

292-100

CLAIMS TRIBUNAL

دادری دعادی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

295-1--

Case No. 292

Date of filing: 25 NOV 85

\*\* AWARD

- Type of Award Final  
- Date of Award 25 NOV 85  
7 pages in English

8 pages in Far

\*\* DECISION - Date of Decision \_\_\_\_\_

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\*\* CONCURRING OPINION of \_\_\_\_\_

- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English

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\*\* SEPARATE OPINION of \_\_\_\_\_

- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English

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\*\* DISSENTING OPINION of \_\_\_\_\_

- Date \_\_\_\_\_  
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S TRIBUNAL

## دیوان داوری دعوی ایران - ایالات متحده

CASE NO. 292  
 CHAMBER TWO  
 AWARD NO. 202-292-2

MIDDLE EAST MANAGEMENT AND  
 CONSTRUCTION CORPORATION,  
 Claimant,  
 and

THE GOVERNMENT OF THE ISLAMIC  
 REPUBLIC OF IRAN,  
 Respondent.

DUPPLICATE  
 ORIGINAL

*مذکور اما*

Appearances:

## For the Claimant:

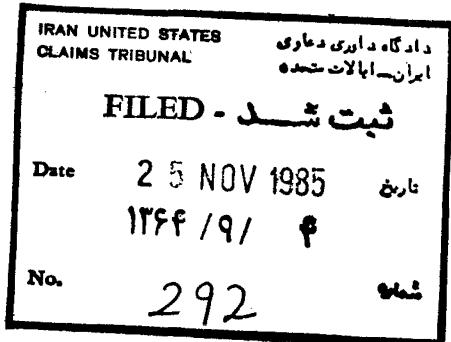
Mr. Conrad F. Gullixson  
 Attorney and Authorized Agent  
 Mr. Jack Kilburn  
 Mr. Michael Behravesh  
 Mr. Delp Johnson  
 Mr. Darryl Kaun

## For the Respondent:

Mr. Mohammad K. Esragh  
 Agent of the Islamic  
 Republic of Iran  
 Mr. Sohrab Rabie  
 Assistant to the Agent  
 Mr. Akbar Shirazi  
 Legal Adviser to the Agent  
 Mr. Ali Asghar Assari  
 Legal Representative  
 of Ministry of Roads  
 and Transportation  
 Mr. Ardashir Bahmani  
 Technical Representative  
 of Ministry of Roads  
 and Transportation

## Also present:

Mr. Daniel M. Price  
 Deputy Agent of the  
 United States of America  
 Ms. Lucy F. Reed  
 Adviser to the Agent

AWARD

I. FACTS AND CONTENTIONS OF THE PARTIES

1. The Claimant, Middle East Management and Construction Corporation ("MEMCCO"), a corporation organized under the laws of the State of California, U.S.A., filed its Statement of Claim against the Government of Iran on 15 January 1982. The Claim is for damages amounting US \$56,995,000, based on five separate contracts one of which was allegedly entered into between the International Marketing and Distributing Company ("IMDICO") and the Cooperative of Workers of the Ministry of Roads and Transportation ("Housing Coop") and the others between MEMCCO and four Iranian individuals. In its closing Brief of 30 January 1984 the Claimant withdrew the four Claims, which were based on the four contracts concluded with individual Iranians and maintained only its first Claim which was at the same time increased to US \$64 million.

2. At the basis of this Claim are two contracts. One contract was apparently entered into between IMDICO and the Housing Coop, and another entered into between MEMCCO and IMDICO. Claimant was inconsistent regarding the exact theory on which it based its Claim, but at the Hearing of 30 October 1985 it presented its Claim as an indirect Claim based on a direct Claim of IMDICO against the Housing Coop and on the fact that all shares of IMDICO were allegedly held by the Claimant during the relevant period between January 1979 when the Claim allegedly arose and 19 January 1981. The contract on which it relies was entered into on 14 September 1977 between IMDICO and the Housing Coop. It provided for the construction of a major housing development project for the Housing Coop.

3. The Claimant contends that the Housing Coop was fully controlled by the Ministry of Roads and Transportation ("Ministry") as the Minister had personally been involved in approving and agreeing to this project. In the alternative, the Claimant contends that according to the Articles of Association of the Housing Coop, the Ministry of Cooperatives and Rural Affairs had such power regarding the decisions

of the Housing Coop, that the Housing Coop had to be considered to be under the control of the Ministry of Cooperatives and Rural Affairs, and therefore constitutes a controlled entity.

4. The Claimant further contends that the Ministry itself was involved to such a degree in this project that the contract has to be considered to have been concluded de facto with the Ministry or that the Ministry at least, under the alter ego principle or the Instrumentality Rule, is responsible for the obligations of the Housing Coop.

5. The Respondents, Ministry and Housing Coop, in essence contend that the Tribunal lacks jurisdiction as the Housing Coop is private and non-governmental with its own Articles of Association and is neither a representative nor an agent of the Ministry nor an entity controlled by the Ministry. They furthermore hold that IMDICO is a private Iranian company and that MEMCCO is barred from bringing an indirect claim for an Iranian company before this Tribunal.

6. The last filings of the Claimant were received on 30 January 1984, that of the Ministry on 30 July 1984 and that of the Housing Coop on 30 September 1983. A Hearing was originally scheduled for 11 and 12 December 1984 and was finally scheduled for 30 and 31 October 1985. On 28 October 1985 the Ministry filed a Brief (32 pages) accompanied by a number of documents. At the Hearing on 30 October 1985 the Claimant produced various documents dated between 1968 and 1979 which clearly always had been in its possession and which were in no way required as rebuttal against the filing of the Ministry of 28 October 1985 but dealt with questions of proof of nationality and transfer of the stock of IMDICO to the Claimant.

7. At the Hearing of 30 October 1985 the Tribunal heard the arguments of both Parties on the jurisdictional issues, it having been envisaged that the Parties would on 31 October 1985 present their arguments regarding the merits of

the Case. After the conclusion of the Hearing on the jurisdictional issues the Tribunal deliberated. As will be discussed hereafter the Tribunal held that it did not have jurisdiction. It therefore decided in view of the circumstances of this matter and the scheduled continuation of the Hearing that it would be unnecessary to continue the proceedings. The Chairman therefore, at the commencement of the Hearing on 31 October 1985 informed the Parties of the dispositif of this Award and closed the Hearing.

## II. REASONS FOR THE AWARD

### A. Unauthorized Submissions

8. The final authorized filing on the merits in this Case was the brief of Respondent Ministry (Doc. 84) which was filed on 30 July 1984. Nevertheless, the same Respondent submitted a Hearing Memorandum two days before the Hearing, and the Claimant offered at the Hearing various documents. All of these last-minute submissions are far too late. Given the forty-five months since the Claim was filed and the fifteen months from the last submission in July 1984 to the date of the Hearing, it is inexcusable for the Parties to delay in this fashion the full articulation of their arguments and presentation of their evidence. The Tribunal could not accept such late submissions without prejudice to the opposing Party or Parties in the Case and damage to the fair and orderly conduct of the proceedings. Therefore, all of these submissions are rejected as untimely.

### B. Jurisdiction

9. While the evidence indicates that the Minister of Roads and Transport was interested in the success of the effort by IMDICO to provide housing for employees of the Ministry pursuant to the contract at issue in this Case, that

evidence falls far short of proof that the Ministry was a party to the contract, either directly or through an agency relationship with the Housing Coop. Attendance by the Minister at a meeting between the directors of the Housing Coop and the representatives of IMDICO and a visit by the Minister to a prospective housing site are actions more consistent with interest and support than with legal commitment. The Housing Coop, not the Ministry, was party to the contract with IMDICO, and there is no evidence whatsoever that the Housing Coop was acting as agent for the Ministry or that the Ministry was the alter ego of the Housing Coop. Surely IMDICO knew that contracting with the Housing Coop was not the same as contracting with the Ministry.

10. Further the evidence does not demonstrate that the Housing Coop was controlled by the Ministry or otherwise by the Government of Iran. While the Housing Coop might understandably have hesitated to conclude a contract with a construction contractor if the Minister were opposed, the evidence indicates that officials of the Housing Coop were the negotiators, and there is no evidence showing that those officials acted under the direction of the Ministry. Neither the Articles of Association of the Housing Coop nor the evidence adduced by the Claimant shows any linkage between the Housing Coop and the Ministry of a type to suggest ministerial control over the Housing Coop. It appears that the land was privately acquired, and funding was to be obtained through loans which were not to be provided by the Government, although the Iran Insurance Company was involved in guaranteeing loan payments. If anything, this Case appears to be a weaker one for control of the Housing Coop by the relevant government agency than that in which Chamber Three found the Housing Cooperative Society of Officers of the Gendarmerie not to be controlled by the Gendarmerie. See American Housing International, Inc. and Government of the Islamic Republic of Iran, et. al., Award No. 117-199-3 (19 March 1984).

11. The Claimant also argues that the Housing Coop was controlled by the Government because the Articles of Association of the Housing Coop refer in a number of places to the Ministry of Cooperatives and Rural Affairs. No evidence has been introduced as to what that Ministry is, what its functions are, or whether it had any involvement at all in the project here in dispute. The references in the Housing Coop's Articles cited by the Claimant are, in any event, not such as to suggest control over the activities and decisions of the Housing Coop. Rather this Ministry appears to have merely a residual role should the Housing Coop run into serious difficulties.

12. After considering the written evidence and the testimony at the Hearing, the Tribunal concludes that the Claimant has failed to prove that the Housing Coop was controlled by the Government of Iran within the meaning of Article VII(3), of the Claims Settlement Declaration. Therefore, the Claim based on a contract with the Housing Coop is not a claim against Iran as defined in that Article and is therefore not within the jurisdiction of the Tribunal.

13. This finding makes it unnecessary for the Tribunal to determine the date on which the Claim arose, the continuity of nationality of the Claimant during the period from that date to the date the Claims Settlement Declaration entered into force or the ownership and control of IMDICO by the Claimant at the date the Claim arose.

14. With respect to Claims 2 to 5, involving contracts with private individuals, the Claimant stated in its brief of 30 January 1984 (Doc. 67) that it lacks proof of jurisdiction and would agree to their dismissal by the Tribunal. The Respondent has raised no objection and had asserted that these Claims were not within the jurisdiction of the Tribunal. The Tribunal so finds.

III. COSTS

15. Each Party shall bear its own costs.

IV. AWARD

16. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

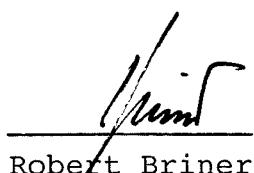
17. The Hearing Memorial (Document 98) filed by the Respondent Ministry of Roads and Transportation on 28 October 1985 and the several documents submitted by the Claimant at the Hearing are hereby rejected as untimely and prejudicial to the rights of the opposing Party or Parties and to the fair and orderly conduct of the proceedings.

18. The Claims are hereby dismissed for lack of jurisdiction.

19. Each of the Parties shall bear its own costs of arbitrating this Claim.

Dated, The Hague

25 November 1985

  
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Robert Briner  
Chairman

In the name of God



George H. Aldrich

  
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Hamid Bahrami-Ahmadi