Bank Markazi agreed. Even if we suppose that this action by Bank Mellat, in assisting the beneficiary and applicant of the letter of credit, divested the Bank of its right to refuse payment owing to defects in the documents and expiration of the term of the letter of credit, there are still no grounds for holding Bank Mellat liable, if we take into account Bank Markazi's response and its conditions for authorizing

payment. It was not Bank Mellat that determined the conditions; nor was it responsible for meeting them. There can be no doubt that it was the beneficiary and applicant of the letter of credit who were responsible for meeting these conditions, and that this involved other firms, including Lufthansa Airlines; their failure to do so is not attributable to Bank Mellat.⁴ In addition, at least one of Bank Markazi's conditions, which was unquestionably a binding provision of the letter of credit during the period of its validity and was not altered afterwards either, was that the documents must conform to the terms of the letter of credit.⁵ On this presumption too, the nonpayment was ultimately due to factors beyond the scope of Bank Mellat's authority.

7. In view of the foregoing, Bank Mellat letter of credit No. SH 546521, just like the letter of credit issued by Bank Sepah, cannot be honored, and Bank Mellat is not liable with respect thereto.



Parviz Ansari

⁴ This fact can be perceived from a perusal of the correspondence between Bank Mellat and Bank Markazi, part of which is cited in the Award. By way of example, one condition laid down in Bank Markazi's letter of 18 Esfand 1358 [9 March 1980], was that a customs clearance slip of the value equivalent to the amount of the documents must be produced. In view of Bank Mellat's letter of 27.3.1359 [17 June 1980] to Bank Markazi, it is clear that the applicant of the letter of credit was unable to obtain the customs clearance slip, owing to the nonassistance and noncooperation of the carrier (Lufthansa Airlines).

⁵ As stated above, the shipping documents' nonconformity to the provisions of the letter of credit was due solely to acts on the part of the Claimant, and only the Claimant could have corrected them.