



In the Name of God

CASE NO. 121
CHAMBER TWO
AWARD NO. 379-121-2

GEORGE W. DRUCKER, JR.,
Claimant,

and

FOREIGN TRANSACTION COMPANY,
INSURANCE COMPANY OF IRAN,
NATIONAL GRAIN, SUGAR, AND TEA
ORGANIZATION,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاری ایران - ایالات متحدہ
شیت شد - FILED	
Date	25 JUL 1988
	۱۳۶۷ / ۵ / ۲ تاریخ

SEPARATE OPINION OF JUDGE KHALILIAN

1. The digressive statement made at the end of paragraph 3 of the Award is superfluous and totally irrelevant to the subject-matter of this Case. In view of paragraphs 34 and 35 of the Award, we learn that the Claimant in this Case is only one individual named George W. Drucker, Jr., who would by himself have enjoyed control over South Gulf if he had been able to prove his ownership therein. Therefore, once the Award expressly states that the sole Claimant has failed to satisfy the requirements of Article VII, paragraph 2, it is altogether superfluous to conjecture, so as to establish this Tribunal's jurisdiction, about other, hypothetical situations in which other U.S. nationals might have owned, to-

gether with the Claimant, a sufficient proprietary interest in South Gulf to control that company. For we know that the Claimant in this Case is only one individual, whereas the phrase "such nationals" in Article VII, paragraph 2 of the Declaration applies to instances where there are a number of claimants. This Article provides that:

"'Claims of nationals' of Iran or the United States as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in judicial persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claims arose to control the corporation or other entity..."

2. Needless to say, this Article permits shareholders of an injured company to bring claim in place of the latter. Furthermore, the expression "such nationals" in the Article clearly signifies that the exception to the principle of the separation between a corporate personality and its shareholders, as agreed upon in the Declaration, is limited to the instance where a claimant shareholder individually, or the claimant shareholders collectively, exercise a majority interest in, and control over, the injured company. Therefore, it is only in such an event that they are entitled to bring claim before this Tribunal. Where this is not the case, the fate of the company's claims shall not be subjected to the will and decision of the minority, even if these seek only to take steps with respect to their own particular shares.

3. While the section of the Award devoted to a recitation of the facts is rather prolix, I do concur with the finding that as a result of his contradictory statements, the Claimant has failed to prove his ownership in South Gulf. I would

also add that even if the available documents in the Case were valid and authentic, it would still be proper to dismiss the claim on the grounds that the laws of Dubai -- the law which is applicable to the transfer of shares -- had not been complied with. This point has been well noted in an award by Chamber One of this Tribunal, which stated its decision as follows:

"Bearing in mind that WMRT/Iran was incorporated in Iran and therefore that any transfer of its shares is governed by the laws of Iran, the Tribunal decides that Juneja's letter is insufficient to show that he validly transferred his shares to the corporation or to the remaining four shareholders."
Award No. 282-10853/54/55/56-1, paragraph 58.

Therefore, the Tribunal would doubtless have reached the same conclusion in the present Case as well, even if the available evidence were valid and authentic.

Dated The Hague,

25 July 1988/ 3 Mordad 1367



Seyed Khalil Khalilian