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IS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

Case No. 286

Date of filing: 1. May 87

\*\* 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 \_\_\_\_\_  
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\*\* SEPARATE OPINION of \_\_\_\_\_  
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\*\* DISSENTING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* OTHER; Nature of document: Correction To Dis of Mr Holtzman

- Date \_\_\_\_\_  
1 pages in English \_\_\_\_\_ pages in Farsi

DUPLICATE  
ORIGINAL  
« نسخه برابر اصل »

CASE NO. 286

CHAMBER ONE

AWARD NO. 301-286-1

WHITTAKER CORPORATION  
(BERMITE DIVISION),  
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,  
THE IRANIAN NATIONAL DEFENCE  
INDUSTRIES ORGANIZATION,  
Respondents.

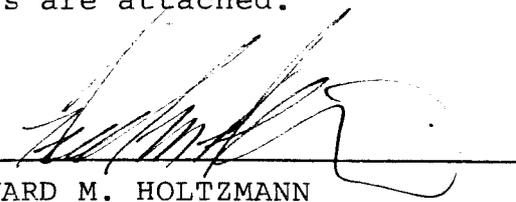
IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاری ایران - ایالات متحدہ
ثبت شد - FILED	
Date	1 MAY 1987
	۱۳۶۶ / ۲ / ۱۱
No.	286

CORRECTION TO THE DISSENTING  
OPINION OF JUDGE HOLTZMANN

The following changes should be made in the English version of my Dissenting Opinion filed on 27 April 1987:

1. At page 2, line 4 of third full paragraph of footnote 1, insert the word "of" after "view."
2. At page 8, line 4 of footnote 5, "Johann" should be spelled "Johan".

Copies of the corrected pages are attached.

  
HOWARD M. HOLTZMANN

(hereinafter referred to as "NDIO"). The majority<sup>1</sup> holds in the Award that no damages are due because the Contract, rather than being breached by MIO, was cancelled by mutual agreement of the Parties. In reaching that conclusion, the Award not only reflects a misreading of the key business documents at issue, but also adopts an interpretation that can only be reached by making the untenable assumption that

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<sup>1</sup>The majority in this Case consisted of the Chairman and Judge Mostafavi. Judge Mostafavi was the proper arbitrator to sign the Award notwithstanding the letter of resignation that he wrote to the President of the Tribunal stating: "Due to personal problems, I am unable to continue my duties with the Tribunal, and I am therefore hereby tendering my resignation. I have also obtained my Government's consent . . . . [T]he appropriate date for my resignation to take effect will be 1st April 1987."

Article 13 of the Tribunal Rules contemplates the possibility of the resignation of an arbitrator and establishes the procedures for appointing a successor. With respect to the resignation of Judge Mostafavi, the Full Tribunal, following its previous practice, determined that (i) the resignation must be submitted to and considered by the Tribunal, (ii) the resignation is not effective until it is accepted by the Tribunal, (iii) the effective date of the resignation is not the date suggested by the resigning arbitrator, but rather a date determined by the Tribunal, and (iv) Judge Mostafavi's resignation would be effective when his successor had been appointed and was available to take up his duties. No successor had been appointed by the date on which the Award was to be signed, and, therefore, Judge Mostafavi's resignation had not become effective as of that date.

Finally, it is to be noted that even if Judge Mostafavi's resignation had become effective by the date of the signature of the Award, he would still be the proper arbitrator to sign the Award in this Case in view of Article 13, paragraph 5, of the Tribunal Rules, which states that "[a]fter the effective date of a member's resignation he shall continue to serve as a member of the Tribunal with respect to all cases in which he had participated in a hearing on the merits . . . ." This provision is not contained in the UNCITRAL Arbitration Rules on which the Tribunal Rules are based, but was added by the Tribunal in the exercise of its powers under Article II, paragraph 2, of the Claims Settlement Declaration.

Re-engineering and Delay Claims, Aeronutronic Overseas Services, Inc. and Government of the Islamic Republic of Iran, Award No. 238-158-1, pp. 6-7 (20 June 1986). Business documents should not be construed in ways that lead to such manifestly unreasonable results.<sup>5</sup>

Dated, The Hague  
22 April 1987

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Howard M. Holtzmann

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<sup>5</sup>The need for tribunals to judge business transactions in the light of commercial reality is not a new concept. Indeed, it is appropriate for this Tribunal sitting in The Hague to recall the advice attributed to Johan de Witt: "There ought in each City to be at least one particular Court of Justice to decide Matters between Buyer and Seller . . . that the Judges apprehending the way of Trading the better, may give or administer the better Justice . . . ." The True Interest and Political Maxims of the Republic of Holland and West-Friesland 131 (London 1702) (English translation of P. de la Court, Interest van Holland (1662)).