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CASE NO. 10712

79

CHAMBER THREE

AWARD NO. 321-10712-3

HARRINGTON AND ASSOCIATES, INC.,
a claim of less than US\$250,000 presented
by THE UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داورى دعاوى ایران - ایالات متحد
FILED - ثبت شده	
Date	27 OCT 1987 تاریخ
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AWARD

Appearances:

For the Claimant:

Mr. John R. Crook,
Agent of the United States
of America;
Ms. Mary Catherine Malin,
Presenter;
Mr. Michael F. Raboin,
Presenter.

For the Respondent:

Mr. Mohammad K. Eshragh,
Agent of the Government of
the Islamic Republic of
Iran;
Mrs. Eftekharolsadat
Mirwahabi,
Legal Adviser to the Agent;
Mr. Abdolmajid Aghighi,
Assistant to the Agent;
Mr. Ali Fathipour,
Attorney for Iran Carton;
Mr. Khayam Dadashzadeh,
Adviser to Iran Carton.

I. INTRODUCTION AND PROCEDURAL HISTORY

1. On 19 January 1982 the United States of America filed a Statement of Claim which presented a claim of less than \$250,000 of HARRINGTON AND ASSOCIATES, INCORPORATED ("Claimant") against THE ISLAMIC REPUBLIC OF IRAN ("Iran") seeking \$36,735.39 as damages arising from a contract with IRAN CARTON INC. ("Iran Carton") for the sale of a conveyor handling equipment system. The Claimant alleges that Iran Carton is an entity controlled by Iran.

2. The Case was assigned to this Chamber on 13 March 1984 and the Claimant filed a Supplementary Statement of Claim on 27 July 1984. Iran and Iran Carton filed separate Statements of Defense on 2 September 1985. Iran Carton, in addition, submitted a counterclaim against the Claimant.

3. On 8 January 1986 the Claimant filed a "Reply to Iran's Statement of Defense," on 13 February 1986 a supplemental submission of evidence consisting of an affidavit of Floyd Kehl, and on 12 May 1986 further evidence on the issue of the controlled entity status of Iran Carton. Iran filed its "Rejoinder" on 17 September 1986 and on the same day submitted "Comments" with regard to the Claimant's submission of 12 May 1986.

4. On 25 September 1986 Iran Carton filed its "Rejoinder." The Agent of the Government of the United States, by a submission filed on 30 September 1986, opposed this late submission, stating, inter alia, that in view of the Hearing which was scheduled for 7 October 1986:

Acceptance of Iran Carton's last minute brief would severely prejudice the Claimant. Harrington and Associates simply cannot investigate and rebut Iran Carton company's new claims and evidence in the short time available.

5. A Hearing in this Case was held on 7 October 1986. At the Hearing the Tribunal informed the Parties that it was prepared to consider Iran Carton's late submission but that in order to avoid undue prejudice to the Claimant caused by the filing of such a voluminous submission so shortly before the Hearing date it would permit the Claimant to submit a reply to this submission after the Hearing.

6. On 21 November 1986 the Claimant filed its "Comments to Iran Carton's Rejoinder."

II. THE CLAIM

7. The Claim is based on a Purchase Contract dated 16 August 1977 ("Contract") and revised subsequently by an Addendum Contract executed on 9 January 1978 ("Addendum Contract"). By these contracts the Claimant alleges that it agreed to supply Iran Carton a complete system of conveyor handling equipment for a total price of \$345,849, consisting of a down payment of \$84,059, a payment of \$226,790 by letter of credit upon shipment of the equipment and the balance of \$33,736 to be paid upon receipt by Iran Carton of the equipment. The Claimant alleges that although it shipped and Iran Carton admittedly received the contractually specified equipment, the balance of \$33,736 remains unpaid.

8. The Claimant further claims \$2,999.39 as expenses incurred by its president, Mr. George Harrington, in connection with a visit to Iran at Iran Carton's request and asserts that Iran Carton is obligated to reimburse this amount by the terms of the Addendum Contract.

9. Iran Carton argues that the Contract provisions required the Claimant not only to deliver the equipment, but also to install it in a satisfactory working condition. The

Claimant having failed to discharge this further obligation, Iran Carton contends, it is not entitled to the balance of \$33,736. Iran Carton denies that the Addendum Contract obligates it to reimburse the expenses incurred in connection with Mr. Harrington's trip to Iran and alleges that this trip was for attending to his own business.

III. THE COUNTERCLAIM

10. Iran Carton contends that the Claimant is in breach of its obligations under the Contract for the complete installation and delivery of the system in satisfactory working condition. Despite repeated requests, the Claimant allegedly failed to dispatch the personnel required for its installation. Although two personnel arrived in Iran in August 1978, it was before all the equipment was received, and they were thus able only to attend to certain preliminary matters. Iran Carton further submits that after all the equipment was received it provided the Claimant with air tickets, but the Claimant failed to dispatch the necessary personnel to Iran or install the system.

11. Iran Carton counterclaims for the return of all amounts paid under the Contract and certain other alleged losses, for a total amount of \$5,393,957, comprised of the following parts:

(a) Return of amounts paid pursuant to the Contract:

- (i) \$84,059 paid to the Claimant as a down payment;
- (ii) \$226,790 paid by the letter of credit;
- (iii) \$14,000 paid to the Claimant for work performed by the installation personnel in August 1978;

- (b) \$62,608 for damage inflicted on the equipment;
- (c) \$6,500 for the air tickets provided to the Claimant's installers but never refunded or used;
- (d) \$5,000,000 for losses incurred due to the non-installation of the system.

12. The Claimant denies any liability for any part of the counterclaim. As to the claim for damage or defects in the equipment, the Claimant states that Iran Carton never gave it any notice of the alleged defects and that in this proceeding Iran Carton has failed to describe, specify or prove the damage. As to the claim based on the non-installation of the system, the Claimant argues that the Contract and the Addendum Contract provided only for the purchase and delivery of the equipment. The installation work was to be done by a different company pursuant to a separate contract. A claim based on the installation contract is the subject of a separate claim by another claimant in Case No. 10713, and the Claimant contends that any counterclaim based on installation of the system should be asserted in that case, if at all.

13. The Claimant also alleges that even if installation had been part of its obligations under the Contract, such an obligation would have been excused by force majeure and Iran Carton's own actions. The Claimant asserts that the installation crew left Iran in August 1978 after only preliminary work, not because the equipment had not been delivered but because revolutionary conditions made it unsafe to remain. The Claimant also alleges that it and the company responsible for installation attempted on numerous occasions to obtain Iran Carton's assistance in facilitating the return of the installation crew and proposed as an alternative to

train Iran Carton personnel to install the system, but Iran Carton failed to respond or provide the necessary assistance.

IV. REASONS FOR AWARD

A. ADMISSIBILITY OF THE CLAIM

14. Iran Carton argues that, regardless of whether the Tribunal otherwise has jurisdiction over this claim, because of its assignment of the claim to a third party the Claimant lacks locus standi to assert the claim. The Tribunal finds that the preliminary nature of this objection requires that it be considered prior to any other issue.

15. On record in this Case is a document ("Assignment") worded as follows:

October 4, 1980

Harrington Manufacturing Corp.
5266 E. 65th St.
Indianapolis, In. 46220

Attn: Mr. George F. Harrington

George:

I, hereby, release to George F. Harrington all claims on any outstanding Invoices to Iran Carton and Benefits thereof.

Sincerely,

HARRINGTON & ASSOCIATES, INC.

FLOYD KEHL
President

16. According to Iran Carton this document clearly evidences that the Claimant "release[d]" to Mr. Harrington "all claims on any outstanding Invoices to Iran Carton and

Benefits thereof," and consequently that the Claimant was not the owner of the claim at the time it was filed with the Tribunal. Iran Carton thus takes exception to the Claimant's locus standi to pursue the claim and on that ground contends that the claim is inadmissible.

17. In support of its contentions the Claimant invokes statements made by Mr. Harrington and Mr. Kehl, who were the parties to the Assignment. The Claimant alleges that Iran Carton's failure to make the payments it owed the Claimant compelled its former owners, Mr. and Mrs. Harrington, to sell the Claimant corporation on 3 October 1980 to its former employee, Mr. Kehl, for \$15,000. The following day the parties realized that the debt owed by Iran Carton had not been included as an asset of the Claimant in determining its value for the purpose of the sale, and that no provision had been made in the sales agreement to ensure that the benefits of any recovery from Iran Carton would accrue to the former owners, Mr. and Mrs. Harrington. These were the reasons for executing the Assignment. Supported by the statements of Mr. Harrington and Mr. Kehl themselves, the Claimant submits that the Assignment was an informally worded agreement and that the intent and understanding of the parties thereto was that any recovery collected by the Claimant was to be remitted to Mr. Harrington. Consequently, the Claimant argues, the Assignment must be construed as an assignment of proceeds only and not of the claims themselves.

18. The Tribunal notes that by the terms of the Assignment the Claimant released to Mr. Harrington "all claims on any outstanding Invoices to Iran Carton and Benefits thereof . . ." Emphasis added; This wording is very simple and perfectly clear and requires no construction in order to be understood. Even if drafted without the assistance of counsel an agreement cannot be construed in such a way that it would be read contrary to the normal meaning of the terms

used. This is especially true when it is executed by persons familiar with business practice and commercial contracts.

19. The Claimant in this Case has invoked evidence regarding the intent of the parties to the Assignment in the form of written affidavits. In the view of the Tribunal a subsequent declaration as to intent can hardly prevail over an unambiguous text agreed at the time. Furthermore, general rules of interpretation permit reliance upon such evidence only when the text at issue requires construction. The Tribunal therefore concludes that the effect of the Assignment was not merely to assign the benefits, but also to transfer the claims themselves.

20. It is thus established that the Assignment was validly entered into prior to the filing of the Claim. Consequently the Claimant was no longer the owner of the claim when it was filed with the Tribunal by the Government of the United States on behalf of the Claimant. It necessarily follows from the foregoing that the Claimant does not have locus standi to bring the claim and the Tribunal must therefore dismiss the claim as inadmissible. This finding is not affected by the otherwise undisputed fact that both successive owners of the claim were United States nationals. It borders on the axiomatic to state that the Tribunal may only consider the particular requirements embodied in the Claims Settlement Declaration, such as those relating to nationality and continuous ownership, once it is satisfied that the proper parties to a claim are before it.

21. The Claimant, however, further submits that the assignment took place in the United States and that, under United States law, the obligor (Iran Carton) is required to make payment only to its original obligee (the Claimant) until it receives notice.

22. The Tribunal finds that this argument concerns the implementation of the Respondent's legal obligations under United States law in case of voluntary payment or of a judgement for damages. It does not affect the Claimant's right to submit to the Tribunal a claim which it previously has assigned to a third party, whereby the Claimant has divested itself of the ownership of the claim. Consequently such an argument does not affect the admissibility of the claim in this Case.

23. It remains for the Tribunal to consider a request by the Claimant at the Hearing that, in case its contentions would be rejected, the Tribunal permit the Claimant to amend its claim pursuant to Article 20 of the Tribunal Rules. The requested amendment was either to substitute or to add Mr. Harrington personally as the claimant in this Case. According to the Claimant no prejudice would be caused the Respondents because the basis of the claim remains exactly the same; Mr. Harrington is the person who has been pursuing the claim here in any case. In any event, the Claimant contends, the granting of the requested amendment is necessary to prevent injustice.

24. The Tribunal cannot accept the Claimant's arguments. As the Tribunal has already held that the Claimant has no locus standi, it necessarily follows from such a finding that the Claimant can neither be heard on the merits of the claim nor on a request to amend it. Furthermore, the Claimant has not evidenced any legal basis on which it could pretend to have the right to act on behalf of a third party in order to submit a claim in the name of the latter. Finally, to accept the requested amendment would amount to accepting the substitution of a proper party, Mr. Harrington, for an improper party, the Claimant, after the jurisdictional deadline prescribed by the Claims Settlement Declaration. See St. Regis Paper Company, and Islamic

Republic Of Iran, Award No. 291-10706-1, para. 31 (29 January 1987).

25. In view of the foregoing the Tribunal does not reach any other issue, jurisdictional or otherwise, raised in the present Case.

(d) The Counterclaim

26. The claim being inadmissible, no counterclaim can validly be entertained. The counterclaim is therefore also dismissed.

V. COSTS

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

VI. AWARD

28. For the foregoing reasons

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The claim of HARRINGTON AND ASSOCIATES INCORPORATED against THE ISLAMIC REPUBLIC OF IRAN is dismissed.

(b) The Counterclaim is dismissed.

(c) Each Party shall bear its own costs of arbitration.

Dated, The Hague,
27 October 1987



Michel Virally
Chairman
Chamber Three

In the name of God



Parviz Ansari Moin

Charles N. Brower
Charles N. Brower
Concurring and
Dissenting Opinion