

ORIGINAL DOCUMENTS IN SAFE

Case No. 395 395-321 Date of filing: 2 Feb '90

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

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

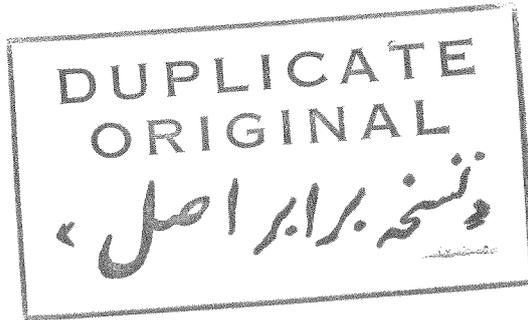
** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** 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 2 Feb '90
7 pages in English _____ pages in Farsi



CASE NO. 395

CHAMBER THREE

AWARD NO. 431-395-3

COMPONENT BUILDERS, INC.,
WOOD COMPONENTS CO. and
MOSHOFSKY ENTERPRISES, INC.,
Claimants,

and

ISLAMIC REPUBLIC OF IRAN,
BANK MASKAN IRAN [SUCCESSOR TO
BANK RAHNI IRAN] and
INSURANCE COMPANY OF IRAN,

Respondents.

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|---------------------------------------|--|
| IRAN-UNITED STATES CLAIMS TRIBUNAL | دیوان داری دعاوی ایران - ایالات متحدہ |
| FILED | ثبت شد |
| DATE | 2 FEB 1990 |
| | تاریخ ۱۳۶۸ / ۱۱ / ۱۲ |

CORRECTION TO AWARD

1. On 13 December 1989 the Agent of the Government of the Islamic Republic of Iran ("Iran") submitted to the Tribunal a "Request to Correct Computation Errors in Award No. 431-395-3." On 13 December 1989 Bimeh Iran also filed a submission "taking exceptions to the said Award" and requesting that "the award rendered be quashed and the Claimants' claims be dismissed." Referring to the latter submission as Bimeh Iran's "submission with respect to the correction of computation errors," the Agent of the Government of the Islamic Republic of Iran filed an exhibit thereto with the Tribunal on 20 December 1989.

2. Iran and Bimeh Iran submitted their requests apparently in reliance on Article 36 of the Tribunal Rules. This Article provides, inter alia, for the correction of "errors in computation, any clerical or typographical errors, or any errors of similar nature" in an award. The Persian version of the Award was filed on 14 November 1989 and served upon the Agent of the Government of the Islamic Republic of Iran on 15 November 1989. The Tribunal notes that the requests were filed on 13 December 1989 and thus within the 30-day period required by the Tribunal Rules. See Hood Corporation and The Islamic Republic of Iran, et al., Decision No. DEC 34-100-3, pp. 1-2 (1 Mar. 1985), reprinted in 8 Iran-U.S. C.T.R. 53, 54.

3. Bimeh Iran first points out that it was entitled to rely on Article 36 of the Iranian Insurance Law relating to the statute of limitations, and that the Tribunal should have requested the text of this Article if required for its decision. On this issue, the Award states, inter alia, that "Bimeh Iran has not submitted in evidence the text of the Iranian Insurance Law upon which it bases its defense. Accordingly, this defense is dismissed for lack of evidence and so the Tribunal need not consider whether such limitation was subsequently nullified." Bimeh Iran's request, while taking issue with the standard of evidence applied by the Tribunal, fails to identify an error of the kind contemplated by Article 36 of the Tribunal Rules.

Consequently, this part of Bimeh Iran's request does not fall within the scope of this Article.

4. Bimeh Iran's second comment is that "the Claimants' assertion that Dr. Rasekh re-inspected the workshop on 5 December 1978 (14 Azar 1357) is not true and not supported by evidence. Dr. Rasekh's letter is not undated and was prepared and signed on 25.6.1978 (4.4.1357)" As to the re-inspection, this is a matter of the Tribunal's evaluation of evidence, including the affidavit presented by Mr. P. Hansen. This part of Bimeh Iran's request is therefore outside the scope of Article 36 of the Tribunal Rules. As to Dr. Rassekh's letter, described by the Award as "undated," the Tribunal notes that in the English translation submitted by the Respondents the letter is undated, and that the date provided in the Persian text is not legible. In response to Bimeh Iran's request, the Tribunal deems it proper to delete the term "undated" from the letter's description provided in paragraph 175 of the Award. To this extent, therefore, the Tribunal grants Bimeh Iran's request in accordance with Article 36 of the Tribunal Rules.

5. In the third part of its request, Bimeh Iran concludes that it is "surprising to see the Tribunal's finding that the Claimants have satisfactorily demonstrated that they have suffered damages [and] the Tribunal's argument that since Bimeh Iran knew of the occurrence of the damages, prima facie it is obligated to pay the damages." In the fourth and final part of its request, Bimeh Iran states that "[i]n case of occurrence of an event and proof of damage, the insurer is responsible vis-a-vis the employer (who is the owner of the object of insurance and its benefits). The Tribunal's argument in this respect cannot be justified."

6. Bimeh Iran's third and fourth comments constitute attempts to reargue certain aspects of the Case on which Bimeh Iran disagrees with the Tribunal's conclusions in the Award. There is no basis in the Tribunal Rules or elsewhere

for review of an award on such grounds. See Paul Donin de Rosiere, et al. and The Islamic Republic of Iran, et al., Decision No. DEC 57-498-1, para. 4 (10 Feb. 1987), reprinted in 14 Iran-U.S. C.T.R. 100, 101.

7. Iran in its request first points out that, because paragraph 21 of the Award determines that five percent of the Supply Price and five percent of the Service Price were to be released on final acceptance, the computation of interest on the sum awarded to the Claimants equal to these summed should run from the date of final acceptance, and not from an earlier date. The Tribunal notes that, as stated in paragraph 126 of the Award, it considers the claim to which Iran's request relates as one for payment of monies due for work performed and goods supplied up to the date of termination of the Building Supply and Erection Agreement, rather than for release of retention monies on expiry of the guarantee period. The calculation of interest set out in paragraph 195 (a) (xiii) of the Award is consistent with this consideration. Accordingly, insofar as Iran's request aims to reargue this issue, it falls outside the scope of Article 36 of the Tribunal Rules.

8. Iran's second comment is that Mr. Krueger's list presents the cost of the equipment and that "[t]hus using a multiplier of 1.64 to arrive at the on site-cost of the equipment is error in computation." The Tribunal notes that, as the Mobley valuation indicates, this multiplier was applied to the U.S.-purchased equipment, rather than to all equipment listed by Mr. Krueger. In his affidavit, which explains the sources and results of the inventory, Mr. Krueger states as to the U.S.-purchased equipment that he has "researched WCC's original purchase orders and sellers invoices to list all equipment with the purchase order number, quantity, purchase date, and purchase price." This statement clarifies that the exclusive heading of "cost" on the list of U.S.-purchased equipment refers to that purchase price and not to the on-site cost. The Tribunal's acceptance of the Mobley valuation, including its

application of the said multiplier, is consistent with this clarification. Consequently, the Tribunal determines that no error as referred to in Article 36 of the Tribunal Rules exists.

9. In the third part of its request Iran contends that, because the Claimants allege that the units reached 97% completion a calculation in the Award on the basis of 100% completion constitutes an error in computation. The Tribunal notes that the Award accurately reflects the principle on which Iran's above contention appears to be based. As stated in paragraph 126, the Tribunal considers the claim as one for payment of monies due for work performed and goods supplied up to the date of termination, rather than for release of retention monies on expiry of the guarantee period. The Tribunal's computation of the amount awarded follows from this consideration. The Tribunal also observes that the Award's determination that "[i]t is not disputed that Wood Components supplied all of the materials required" is not incompatible with the fact that the units were not 100% completed. Accordingly, the Tribunal finds no error to be corrected within the meaning of Article 36 of the Tribunal Rules.

10. Fourth, Iran states that "during the period of the implementation of the contract no deduction has been made in the Claimants' payments as performance guarantee. Thus the Award on the payment of sums purporting performance guarantee is error in computation." The Award notes that the Building Supply and Erection Agreement provides for a withholding of payments as a performance guarantee, which withholding is at the root of part of the claim presented by the Claimant. From the evidentiary record, the Award concludes that certain payments were in fact withheld. Consequently, the awarding of certain amounts from these payments does not constitute an error in computation as referred to in Article 36 of the Tribunal Rules.

11. Finally, Iran states that the "[a]ward in the part which was based on Invoice No. 18 and not claimed by the Claimants is error in computation." The Tribunal notes that, based on this invoice, it awarded an amount as unpaid progress payment less the required deductions to be made pursuant to the Building Supply and Erection Agreement. The Tribunal further notes that, as observed in paragraph 10, supra, the Award determined that certain amounts were withheld to which the Claimants assert they are entitled. In examining this contention the Award makes a finding, based on the record of the Case, that the Tribunal may rely upon Progress Billing No. 18 as an accurate reflection of the work performed up to termination of the Building Supply and Erection Agreement. The Tribunal is unable to identify any error in computation in response to the comment presented by Iran.

12. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

- (a) The final sentence of paragraph 175 of Award No. 431-395-3 (10 Aug. 1989) is corrected to read as follows:

In support of this contention Bimeh Iran has submitted in evidence a note³⁶ from Dr. Rassekh confirming that he visited the Shahin Shahr site but was unable to inspect the damaged goods and that at the time of writing the Claimants had not notified Bimeh Iran of their readiness for inspection.

- (b) The remainder of the requests for correction of Award No. 431-395-3 (10 Aug. 1989), filed on 13 December 1989

