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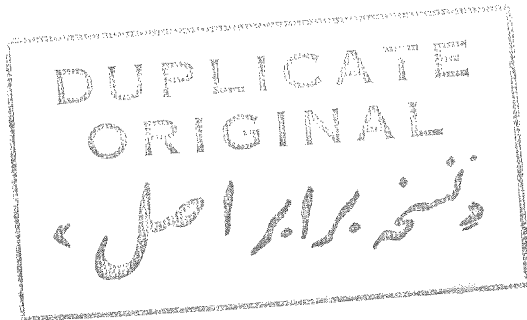
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CASE NO. 332

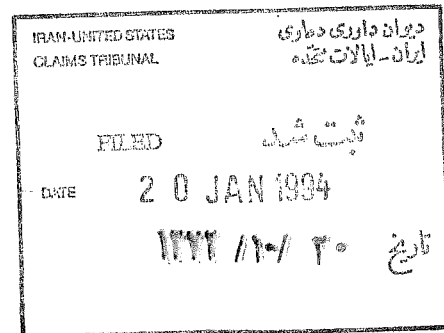
CHAMBER THREE

DECISION NO. DEC121-332-3

SECURITY PACIFIC NATIONAL BANK,
Claimant,

and

BANK MARKAZI IRAN,
BANK SADERAT IRAN,
BANK KESHAVARZI,
BANK MASKAN,
BANK SANAT VA MADAN,
NATIONAL PETROCHEMICAL COMPANY,
DOPAR LABORATORIES CO. LIMITED, and
THE GOVERNMENT OF IRAN,
Respondents.



DECISION

1. On 18 January 1982 SECURITY PACIFIC NATIONAL BANK (the "Claimant") brought a claim against BANK MARKAZI IRAN, BANK SADERAT IRAN, BANK KESHAVARZI, BANK MASKAN, BANK SANAT VA MADAN, NATIONAL PETROCHEMICAL COMPANY, DOPAR LABORATORIES CO. LIMITED and THE GOVERNMENT OF IRAN (the "Respondents").

2. The Statement of Claim identifies several claims for interest pursuant to syndicated loan agreements between the Respondents and various syndicates of banking institutions of which the Claimant was a member.

3. By letter filed 19 November 1990 the Claimant informed the Tribunal that "all the claims asserted by [the Claimant] ... in this case have been settled." The Claimant therefore requested the Tribunal to terminate the proceedings.

4. By Order of 6 December 1990 the Respondents were requested to comment by 7 January 1991 on the Claimant's submission of 19 November 1990. Having granted several extensions to this deadline, the Tribunal issued an Order on 20 April 1992 in which it stated that it "intend[ed] to terminate the proceedings in this Case in accordance with Article 34 of the Tribunal Rules unless the Respondents submit [ted the said] comments ... invoking justifiable objections to the termination of the proceedings ... [by] 11 May 1992." On 11 May 1992 the Tribunal received the Respondent's comments. The Respondents explained therein that Bank Markazi Iran had brought certain claims against Security Pacific in other Cases before the Tribunal and requested the Tribunal to decide these Claims as Counterclaims in the present Case.

5. It is necessary to retrace the history of the Counterclaims in question to have a clearer view on their relationship with the Case at hand.

6. In Cases Nos. 689, 735 and 784 Bank Markazi Iran, acting on its own behalf and on that of various Iranian agencies, filed a series of claims on 18 and 19 January 1982 against Security Pacific¹ based on the latter's alleged failure to reimburse certain principal sums held by it for the account of the Iranian agencies and to pay interest on deposits and assets which also were held for the account of the Iranian agencies. Cases Nos. 689 and 735 were brought before Chamber Two. Case No. 784 was brought before Chamber Three.

7. On 2 September 1983 a submission signed by both Parties on 26 May 1983 was filed in Cases Nos. 689 and 735 requesting the termination of a number of Claims and the termination of portions of others, as specified in Schedules A and B to the submission. Schedule B indicated that the Claims in Cases Nos. 689 and 735 were settled "so far as [they] relate[d] to interest on [a number of] accounts" listed in the Schedule.

8. By Orders of 19 September 1983 Chamber Two terminated the proceedings in Cases Nos. 689 and 735 pursuant to Article 34, paragraph 1, of the Tribunal Rules "for the portion as specified in ... Schedule [B]."

9. Subsequent to the Tribunal's decision in Case No. A-17, United States of America and Islamic Republic of Iran, Decision No. DEC 37-A17-FT (18 June 1985), reprinted in 8 Iran-U.S. C.T.R. 189, Chamber Two on 24 July 1985 issued Orders in Cases Nos. 689 and 735 stating, inter alia, that

1. The Tribunal hereby informs the Parties that it intends to terminate all proceedings in th[ese]

¹ The Statement of Claim in Case No. 689 refers to Security Pacific National Bank as the respondent. The Statement of Claim in Case No. 735 refers to Security Pacific International Bank as the respondent. The Statement of Claim in Case No. 784 refers to Security Pacific Bank as the respondent.

Case[s], pursuant to Article 34 of the Tribunal Rules, unless the Claimant[s] inform[] the Tribunal, by 2 September 1985,² that the present Claim[s] involve[] ... amounts owing and payable to [them] from Dollar Account No. 2.

2. The Tribunal reminds the Parties that if the Iranian bank claim[s] involved in the present Case[s] relate[] to ... claim[s] by a United States banking institution or other private entity in another Case, then a party in such other Case may request that the Iranian bank claim[s] be decided as ... counterclaim[s] in that other Case. Such request should be filed in the Case involving the claim brought by the United States banking institution or other private entity, not later than 1 October 1985.

A similar Order was issued by Chamber Three in Case No. 784 on 10 February 1986.

10. On 1 October 1985 Bank Markazi Iran filed a letter in Cases Nos. 689 and 735 in which it stated that "none of the [Claims in the said Cases] ... , is payable from Dollar Account No. 2." At the same time, it requested the adjudication of these Claims "as [C]ounterclaims to those by the American Claimants [in Case No. 332], in accordance with paragraph 2 of the Order dated July 24, 1985." In another letter filed on 8 April 1986 in Case No. 784 Bank Markazi Iran stated that the Claim in that Case also is not payable from Dollar Account No. 2. In the same letter, the Bank informed the Tribunal that "it intend[ed] to bring [the Claim in Case No. 784] as [a] [C]ounterclaim in Case No. 332 in accordance with the guideline provided in the Tribunal's Order of 10 [February] 1986."

² By Orders of 16 September 1985 Chamber Two extended this deadline until 1 October 1985.

11. By Orders of 26 November 1985 filed in Cases Nos. 689 and 735 Chamber Two reminded the Parties that the Tribunal has, in its Decision in Case No. A-17, held, inter alia:

Claims by Iranian banks against United States banking institutions are within the jurisdiction of the Tribunal only to the extent, if any, that they are disputes as to amounts owing from Dollar Account No. 2 for the types of debts payable out of that account which have been referred to the Tribunal in accordance with Paragraph 2(B) of the undertakings.

12. Having noted Bank Markazi Iran's statement of 1 October 1985 that the Claims in Cases Nos. 689 and 735 do not involve an amount or amounts owing and payable to it from Dollar Account No. 2, Chamber Two decided in the said Orders that the Tribunal "lack[ed] jurisdiction over [those] Claim[s]." In view thereof, Chamber Two terminated the arbitral proceedings in both Cases pursuant to Article 34 of the Tribunal Rules.

13. In view of Bank Markazi Iran's letter of 8 April 1986 in Case No. 784 Chamber Three also found in its Order of 15 April 1986 that the Tribunal lacked jurisdiction over the Claim filed in the Case and therefore terminated the proceedings pursuant to Article 34 of the Tribunal Rules.

14. With regard to Bank Markazi Iran's request that the Claims in Cases Nos. 689 and 735 be adjudicated as Counterclaims in Case No. 332, Chamber Two remarked in its Orders of 26 November 1985 that its Orders of 24 July 1985 required such "Counterclaim ... [to] be filed by a Party to the Case in which the Counterclaim is sought to be filed, and in that Case." (Emphasis added) Chamber Two therefore concluded that the request filed on 1 October 1985 in Cases Nos. 689 and 735 was "made in the wrong case."

15. In considering Bank Markazi Iran's request described in paragraph 4, supra, to examine the Claims it had filed in Cases Nos. 689 and 735 that were not terminated by Chamber

Two's Orders of 19 September 1983 and the Claims in Case No. 784 as Counterclaims in the present Case, the initial question is whether those Claims are admissible as Counterclaims in this Case. The Tribunal notes in this respect that Chamber Two's Orders of 24 July 1985 required that the request to decide the Iranian bank claims as Counterclaims in the other Cases be filed in such other Cases not later than 1 October 1985. However, Bank Markazi Iran's requests to decide the remaining Claims in Cases Nos. 689 and 735 as Counterclaims in Case No. 332 were filed in the latter Case several months after the October deadline set by that Order, namely on 14 January 1986. Chamber Three's Order of 10 February 1986 in Case No. 784 required the request to be made by 7 May 1986. Such request was filed timely by Bank Markazi Iran in Case No. 332 on 1 May 1986.

16. For the Tribunal to be able to take up the Counterclaims in the context of this Case, it would, in any case, need to be established that such Counterclaims are within its jurisdiction. Bank Markazi Iran developed a number of arguments in support thereof in its Statement of Counterclaim which was filed on 7 July 1986 in Case No. 332.³ In its submission filed 19 November 1990 the Claimant argued that the Counterclaims are not within the Tribunal's jurisdiction.⁴ Bank Markazi Iran replied to that submission on 11 May 1992.⁵

³ While Bank Markazi Iran had requested Chamber Three to take up its Claims in Cases Nos. 689, 735 and 784 as Counterclaims in this Case, the Statement of Counterclaim surprisingly only refers to Case No. 735.

⁴ In that submission the Claimant discussed the Counterclaims that originated from Cases Nos. 735 and 784.

⁵ In its reply, which essentially is a reiteration of the Statement of Counterclaim, Bank Markazi Iran refers to Cases Nos. 735 and 689 but not to Case No. 784.

17. Bank Markazi Iran presents three alternative arguments in support of its position that the Tribunal has jurisdiction over the Counterclaims. First, it asserts that the Tribunal has jurisdiction on the basis of the principle of set-off. The Tribunal believes, however, that quite apart from the merits of that assertion, the Counterclaims in any event could not be set off against the Claims as the latter already have been settled in their entirety.

18. Second, Bank Markazi Iran maintains that the Tribunal's jurisdiction over the Counterclaims is grounded on Article 2 (B) of the Undertakings. With regard to this Article, Bank Markazi Iran writes as follows:

Pursuant to the Undertakings, 'In [sic] the event that within 30 days any U.S. Banking institution and the Bank Markazi are unable to agree upon the amounts owed, either party may refer such dispute to binding arbitration by such international arbitration panel as the parties may agree, or failing such agreement within 30 additional days after such reference, by the Iran-United States Claims Tribunal.'

Therefore, the Iran-United States Claims Tribunal is, by virtue of the Undertakings, obligated to entertain - at least as far as banking claims are concerned - the claims referred thereto by 'either party'; the Tribunal's jurisdiction over such claims is established.

19. However, in Case No. A-17 the Tribunal held that

[t]o the extent that such claims purport to be based on Paragraph 2 (B) of the Undertakings, the Tribunal determines that it has jurisdiction over such claims only to the extent, if any, that they are disputes as to amounts owing from Dollar Account No. 2, for the types of debts payable out of that account. It is evident from the text of Paragraph 2 (B) that its payment provisions deal solely with the disposition of the funds deposited in that account. Paragraph 2 (B) gives no jurisdiction over 'claims' by one bank seeking payment from another but establishes a limited jurisdiction over 'disputes', which may have

been referred to the Tribunal by either Bank Markazi or the United States banking institution involved, as to 'amounts owing' from Dollar Account No. 2.

Case No. A-17, supra, at pp. 11-12, reprinted in 8 Iran-U.S. C.T.R. at 197 (footnote omitted).

20. The Tribunal recalls that in its letters of 1 October 1985 and 8 April 1986 Bank Markazi Iran had stated that its Claims in Cases Nos. 689, 735 and 784 did not involve amounts owing and payable to it from Dollar Account No. 2. That being the case, the Tribunal concludes that it has no jurisdiction pursuant to the Undertakings over such Claims whether styled as a claim or a counterclaim.

21. Third, Bank Markazi Iran contends that its Counterclaims are within the Tribunal's jurisdiction because they meet the requirements of Article II, paragraph 1, of the Claims Settlement Declaration according to which a counterclaim must arise "out of the same contract, transaction or occurrence that constitutes the subject matter" of the claim. Bank Markazi Iran is of the opinion that this requirement is met in the present instance because "[banking] transactions are reckoned as parts of a prolonged general agreement for reciprocal transactions" in view of their "nature and type."

22. The Tribunal notes, however, that the Claims in this Case purportedly arise out of various syndicated loan agreements between the Respondents and several syndicates of banking institutions of which the Claimant was a member, whereas the Counterclaims arise out of Security Pacific's alleged failure to transfer funds which it held in different accounts for various Iranian agencies. Bank Markazi Iran has not identified, nor has the Tribunal been able to find in the record, any specific link between the transactions forming the

basis of the Claims and the account arrangements on which the Counterclaims are based.⁶

23. Consequently, the Tribunal holds that the Counterclaims do not arise out of the "same contract, transaction or occurrence" as the Claims and that, therefore, it has no jurisdiction over the Counterclaims under Article II, paragraph 1, of the Claims Settlement Declaration.

24. For the foregoing reasons,

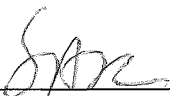
THE TRIBUNAL DECIDES AS FOLLOWS:

a) The Counterclaims are dismissed for lack of jurisdiction.

⁶ Furthermore, as noted in footnote 1, supra, the Claims in the present Case were brought against Security Pacific National Bank, whereas the Claims in Cases No. 784 and 735 were brought against Claimants named Security Pacific Bank and Security Pacific International Bank respectively.


b) The remaining arbitral proceedings in Case No. 332 are terminated in accordance with Article 34, paragraph 2, of the Tribunal Rules.

Dated, The Hague
20 January 1994




Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Mohsen Agahosseini
Dissenting