

IRAN-UNITED STATES CLAIMS TRIBUNAL

DUPLICATE
ORIGINAL

نسخه برابر اصل

ESAHAK SABOONCHIAN,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

دیوان داورى دعاوى ایران - ایالات متحده

CASE NO. 313
CHAMBER TWO
AWARD NO. 524-313-2

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحده
FILED	ثبت شد
DATE	15 NOV 1991
	۱۳۷۰ / ۸ / ۲۴ تاریخ

AWARD

Appearances:

For the Claimant : Mr. Esahak Saboonchian,
Claimant,
Mr. Huston T. Carlyle,
Attorney,
Mr. Hamid Sabi,
Attorney,
Mr. Robin Der-Abramian,
Witness.

For the Respondent : Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran,
Mr. Jafar Niaki,
Legal Adviser to the Agent,
Mr. Abbas Rahimi,
Legal Assistant to the Agent,
Mr. Abbas Hashemi,
Representative of Respondent,
Mr. Mohammed E. Mahdavi,
Representative of Respondent,
Mr. Ali Rahimi,
Representative of Respondent,
Mr. Mehdi Bathaei,
Representative of Respondent.

Also present : Ms. Lucy F. Reed,
Agent of the Government of the
United States of America,
Mr. Michael F. Raboin,
Deputy Agent of the Government
of the United States of
America,
Mr. D. Stephen Mathias,
Attorney-Adviser, U.S. Depart-
ment of State.

I. THE CLAIM

1. The Claimant, ESAHAK SABOONCHIAN, filed a Statement of Claim against the Respondent, THE ISLAMIC REPUBLIC OF IRAN, on 15 January 1982, seeking compensation in the amount of U.S.\$6,850,000 (later increased to U.S.\$7,155,000) plus interest and costs for the alleged expropriation by the Respondent of a farm in the vicinity of Abadan in which he allegedly had an ownership interest as a result of inheritance from his father. The Respondent objected, inter alia, to the jurisdiction of the Tribunal on the ground that the Claimant is exclusively a national of Iran and denied liability on the grounds that the Claimant did not own the property in question and that the property had not been expropriated. The Respondent also contested the Claimant's valuation of the property.

II. PROCEDURE

2. Following the Full Tribunal's Decision in The Islamic Republic of Iran and The United States of America, Decision No. Dec. 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251 (Case No. A/18), holding that it has "jurisdiction over claims against Iran by dual Iran-United States nationals where the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States" and the submission of a number of memorials and evidence by the Parties, the Tribunal, by the Order of 3 March 1989, joined "all jurisdictional issues, including the issue of the Claimant's nationality, to the consideration of the merits of this Case."

3. The Tribunal noted in the Order that apparently the Claimant was, during the relevant period, a national of both Iran and the United States. It went on to state that:

"[I]n order to reach definitive conclusions as to the dominant and effective nationality of the Claimant, as well as the Tribunal's jurisdiction over the claims presented by the Claimant and the relevance, if any, to the merits of the Claimant's other nationality, the Tribunal will have to examine further the nationality issue, together with other issues, such as the facts and applicable laws relating to the alleged acquisition and ownership of the property which constitutes the basis of this Claim as well as the actions by the Respondent allegedly affecting them."

4. A Hearing in this Case was held on 25 June 1991.

III. FACTS AND CONTENTIONS

5. In view of its holding, infra, with respect to the Claimant's proof of ownership of the property, the Tribunal shall limit itself to those facts and contentions that are most relevant and those necessary to understand the Case.

6. The Claimant was born of Iranian parents in Iran in 1927 and thus is an Iranian national by birth. He entered the United States in 1949 and received his Bachelor of Science degree in chemical engineering from Northwestern University in 1954. In 1952, he married a U.S.-born woman, and a son was born to them in the United States in 1953. Both the wife and the son are Iranian nationals by virtue of Iranian law as well as United States nationals by virtue of U.S. law. The Claimant acquired United States nationality on 2 December 1960, as evidenced by a copy of his Naturalization Certificate, but he did not abandon his Iranian nationality and thus remains a dual national.

7. The Claimant contends that he has lived continually in the United States since 1949, and was employed by the Texaco Corporation from 1955 until his retirement in 1988. He states he has visited Iran only three times, each for a period of approximately one month, in 1967, 1971, and 1975.

8. The farm in question, occupying an area of 26 hectares, was apparently operated by the Claimant's father, Benjamin Saboonchian from late 1945 until 1975 when the father suffered a stroke and moved to Tehran. From 1975 until the summer of 1979 the farm allegedly continued to belong to the father, but the Tribunal is uninformed as to who was in charge of it or the arrangements by which it functioned. The father died on 30 July 1979 in Tehran. The Claimant asserts that in late August or early September 1979, the Respondent, acting through Revolutionary Guards, destroyed the farm.

9. The origin of the property, according to the evidence submitted by the Claimant, dates back to 1 December 1945 when the Anglo-Iranian Oil Company (later succeeded by the National Iranian Oil Company NIOC), which had bought some camp buildings on the site from the British Army, concluded an agreement with Benjamin Saboonchian, and his partner, Nerses Shaghzarian, for the establishment of a farm which would supply the Company with dairy products, pork, eggs and vegetables. The Claimant's father and his partner agreed to pay 50% of the value of the buildings to the Company immediately upon occupancy. The agreement also set forth various bilateral rights and obligations between the parties including, inter alia, that the Company would install and maintain an irrigation pump at a river close to the farm, and that the Claimant's father and his partner would arrange with the Iranian authorities for acquiring land for the purpose of cultivation of fodder crops and vegetables.

10. In 1949, Benjamin Saboonchian entered into a partnership agreement with Nerses Shaghzarian for a period of five years according to which Mr. Saboonchian was to carry out the day to day activities of the farm under the supervision of Mr. Shaghzarian. It indicated that Mr. Shaghzarian had applied to the local authorities to acquire the lands covered by the agreement and that if permission by such

authorities was granted, the land would have to be registered in both partners' names in equal shares. This agreement, however, was terminated by another agreement in 1952. According to the terms of the new agreement, the shares of Mr. Shaghzarian were transferred to Mr. Saboonchian against the payment of Rls. 400,000. The same agreement indicated again that the two individuals had applied to the authorities for the acquisition of the land of the farm but had not as yet received a positive response. If they acquired the land, Mr. Shaghzarian was to receive a 20% share in the portion of the land in excess of 49.4 acres.

11. The Claimant submitted copies of correspondence exchanged between his father and the local authorities concerning the acquisition of the land in question. The content of this correspondence indicates that it was part of a wider correspondence as there are references to a number of other letters not in evidence.

12. As regards the fixtures on the farm such as the buildings and other improvements, the evidence submitted by the Claimant indicates that his father, following the instruction of NIOC, paid 152,800 rials to NIOC for the remainder of "the price of the pigry, the pumphouse building, and the use of the irrigation pump till the end of the year 1967" and that on 24 February 1971 NIOC confirmed to the Country Registration Office of Abadan that Benjamin Saboonchian had paid the price and the Company had no claim on these properties. No evidence has been presented to show that these items were subsequently registered in Mr. Benjamin Saboonchian's name.

13. On 1 June 1974, the Abadan Housing Organization advised the Claimant's father that the land requested by him was covered by Article 7, paragraph A, of the Dissolution of the Administration of the Crown Properties Act of 1967 and that he could proceed to purchase the land from the Housing

Organization to which the land had been assigned by virtue of the said Act, in accordance with the relevant laws and regulations. However, after the Abadan Parliamentary Deputy interceded on behalf of the Claimant's father in 1976, the Abadan Housing Organization informed the Deputy in a letter dated 11 March 1976 that the land in question had been acquired by the National Petrochemical Industries Company (NPIC), and therefore no further action could be taken. The Deputy subsequently informed Mr. Benjamin Saboonchian of this letter on 8 April 1976. Although on 11 May 1976, Benjamin Saboonchian once more wrote to the said Deputy to take up the issue with the relevant authorities, there is no evidence that either of them followed the matter any further.

14. The Claimant maintains that, under Iranian law, his father nevertheless retained a valid claim to ownership of the real estate by virtue of his long possession and use of it. At the Hearing, the Claimant asserted that had the father brought suit in an Iranian Court to contest NPIC's title to the land, the suit would have succeeded but he also admitted that his father never took any legal action until his death in July 1979. He argued this Tribunal should find invalid NPIC's title to the land. Respondent, denying both assertions, argued that the father never acquired ownership to the land and any claim he might have had with regard to the land had become moot as a result of the 1975 transfer which was carried out in full compliance with the relevant Iranian law.

15. With respect to the alleged destruction of the farm, the Claimant relied on affidavits and testimony by Mr. Robin Der-Abramians who allegedly drove past the farm on the day of the events in question. In view of our holding, infra, with respect to the Claimant's ownership, it is unnecessary to describe that evidence except to note that it contained certain contradictory features which inevitably damaged its

credibility. Similarly, the Tribunal need not recount the rebuttal evidence of the Respondent on this matter.

16. During earlier stages of the proceedings the Claimant sought to recover all of the value of the farm, relying first on assignments made in 1980 by his mother and brother, and then on Iranian law with respect to intestate succession. At the Hearing he ultimately acknowledged that the Respondent was correct in its assertion that according to the 1933 Act for the Application of Personal Status of Non-Shi'a Iranians and as certified by the Patriarchal Council of Armenians of Tehran, the estate of the Claimant's father would have been distributed in equal shares among the wife and children, and thus the Claimant would at most have been entitled to one-third of the estate. The Claimant also acknowledged that the part of the claim based on the two assignments did not satisfy the continued ownership requirements of Article VII, paragraph 2, of the Claims Settlement Declaration. He accordingly reduced his claim to one-third of the value of the farm. The evidence does not establish whether the Claimant's father left a will, whether the estate was probated or any other Iranian judicial proceedings ensued, or indeed what assets and liabilities comprised the estate.

17. The Respondent further argued that the Claimant's own share of the Claim too does not satisfy the requirements of Article VII, paragraph 2, of the Claims Settlement Declaration, as the Claim did not in fact arise in 1979 but in 1975 when the farm was transferred to NPIC, a subsidiary of NIOC. The acquisition was effected by the decision dated 28 April 1971 of a board, composed of the then Attorney General, Minister of the Interior and Director of Title Deeds and Land Registration Department in accordance with Article 11 (d) (7) of the Act of the Articles of Association of NIOC. Benjamin's farm was part of a larger parcel of land which had been required for the NPIC operations. The Act of

Articles of Association of NIOC provided for the compulsory purchase process in the event the owner of the land or superstructure thereon did not consent to the sale, whereupon the board would determine the value of the property using the valuation report of a commission of three experts, composed of a chairman, and one appointed by each side of the dispute. Evidence submitted by the Respondent shows that the compulsory purchase was carried out and that several parcels of land in the area together with the fixtures and property thereon, including the farm in question, were transferred to NPIC on 18 February 1975 and that a fixed amount was deposited in a special account with the Ministry of Justice to satisfy the claims of the owners. The Respondent thus argued that Benjamin Saboonchian did not own the farm and that there was only a claim of ownership which itself was ended by the 1971 decision of the three-member board, executed by the 1975 official transfer of the farm to NPIC. The farm, according to the Respondent, could not have been inherited by the Claimant and any damage to the farm in 1979 was not to be considered damage to the Claimant's property. Respondent argued that the Claimant inherited, if any, a claim for the farm which claim does not satisfy the requirements of Article VII, paragraph 2, of the Claims Settlement Declaration.

IV. REASONS FOR THE AWARD

18. It is obvious that any Claimant who seeks compensation for an alleged expropriation of property must first establish to the satisfaction of the Tribunal that he has ownership interests in that property. The evidence in this Case, as described supra, establishes that, at most, the Claimant inherited not a share in the ownership of real estate -- a farm -- but merely a claim that his father may have had to challenge the legality of the several decisions by governmental authorities that had denied him such ownership. The Tribunal therefore concludes that the Claimant has failed to

prove that he owned the farm during the relevant jurisdictional period. Consequently, the Claimant cannot have had an outstanding claim regarding this property on the date of the Algiers Declarations. In view thereof, the Tribunal has no jurisdiction over the Claim.

19. To the extent that the Claimant is asking the Tribunal to decide the claim he may have inherited -- that is, the claim of the Claimant's father to obtain title to the land he farmed (see supra, para. 14), the Tribunal has no jurisdiction. Article VII, paragraph 2 of the Claims Settlement Declaration limits the Tribunal's jurisdiction to claims owned continuously by nationals of the same country from the date the claim arose to 19 January 1981. The claim of the Claimant's father, who was solely an Iranian national, arose at the latest in 1975, four years before his death. This claim therefore does not satisfy the requirement of continued nationality of ownership as provided by Article VII, paragraph 2, of the Claims Settlement Declaration.

20. To the extent the Claimant seeks compensation for any personal property owned by the Claimant's father and left on the farm at the time of the alleged expropriation, the Tribunal finds that the Claimant has failed to allege facts with sufficient specificity to state a cognizable claim, which consequently must be dismissed.

21. Consequently, the Tribunal does not reach other jurisdictional questions including the dominant and effective nationality of the Claimant.

V. COSTS

22. Each Party shall bear its own costs of arbitration.

VI. AWARD

23. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a) The Claims of ESAHAK SABOONCHIAN are dismissed for lack of jurisdiction.

- b) Each Party shall bear its own costs of arbitration.

Dated, The Hague
15 November 1991

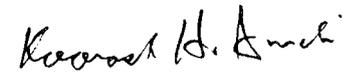
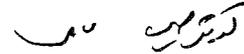


José María Ruda
Chairman
Chamber Two



George H. Aldrich

In the Name of God



Koorosh H. Ameli
Concurring