IRAN-UNITED STATES CLAIMS TRIBUNAL

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دیوان داوری دعاوی ایران - ایا

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Case No. 340 Date of filing: 11 June 84

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

** DECISION - Date of Decision _____
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** CONCURRING OPINION of Mr. Mosk

- Date 31 May 84
4 pages in English _____ pages in Farsi

** SEPARATE OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____

- Date _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده



CASE NO. 340

CHAMBER THREE

AWARD NO. 133-340-3



CAL-MAINE FOODS INC.,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and SHERKAT SEAMOURGH COMPANY, INCORPORATED,

Respondents.

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CONCURRING OPINION OF RICHARD M. MOSK

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I concur in the Tribunal's Award in order to form a majority.

I believe that it would have been preferable to award the Claimant interest and its costs, including reasonable attorneys' fees. See Granite State Machine Co., Inc. v. Iran, Award No. 18-30-3 (15 December 1982) (Concurring Opinion of Richard M. Mosk (25 January 1983)).

The Tribunal correctly notes that the Tribunal practice has been to award interest. That interest accrues from the date of the breach of the obligation. See, e.g., Granite State Machine Co., Inc. v. Iran, Award No. 18-30-3 (15 December 1982); CMI International, Inc., and Ministry of Roads and Transportation, et al, Award No. 99-245-2 (27 December 1983). The Tribunal fails to award interest in the instant case because of the peculiar facts involved therein.

Originally, Claimant alleged that it was entitled to monies based on an option agreement under which Claimant's foreign subsidiary ("CMI")[1] had the option to sell its shares in Sea Cal Corporation ("Sea Cal") to Seamourgh Company Incorporated ("Seamourgh") for a specified price. Later, Claimant changed its theory to allege that CMI had, in fact, sold its Sea Cal shares, but that CMI had not been paid for those shares by Seamourgh, which was obligated to make such payment. Apparently the actual sales price for the shares was less than that to which CMI would have been entitled under the option agreement. Claimant provided no information about the terms or conditions of the sale other than the sales price. Thus, it is not clear when the consideration was to be paid for the shares. In the absence of this information, there is some justification for the Tribunal's decision not to award interest, for it could be argued that the Tribunal cannot ascertain what, if any, interest it could award.

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[1] The claim is an indirect one authorized by Article VII, paragraph 2, of the Claims Settlement Declaration.

As the stock was sold and delivered, I believe that in the absence of any facts showing a special arrangement for deferred payment, the Tribunal should have concluded that the obligation to pay for the stock arose at the time of the transfer of the shares or at least within a reasonable time thereafter. Generally such a payment should occur at or shortly after the transfer of the shares. The normal rule is that "[i]n the absence of agreement or course of dealing to the contrary, the price is payable on delivery." 1 Corbin On Contracts, §96 at 415 (1963).

It appears that Claimant had difficulties obtaining information and material concerning its claim. Much of the information existed in Iran and was available to the Respondents. This is another example of the problems parties have in obtaining and submitting evidence to the Tribunal. See Ultrasystems Incorporated v. Iran, Award No. 27-84-3 (4 March 1983) (Concurring Opinion of Richard M. Mosk (4 March 1983)).

As Respondents failed to produce evidence that was undoubtedly in their possession concerning the stock, I question whether it is appropriate to place the burden of producing evidence regarding unknown terms of the sale upon the Claimant.

For the foregoing reasons, the Tribunal should have awarded interest to Claimant from the date of the sale of the shares or from a date shortly thereafter.

Finally, the Tribunal states that under the circumstances, The Islamic Republic of Iran has no direct liability. Thus far the Tribunal has not found it necessary to discuss the liability of the Government of Iran when an entity controlled by the Government of Iran is held liable. It would seem that such liability of the Government of Iran follows from its obligation to provide the monies to pay awards against its controlled entities. Declaration of the Government of the Democratic and Popular Republic of Algeria, Par. 7; Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran With Respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, Par. 2 ("Iran having affirmed its intention to pay all its debts and those of its controlled institutions . . ."); Technical Agreement With N.V. Settlement Bank of The Netherlands, 17 August 1981, Par. 1(d)(ii)(Bank Markazi obligation).

At the present time, the Tribunal has not dealt with this issue, and there is presently no need to do so.

I concur in the Award in this case.

Richard M. Mosk

RICHARD M. MOSK

Dated, 31 May 1984