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ES CLAIMS TRIBUNAL

دیوان داوری دعادی ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

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Case No. 454

Date of filing: 29 Feb 88

\*\* AWARD - Type of Award Final  
- Date of Award 29 Feb 88  
8 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

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CASE NO. 454

157

CHAMBER THREE

AWARD NO. 350-454-3

JONATHAN AINSWORTH,  
Claimant,  
and  
THE ISLAMIC REPUBLIC OF IRAN,  
TCHACOSH COMPANY,  
SIPOREX INDUSTRIAL AND  
MANUFACTURING WORKS, LTD., and  
GASHTAWAR COMPANY,  
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ	
ثبت شد - FILED		
Date	29 FEB 1988	تاریخ
	۱۳۶۶ / ۱۲ / ۱۰	
No.	454	شماره

DUPLICATE  
ORIGINAL  
نسخه برابر اصل

AWARD

I. THE PROCEEDINGS

1. On 18 January 1982 the Claimant JONATHAN AINSWORTH, as owner of PETRU INTERNATIONAL CORPORATION ("Petru"), TCHACOSH COMPANY INC. ("Tchacosh"), SIPOREX COMPANY INC. ("Siporex") and GASHTAWAR COMPANY INC. ("Gashtawar"), submitted a Statement of Claim against the Respondent THE ISLAMIC REPUBLIC OF IRAN ("Iran"). The Claim alleges that Iran breached various contracts entered into with Tchacosh, Siporex and Gashtawar and that Iran expropriated the Claimant's ownership interest in these companies. The alleged breaches and expropriation relate only to Tchacosh, Siporex and Gashtawar and not to Petru or Jonathan Ainsworth. The Claimant, however, contends that he was the owner of the above mentioned companies at the time of the taking and that these companies on 15 April 1980 assigned their interests in the Claim to Petru, another of the Claimant's companies. The Claimant seeks U.S. \$1,004,523,000 as compensation.

2. On 18 January 1983 the Tribunal issued an order requiring the Claimant to amend his Claim in conformity with Article 18 of the Tribunal Rules.

3. On 5 September 1983 the Claimant submitted what he classified as a supplement to his Claim pursuant to the Tribunal's Order. As this "supplement" was merely a copy of the original Statement of Claim, the Tribunal on 7 November 1983 informed the Claimant that this submission did not satisfy its earlier Order and directed the Claimant again to amend his Statement of Claim. Pursuant to this Order, the Claimant filed an "Amendment to the Claim" on 30 November 1983 in which he stated that Tchacosh, Siporex and Gashtawar had assigned all of their rights and interests in the Claim to Petru, another of the Claimant's companies, on 15 April 1980. The Claimant also named Tchacosh Company ("Tchacosh Iran") and Siporex Industrial and Manufacturing Works, Ltd. ("Siporex Iran") as additional Respondents in this Case.

4. On 27 January 1984 the Tribunal ordered the Respondents to file a Statement of Defense. On 15 and 19 October 1984 Siporex Iran and Tchacosh Iran submitted their Statements of Defense.

5. On 4 March 1985 the Claimant submitted a response to the jurisdictional arguments set forth in the Respondents' Statements of Defense.

6. On 20 February, 14 March, 21 June and 1 July 1985 the Claimant submitted various motions and added in the caption of his submissions Gashtawar Company ("Gashtawar Iran") as a Respondent in this Case.

7. On 10 September and 7 November 1985 Siporex Iran submitted two further briefs and evidence in response to the Claimant's motions.

8. On 10 October 1986 the Claimant submitted a request stating "Please withdraw my claim." The Tribunal then informed the Parties of its intention to terminate the Case unless by 6 November 1986 the Respondents raised any justifiable grounds for an objection. The Respondents informed the Tribunal on 5 November 1986 that they had no objection to the withdrawal. On 4 November 1986, however, the Claimant had submitted an "Amended Notice" requesting that the Tribunal "withdraw the claims of Tchacosh, Siporex and Gashtawar, but not the claim of Jonathan Ainsworth and of his corporation, Petru." On 11 and 18 November 1987 Iran objected to the Claimant's request.

9. On 12 January 1988 the Tribunal issued an Order granting the Claimant's request and terminating the Case, pursuant to Article 34, paragraph 2 of the Tribunal Rules, insofar as it pertains to Tchacosh, Siporex and Gashtawar. As pointed out by the Tribunal in the Order, this left for the Tribunal to consider the claims of breach of contract

and expropriation pursuant to the alleged assignment of these claims to Petru. In addition, the Tribunal informed the Parties that it intended to decide the remaining issues referred to therein on the basis of the written evidence before it and set forth for the Parties certain issues relating to the dates of the alleged taking and breaches of contract pleaded by the Claimant. In light of these issues the Tribunal allowed the Parties to submit by 12 February 1988 any final comments and evidence they wished the Tribunal to consider.

10. On 8 and 10 February 1988 the Claimant submitted two letters in which he stated that the dates of the taking were set forth in Judge Sani's Dissenting Opinion in Rexnord Inc. and The Islamic Republic of Iran, Award No. 21-132-3 (10 Jan. 1983), reprinted in 2 Iran-U.S. C.T.R. 6, and that the companies were nationalized by Iran subsequent to the Claimant's acquisition of them. On 12 February 1988 the Respondents submitted two Memorials in response to the Tribunal's Order requesting the Tribunal to "dismiss Claimant's unfounded Claim and to terminate the Case."

## II. REASONS FOR THE AWARD

11. As previously set forth in the Tribunal's Order of 12 January 1988, the Claimant at various stages of this arbitration has alleged three separate factual circumstances and dates in relation to the asserted taking by Iran of Tchacosh, Siporex and Gashtawar. The Tribunal in that Order expressed its concern over these somewhat contradictory allegations and set forth the problems, as it viewed them, with each of the alleged series of facts and dates. In his responses to this Order, filed on 8 and 10 February 1988, the Claimant merely realleged facts already pleaded without providing the Tribunal with any further clarification or evidence of his allegations. In sum, these submissions do

nothing to dispel the Tribunal's concerns over the Claim as pleaded, as expressed in the Order of 12 January. The Tribunal therefore is left to examine again the three separate series of allegations existing in this Case.

A. The Expropriation Claim

1. Allegations of the Statement of Claim and Attached Affidavits

12. The Claimant alleges that Tchacosh, Siporex and Gashtawar (the "United States corporations") are United States nationals. According to the Affidavits of Hassan Haschemi, who describes himself as a "refugee from Iran," which affidavits are appended to the Statement of Claim, he owned Tchacosh Iran, Siporex Iran and Gashtawar Iran, three Iranian companies, prior to the formation of the United States corporations. The Claimant also alleges that, upon the formation of the United States corporations on 14 April 1980, Mr. Haschemi assigned all his rights, titles, properties and assets in these Iranian companies to the Claimant's United States corporations bearing the same names.

13. Mr. Haschemi, however, also alleges in his affidavits that his Iranian companies, prior to the assignment to the United States corporations, encountered difficulties in conducting business during the Islamic Revolution and indeed unequivocally states that their assets "were confiscated by the Revolutionary Council" sometimes before 10 June 1979. In the "Report of the Actions Taken During Assignment at Tchacosh Company," dated 17 December 1979 and attached to the Affidavits, Ali Mahmoudi, a government-appointed provisional director, in fact describes his direction of this company between 6 August 1979 and the date of the Report. Indeed the Claimant also referred to the appointment in 1979 of Ali Mahmoudi in Tchacosh Iran and a Mr. Ahari in Siporex Iran as new managing directors and alleged in his Statement

of Claim that both companies were controlled by Iran in 1979.

14. Under these facts as pleaded, the alleged expropriation occurred well before the assignment of the Iranian companies to the United States companies. Consequently, the Claim was not continuously owned by United States nationals as required by Article VII, paragraph 2 of the Claims Settlement Declaration.

2. Allegations of the Amended Statement of Claim

15. In the "Amendment to the Claim" the Claimant states that Tchacosh was expropriated on 18 September 1981 and that Siporex was expropriated on 16 and 19 February 1981. Under these facts as pleaded, the expropriation Claim as to those entities arose after the jurisdictional deadline of 19 January 1981 and therefore is outside the jurisdiction of the Tribunal.

3. Allegations of the 4 March 1985 Submission

16. In his submission filed on 4 March 1985, the Claimant asserted that his companies were nationalized by Iran on 11 May 1980, the date on which the "Act Concerning the Administration and Ownership of the Shares of Construction Contracting and Consulting Engineering Firms and Companies" was issued by Iran. This act stated that it was Iran's intention to expropriate companies in which the owners had reaped unjust profits and left the country after the revolution. According to the Claimant, the "Act Fixing the Scope of the Duties and Authority of a Temporary Director" issued by Iran on 27 August 1980 effectively expropriated the companies. This act, however, merely stated that provisional managers appointed by Iran would have plenary powers.

17. The Tribunal notes that neither of the acts described above refers specifically to the companies at issue. The Claimant therefore has not set forth adequate evidence to substantiate this third series of allegations. Consequently, the Claimant has not established that an expropriation of his property occurred within the period in which the Tribunal could assert jurisdiction.

B. The Claim for Breach of Contract

18. The Claim for breach of contract is based on construction contracts previously entered into between Iran and the Iranian companies. The Claimant states that these breaches occurred subsequent to the assignment of the assets of the Iranian companies to his U.S. companies, but provides the Tribunal with no evidence of this allegation. By contrast, an affidavit of Mr. Haschemi, submitted by the Claimant, states that the alleged breaches occurred at the time of the Revolution in Iran in early 1979. Thus, the breach of contract claims also are outside the jurisdiction of the Tribunal, since they were not continuously owned by the Claimant.

19. In sum, the Tribunal concludes that the Claimant's failure to present adequate proof of the alleged breaches and expropriation occurring within the jurisdictional period requires dismissal of the Claim.

III. COSTS

20. The Tribunal finds that under the circumstances in this Case each Party shall bear its own costs of arbitration.



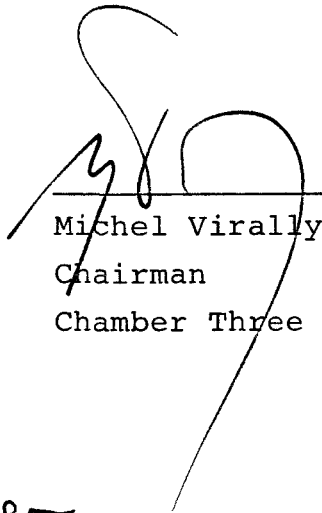
IV. AWARD

21. In light of the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a) based on the jurisdictional reasons set forth above the Claim is dismissed,
- b) each Party shall bear its own costs of arbitration.

Dated, The Hague,  
29 February 1988



Michel Virally  
Chairman  
Chamber Three

Charles N. Brower  
Charles N. Brower

In the Name of God



Parviz Ansari Moin  
Parviz Ansari Moin