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Case No. 380

380-94

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★★ AWARD

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** DECISION - Date of Decision

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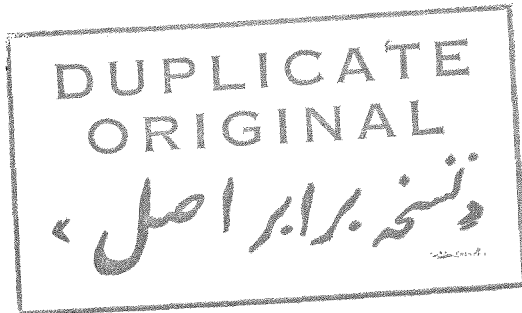
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ



CASE NO. 380

CHAMBER THREE

AWARD NO. 488-380-3

RONALD E. CHAMNESS,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
MINISTRY OF FOREIGN AFFAIRS,
IRAN ELECTRONICS INDUSTRIES
(DEFENCE INDUSTRIES ORGA-
NIZATION),

Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	9 AUG 1990
	تاریخ ۱۳۶۹ / ۵ / ۱۸

AWARD

Appearances:

For the Respondents:

Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran;
Dr. Mohammad Taghi Naderi,
Legal Advisor to the Agent of
the Government of the Islamic
Republic of Iran;
Mr. Karam Ali Kamayestani,
Legal Assistant to the Agent
of the Government of the
Islamic Republic of Iran;
Mr. Mohammad Hosein Sharif,
Legal Advisor of Defence
Industries Organization;
Mr. Mohammad Mehdi Sadat Hoseini,
Representative of Defence
Industries Organization;
Mr. Reza Ahmadi Torshizi,
Representative of Iran Elec-
tronics Industries.

Also present

:

Ms. Lucy F. Reed,
Agent of the Government of the
United States of America.

I. INTRODUCTION

1. The Claimant, Ronald E. Chamness ("Chamness"), brings an indirect claim for a total of U.S.\$679,436.80 plus interest on behalf of Continental Mechanical of the Middle East Limited ("CMME"), a Bahamian entity allegedly owned by him. The named Respondents are the Government of the Islamic Republic of Iran ("Iran"), the Ministry of Foreign Affairs and Iran Electronics Industries ("IEI"). IEI is affiliated with the Defence Industries Organization ("DIO"), which has submitted the pleadings on behalf of IEI.

2. On or about 11 May 1978 CMME and its affiliate Continental Supply Limited ("Supply") as contractors entered into an agreement (the "Agreement") with IEI for the delivery and installation of mechanical, electrical and ceiling works for a factory complex in Shiraz, Iran. Supply was to furnish the materials and CMME was to handle the installation, for a total contract price of 1,823,500,000 rials. An American company, Continental Mechanical Corporation ("Continental"), guaranteed the contractual performance of CMME and Supply.¹

3. The Claimant contends that CMME, having received an advance payment secured by a letter of credit for the benefit of IEI, commenced its work on the project, but that the revolutionary events then occurring in Iran caused CMME on 7 December 1979 to give IEI notice of termination of the Agreement by reason of force majeure. The Claimant asserts that IEI breached the Agreement by failing to pay CMME pursuant to two interim payment requests relating to the work it had performed.

¹See fn. 2.

4. The Claimant further alleges that CMME was not paid for an additional undertaking entered into on or about 20 March 1979. By a telex of that date IEI

authorise[d] Continental Supply Ltd. to act where required for and on behalf of Iran Electronics Industries to locate, repossess [sic] and shipp [sic] any of the materials formerly shipped by Continental under the above contract except those materials which have already been delivered to an Iranian port or those which have not so far been shipped for Iran. While we reserve our rights under the contract, the actual expenses properly incurred by Continental in respect of the acts hereunder authorized, will after substantiation, be reimbursed to Continental.

According to the Claimant, "CMME, acting at the request of its affiliate Supply, caused actions to be taken to locate, repossess and reship the materials," incurring unreimbursed costs of U.S.\$148,908.41.

5. In reply to Chamness' claim, the Respondents argue, inter alia, that the Claimant has not evidenced his ownership of CMME, and that the Tribunal lacks jurisdiction because the Agreement provides that "any legal action or proceeding arising out of our [sic] relating to this Contract may be instituted in any competent Iranian court."

6. On the merits, the Respondents contend that the Claimant, not IEI or Iran, breached the Agreement. They argue that Supply and CMME failed to deliver goods and perform contractual installation services; that CMME's interim payment requests were not accompanied by the required supporting documentation; that performance of the Agreement was not affected by force majeure conditions; that, in any case, the Claimant did not comply with the contractual provisions relating to force majeure; and, finally, that pursuant to settlement negotiations held in October 1981 Chamness had agreed to withdraw his claim in return for a

release by IEI of the letter of credit, which allegedly expired by its own terms on 11 November 1981.

7. Based on the foregoing, DIO has submitted a substantial counterclaim against Chamness and Continental demanding, inter alia, the delivery and installation of the remaining materials. DIO also seeks reimbursement of the advance payment, compensation for damages caused by the Claimant's termination of the Agreement and payment of certain shipment and storage charges.

II. PROCEDURAL HISTORY

8. The Claimant filed a Statement of Claim on 18 January 1982. On 20 June 1984 Iran submitted a Statement of Defense and DIO filed a Statement of Defense and Counterclaim. On 20 February 1985 Chamness filed a Reply and Response to Counterclaim; exhibits thereto were filed on 7 March 1985. On 29 July 1985 DIO submitted a Rejoinder to the Claimant's Reply together with supporting documents.

9. DIO and Chamness submitted their Hearing Memorial and Evidence on 13 October 1986 and 15 January 1987, respectively. On 5 October 1987 DIO filed a rebuttal.

10. A Hearing was scheduled for 23 May 1990. By telefax message received on 21 May 1990 Chamness informed the Tribunal that "[f]or emergency personal reasons [he was] unable to attend the hearing." He furthermore expressed his desire "that the case be decided based on the submitted papers and without a hearing." On 22 May 1990 the Tribunal issued a Communication to the Parties stating that, in view of the Respondents' objection to the Claimant's request, the Hearing would proceed as scheduled. A brief Hearing was held on 23 May 1990 and the Claimant did not attend.

III. JURISDICTION

11. The Tribunal first must investigate whether it possesses jurisdiction over the claim. On this issue, Chamness asserts that he

is a national of the United States as specified in Article VII, Paragraph 1(a) of the Declaration and he owns this claim indirectly by reason of his ownership of one hundred percent (100%) of the capital stock of Continental Mechanical of the Middle East, Ltd. (CMME). Claimant has owned all of the capital stock of CMME continuously from the times this claim arose to the present, and such ownership was, at the times the claim arose, sufficient to control the corporation. CMME is a corporation organized and existing under the laws of the Bahamas, with its principal place of business in Nassau, the Bahamas.

In support of these contentions, the Claimant has submitted a copy of his Certificate of Birth evidencing his United States nationality, a copy of the Certificate of Incorporation of CMME and documents indicating that as of 31 December 1982 he was the beneficial owner, with voting power, of 5000 shares of CMME's capital stock.²

12. The Respondents contest the Tribunal's jurisdiction, arguing that the "Claimant has produced no evidence or document to prove that at the time when the Algerian Declaration came into force or at the time of filing the claim, he had any ownership in the contracting companies."

²The Tribunal notes that the guarantee by Continental - signed for Continental by Chamness, who likewise signed the Agreement for CMME and Supply - refers to CMME and Supply as "wholly owned subsidiaries" of Continental. The Claimant has not clarified his interest in Continental, if any.

13. To determine whether it has jurisdiction, the Tribunal must apply Article VII, Paragraph 2, of the Claims Settlement Declaration. This Article provides, in relevant part:

"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 juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this Agreement.

14. The Tribunal observes that the evidence submitted by the Claimant documents his (beneficial) ownership of 5000 shares in CMME only as of 31 December 1982, i.e., after the jurisdictional deadline of 19 January 1981 referred to in the Article cited above. The Claimant thus has failed to establish his indirect ownership of the claim during the relevant period. The Tribunal therefore must dismiss the claim for lack of jurisdiction. The counterclaim is rejected for the same reason. See Reliance Group, Inc. and National Iranian Oil Company, et al., Award No. 15-90-2, p. 3 (8 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 384, 385.

IV. COSTS

15. IEI seeks reimbursement of the costs incurred in defending against the claim and pursuing the counterclaim. In response to a request made by the Tribunal at the Hearing, IEI has, without attaching supporting records, submitted a specification of these costs for a total amount of U.S.\$57,806.

16. Articles 38 and 40 of the Tribunal Rules, which provide the basis for an award of costs of arbitration, allow the Tribunal to make a reasonable determination. In the present Case, the Tribunal takes into consideration the Claimant's failure to address the Respondents' consistent objections to the Tribunal's jurisdiction. The Tribunal also notes the timing of the Claimant's request for a decision on the basis of the documents and the insufficient explanation of his failure to appear or to have himself represented at the Hearing. The Tribunal decides to award to IEI U.S.\$8,000 in legal fees and U.S.\$9,000 in costs incurred for attending the Hearing. Cf. Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3, para. 586 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, 185.

V. AWARD


17. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The claim of RONALD E. CHAMNESS against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, THE MINISTRY OF FOREIGN AFFAIRS and IRAN ELECTRONICS INDUSTRIES (DEFENCE INDUSTRIES ORGANIZATION) is dismissed for lack of jurisdiction.
- b. The counterclaim of IRAN ELECTRONICS INDUSTRIES (DEFENCE INDUSTRIES ORGANIZATION) against RONALD E. CHAMNESS and CONTINENTAL MECHANICAL CORPORATION is dismissed for lack of jurisdiction.
- c. The Claimant RONALD E. CHAMNESS is obligated to pay to the Respondent IRAN ELECTRONICS INDUSTRIES (DEFENCE


INDUSTRIES ORGANIZATION) costs of arbitration in the
amount of U.S.\$17,000.

Dated, The Hague,
9 August 1990




Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Parviz Ansari Moin