

213-212

ORIGINAL DOCUMENTS IN SAFE

Case No. 213

Date of filing: 13 Nov '95

\*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* OTHER; Nature of document: Correction to Award  
\_\_\_\_\_

- Date 13 Nov '95  
7 pages in English \_\_\_\_\_ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

DUPLICATE  
ORIGINAL

نسخه برابر اصل

دیوان داورى دعاوى ایران - ایالات متحده

CASES NOS. 213 and 215

CHAMBER THREE

AWARD NO. 567-213/215-3

DADRAS INTERNATIONAL, and  
PER-AM CONSTRUCTION CORPORATION,  
Claimants

and

THE ISLAMIC REPUBLIC OF IRAN, and  
TEHRAN REDEVELOPMENT COMPANY,  
Respondents.

|                                       |   |
|---------------------------------------|---|
| IRAN-UNITED STATES<br>CLAIMS TRIBUNAL | دیوان داورى دعاوى<br>ایران - ایالات متحده |
| FILED                                 | ثبت شد                                    |
| DATE                                  | 13 NOV 1995                               |
|                                       | تاریخ ۱۳۷۴ / ۸ / ۲۲                       |

CORRECTION TO THE ENGLISH VERSION OF THE AWARD

A. The following corrections are hereby made to the English version of the Award, filed on 7 November 1995.

1. The reference on page 2 to "Mr. George K. Duvé Sr." is hereby corrected to read "Mr. George K. Duvé Jr.".

2. The reference in line 10 of paragraph 125 to "articles of association" is hereby corrected to read "Notice of Establishment".

3. The reference in line 7 of paragraph 243 to "Article J" is hereby corrected to read "Article G".

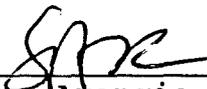
4. Paragraph 285 is hereby corrected to become sub-paragraph "c." of paragraph 284, and sub-paragraph "a." of paragraph 285 is hereby corrected to become sub-paragraph "d." of paragraph 284.

5. The sentence "This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent" is hereby added as sub-paragraph e. of paragraph 284 of the Award.

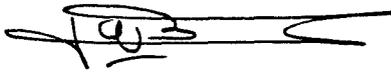
B. Copies of the corrected pages are attached.

Dated, The Hague

13 November 1995

  
\_\_\_\_\_  
Gaetano Arangio-Ruiz  
Chairman  
Chamber Three

In the Name of God

  
\_\_\_\_\_  
Mohsen Aghahosseini

  
\_\_\_\_\_  
Richard C. Allison

See my Dissenting  
Opinion filed on 7  
November 1995.

Appearances

First Hearing

For the Claimants:

Prof. Aly S. Dadras,  
Claimant;  
Mr. Gordon W. Paulsen,  
Mr. John C. Koster,  
Counsel;  
Mr. George K. Duvé Jr.,  
Witness;  
Mr. Theodore Liebman,  
Rebuttal Witness.

For the Respondents:

Mr. Ali H. Nobari,  
Agent of the Government of the  
Islamic Republic of Iran;  
Dr. Bijan Izadi,  
Deputy Agent of the Government of  
the Islamic Republic of Iran;  
Dr. Nemat Mokhtari,  
Mr. Nozar Dabiran,  
Legal Advisors to the Agent;  
Mr. Zabiollah Alavi Harati,  
Legal Advisor to TRC;  
Mr. Mohammad Jazayeri,  
Attorney for TRC;  
Mr. Alireza Nazem Bokaei,  
Technical Representative of TRC;  
Mr. Keyvan Ramian,  
Witness;  
Mr. Mirsadredin Amirkhalkhali,  
Mr. Mohammad Taghi Entezari,  
Mr. Mohammad Habibi,  
Expert Witnesses;  
Mr. Hashem Atifeh Rad,  
Rebuttal Witness.

Also present:

Mr. D. Stephen Mathias,  
Agent of the Government of the  
United States of America;  
Ms. Mary Catherine Malin,  
Deputy Agent of the Government of  
the United States of America.

and English law speaks of a flexible civil standard that raises the burden of proof where the commission of a fraud or a crime is alleged in civil proceedings.<sup>25</sup>

124. The allegations of forgery in these Cases seem to the Tribunal to be of a character that requires an enhanced standard of proof. Consistent with its past practice, the Tribunal therefore holds that the allegation of forgery must be proved with a higher degree of probability than other allegations in these Cases. See Oil Field of Texas, Inc. and Government of the Islamic Republic of Iran, et al., Award No. 258-43-1 (8 October 1986), reprinted in 12 Iran-U.S. C.T.R. 308, 315 (holding that alleged bribery would not be established if, on the evidence presented, "reasonable doubts remain"). The minimum quantum of evidence that will be required to satisfy the Tribunal may be described as "clear and convincing evidence," although the Tribunal deems that precise terminology less important than the enhanced proof requirement that it expresses.

C. Technical Objections: Single Signature and Company Seal

125. The Respondents have raised two technical objections to the validity of the Contract. First, they argue that the Contract relied upon by the Claimants is not binding on TRC because it was signed by only one of TRC's directors, Mr. Golzar, whereas according to the company's articles of association at least two directors should have signed the Contract. The Tribunal notes, however, that it is undisputed that Mr. Golzar was TRC's managing director at the time of the alleged signing of the Contract and other agreements with the Claimants. According to Article 10 of the company's Notice of Establishment, the managing director "is vested with full powers to manage the Corporation." Article 12 states further: "Authorized Signatories: Mr. Rahman Golzar Shabestari, alone, with the seal of the Corporation." Thus, even under TRC's own internal

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<sup>25</sup>Cross, supra note 22, at 147-8.

allegation of forgery in contesting the validity of the Contract, the Tribunal further finds -- based upon its rejection of the forgery allegations and all of the other evidence in these Cases -- that the Contract dated 9 September 1978 was valid, enforceable and binding on the Parties. It therefore turns to the issues of breach and damages.

C. Breach of the 9 September 1978 Contract

1. The Parties' Contentions

242. The Claimants in Cases Nos. 213 and 215 allege that on 9 September 1978 they stood ready, willing and able to perform their obligations under the Contract. They further allege that TRC breached the Contract by failing to pay Dadras International for work already performed, and by halting construction on the project before it began.

243. The Respondents, on the other hand, allege that Per-Am did not have the ability to carry out its undertakings and meet its preliminary commitments under the Contract. They argue that Per-Am was under an obligation to secure a "letter of guarantee equal to 5% of the initial contract price" under the General Conditions of Contract approved by the Plan and Budget Organization, as incorporated into the Contract by Article G of the Contract. They argue further that the obligation to secure a letter of guarantee is reflected in Article E(4) of the Contract. In addition, the Respondents point out that no evidence has been produced by Per-Am to substantiate its contention that it entered into a contract with AIDC for the purchase of the D-F-C plants, as the Claimants contend. They further argue that the method used by Per-Am to calculate its profit is incorrect, and that in any event, many unknown occurrences during construction could have affected the timetable of the Project and therefore the payment schedule.

282. Consequently, and bearing in mind that the Claimant in Case No. 213 has ultimately been successful in its claim for work performed, the Tribunal determines that the Claimant in Case No. 213 shall be awarded costs of arbitration from the Respondents in the amount of U.S.\$75,000.00, and that the Respondents in that Case should bear their own costs.

283. Noting the similarity of the post-Hearing issues in Case No. 215 with those in Case No. 213, and noting further that the Claimant in Case No. 215 did not succeed in establishing damages with sufficient certainty, the Tribunal determines that the Parties in Case No. 215 shall bear their own costs.

VIII. AWARD

284. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The Respondents, the Islamic Republic of Iran and Tehran Redevelopment Company, are obligated to pay the Claimant, Dadras International, the amount of Three Million One Hundred Nine Thousand Four Hundred Thirty Six United States Dollars and No Cents (U.S.\$3,109,436.00) plus simple interest at the rate of 8.5% per annum (365-day basis), calculated from 9 September 1978 up to and including the day on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;
- b. The claim of Dadras International in the amount of One Hundred Twenty Six Thousand Three Hundred Twenty United States Dollars and Eighty-One Cents (U.S.\$126,320.81) for supervision fees is dismissed for failure to prove damages with sufficient certainty;
- c. The claim of Per-Am Construction Corporation in the amount of Three Million One Hundred Twelve Thousand

Eight Hundred Eighty United States Dollars (U.S.\$3,112,880.00) is dismissed for failure to prove damages with sufficient certainty;

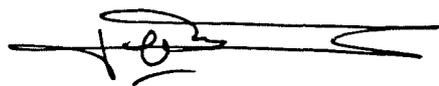
- d. The Respondents are ordered to pay the Claimant Dadras International costs of arbitration in the amount of Seventy Five Thousand United States Dollars and No Cents (U.S.\$75,000.00);
- e. This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague  
7 November 1995

  
\_\_\_\_\_  
Gaetano Arangio-Ruiz  
Chairman  
Chamber Three

  
\_\_\_\_\_  
Richard C. Allison

In the Name of God

  
\_\_\_\_\_  
Mohsen Aghahosseini

Dissenting to the Award's findings, except concurring in its dismissal of the Claim in Case No. 215.  
See Dissenting Opinion.