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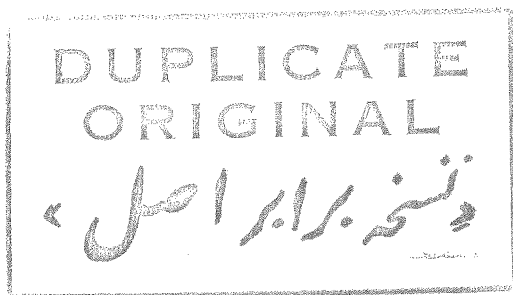
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CASE NO. 4

CHAMBER THREE

AWARD NO. 575-4-3

REZA NEMAZEE,

Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	10 DEC 1996
	تاریخ ۱۳۷۵ / ۹ / ۲۰

FINAL AWARD

Appearances

For the Claimant:

Dr. Reza Nemazee,
Claimant;
Mr. Richard J. Burton,
Professor Dennis O'Connor,
Counsel for the Claimant;
Mr. Michael Laurie,
Legal Assistant to the Claimant;
Dr. Parviz Sorouri,
Mrs. Rowshan Golshayan,
Rebuttal Witnesses.

For the Respondent:

Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran;
Mr. Nozar Dabiran,
Legal Adviser to the Agent;
Mr. Behrooz Saleh Pour,
Legal Assistant to the Agent;
Dr. Ali Azmayesh,
Attorney for Bank of Industry and
Mine;
Mr. Javad Givehchin,
Attorney for Bonyad Mostazafan va
Janbazan and Dana Insurance
Company;
Mr. Daryoush Ashrafi,
Mr. Ali Latifi,
Mr. Khayam Dadashzadeh,
Representatives of Bonyad
Mostazafan va Janbazan;
Mr. Mahmoud Alizadeh,
Representative of Fars and
Khuzestan Cement Company;
Mr. Mostafa Tehrani,
Mr. Abdol Majid Goldeh,
Representatives of Dana Insurance
Company;
Mr. Ali Aziz Jahan,
Mr. Masoud Fazl,
Mr. Ahmad Bafoghini,
Mrs. Mahin Nemazee,
Mrs. Zahra Saffarian,
Dr. Behrooz Vahdat,
Mr. Mohammad Ali Mahdavi Sabet,
Witnesses;
Dr. Mahdi Shahidi,
Mr. Yousef Bouzari,
Expert Witnesses.

Also Present:

Mr. D. Stephen Mathias,
Agent of the United States of
America;

Mr. Sean D. Murphy,
Department of State of the United
States of America.

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I. INTRODUCTION

1. The Claimant in this Case is REZA NEMAZEE (the "Claimant"), a dual Iranian-United States national of dominant and effective United States nationality. The Respondent in this Case is THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN (the "Respondent"). The Claimant alleges that he owned real estate and corporate stock in Iran, the bulk of which had been transferred to him in 1979 by his grandfather, Mehdi Nemazee, and his father, Hossein Nemazee. The Claimant alleges that the Respondent expropriated his interests in these properties during 1979 in the course of specifically expropriating the property of members of the Nemazee family by legislation and court order. The Claimant seeks compensation in the amount of U.S. \$225,958,458, comprising \$38,387,029 in respect of real estate and \$187,571,429 in respect of stocks, plus interest from the date of expropriation and costs.

2. The Respondent acknowledges that it expropriated assets belonging to certain members of the Nemazee family and contends that this occurred in April 1979. The Respondent denies, however, that the Claimant owned any moveable or immoveable property in Iran and contests the validity of the purported transfers of assets from the Claimant's grandfather and father to the Claimant. The Respondent consequently denies that assets belonging to the Claimant were expropriated. It asks that this claim be dismissed with costs.

II. PROCEDURAL HISTORY

3. The Claimant and his mother, Luz Belen Nemazee, filed a Statement of Claim on 20 October 1981. The Respondent filed its Statement of Defence on 14 May 1982. Pleadings on nationality were completed by 20 April 1989. On 10 July 1990, the Tribunal issued a Partial Award in which it determined that, during the relevant period from the date their claims arose until 19 January

1981,¹ Reza Nemazee was a dominant and effective United States national, but that Luz Belen Nemazee was not. See Reza Nemazee and Luz Belen Nemazee and Islamic Republic of Iran, Partial Award No. 487-4-3 (10 July 1990), reprinted in 25 Iran-U.S. C.T.R. 153. Judge Parviz Ansari filed a Separate Opinion on 31 August 1990.

4. Following a request by the Claimant and objections thereto by the Respondent, on 17 December 1990 the Tribunal required the Respondent to produce certain documents relating to the alleged expropriation of Nemazee family properties. The Tribunal also ordered the Claimant to submit his Memorial and evidence on the merits. The Respondent filed a submission in response to this Order on 10 June 1991.

5. On 10 September 1991 the Claimant asked to be allowed to file video cassettes of oral depositions. On 13 September 1991 the Respondent requested that copies of any video cassettes also be provided to it. On 20 September 1991 the Tribunal ordered the Claimant to file nine copies of each video cassette in both English and Persian, explicitly reserving the question of the tapes' admissibility. Three of the English copies and three of the Persian copies were required to be duplicated "to the technical standard applicable in Iran." The Claimant was also required to file the usual number of copies of the transcript of the soundtrack of the video cassettes, in both English and Persian. Finally, the Tribunal ordered that:

the Claimant and/or his counsel shall take all appropriate measures to authenticate the said cassettes and shall describe such measures, including without limitation the manner in which the videotaping was done, in the Memorial to be filed pursuant to . . . this Order.

6. The Claimant filed his Memorial on the merits, together with the video cassettes, on 11 November 1991. Each videotaped

¹ 19 January 1981 is the Tribunal's jurisdictional cut-off date.

deposition was in both English and Persian. On the same day, the Claimant filed a "Memorial on the Admission of Video Taped Affidavits Into Evidence." Because the Claimant chose not to show any of the videotapes at the Hearing and because the Tribunal has been able to rely for evidentiary purposes on the submitted transcripts rather than the actual tapes, the Tribunal considers that it is unnecessary to decide the question of the admissibility of the videotapes.

7. The Respondent filed parts of its Memorial on the merits of the Case on 14 December 1992 and the remainder on 30 December 1992. After the Parties had filed their Memorials and evidence in rebuttal, on 23 June 1994 the Claimant filed the "Memorial of the United States on the Issue of the Caveat in Case A/18," together with a Notice of Intent to rely on this Memorial. By submission of 27 June 1994, the Respondent objected to the admission of the Memorial on the ground that it was filed after the date of the Respondent's last filing in the Case. In the alternative, the Respondent requested the opportunity to reply to the Memorial. By Order of 29 June 1994, the Tribunal notified the Parties that it had decided to accept the "Memorial of the United States on the Issue of the Caveat in Case A/18" into the record and invited the Respondent to reply to it. The Respondent filed the "Brief of the Islamic Republic of Iran on the Issue of the Caveat in Case A/18" on 16 September 1994.

8. On 13 February 1995 the Respondent filed a list of the witnesses that it intended to present at the Hearing. On 13 March 1995 -- one day before the Hearing -- the Claimant submitted a Memorial incorporating a list of rebuttal witnesses. In the Memorial the Claimant argued that the inclusion of certain witnesses on the Respondent's witness list indicated that the Respondent intended to raise certain new issues at the Hearing and that the Claimant's two rebuttal witnesses would be introduced to rebut any evidence the Respondent might provide on these matters. The Claimant also sought to introduce one of the two rebuttal witnesses as a general rebuttal witness. The Claimant further indicated that he wished to introduce "Rebuttal

Documents" at the Hearing. Finally, the Memorial addressed other aspects of the Case and its procedural history.

9. By Order of 13 March 1995, the Tribunal notified the Parties that it would accept both witnesses indicated by the Claimant as rebuttal witnesses, with one of them being permitted to testify only on specific issues and the other being a general rebuttal witness. The Tribunal stated that it was not in a position to rule on the admissibility of further documents at the Hearing "until their nature, object and content is known." The Tribunal further decided that, insofar as the Claimant's submission contained arguments on the merits, these were late-filed and were stricken from the record.

10. A Hearing was held in this Case on 14 and 15 March 1995.

III. JURISDICTION

11. The Claimant is a dual national of Iran and the United States. In accordance with its decision in Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, the Tribunal already has determined that the Claimant was a dominant and effective United States national during the relevant period (see para. 3, supra).

12. Article II, paragraph 1, of the Claims Settlement Declaration provides that the Tribunal has jurisdiction over claims "which are outstanding on the date of this Agreement [19 January 1981] . . . and arise out of debts, contracts . . . , expropriations or other measures affecting property rights." The present claim concerns the alleged taking of property interests and therefore falls within the Tribunal's subject matter jurisdiction. Furthermore, both Parties agree that the assets allegedly owned by the Claimant, except for one apartment, were expropriated on some date in 1979, although they differ as to the exact date. The Claimant contends that the one apartment was

expropriated in December 1979. The claim therefore arose, if at all, prior to 19 January 1981, and thus falls within the Tribunal's temporal jurisdiction.

IV. OWNERSHIP

A. Facts and Contentions

13. The Tribunal now turns to consider the merits of the claim. The Claimant was born in 1949 and spent his first twelve years in Iran. It appears that his family was well-known in Iran and possessed very considerable wealth. From 1962 until 1978 he lived first in England and then in the United States, completing his schooling and obtaining undergraduate and graduate degrees in psychology. In early 1978, soon after completing his studies, he was recruited to teach clinical psychology at the Imperial Medical Center that was to be established in Tehran. The Claimant returned to Iran in November 1978. The Center did not materialize due to political turmoil, but the Claimant nonetheless remained in Iran until August 1979.²

14. The Claimant alleges that not long after arriving in Iran in 1978 he acquired property from three different sources. First, he asserts that he purchased an apartment for his own residence in the Saman residential complex in Vanak, an area of Tehran (the "Saman Vanak apartment"). More significantly, he asserts that his grandfather, Mehdi Nemazee, transferred to him one third of his property and that his father, Hossein Nemazee, transferred all of his property to him. Indeed, the Claimant alleges that one of the reasons for his return to Iran in 1978, in addition to establishing a course at the Imperial Medical Center, was to receive the property from his father and

² The Claimant's background is set out in more detail in the Partial Award in this Case. See Reza Nemazee and Luz Belen Nemazee, 25 Iran-U.S. C.T.R. at 155-57.

grandfather. The Claimant alleges that the Respondent subsequently expropriated all of these properties.

15. The Claimant asserts that, as a result of the acquisitions described above, he became the owner of 23 parcels of real estate in various parts of Iran and shares of stock in five Iranian companies -- Fars and Khuzestan Cement Company; Dana Insurance Company; the Industrial Mining and Development Bank (now known as the Bank of Industries and Mines); the Bank of Iran and the Middle East (now Bank Tejerat); and the Roud Company.³ He alleges that at the date of expropriation the value of the real estate was U.S.\$38,387,029 and the value of the stock was U.S.\$187,571,429, giving a total value of U.S.\$225,958,458.

16. The Claimant states that he no longer has access to any documentary records showing his legal title to these assets. He contends that none of the members of the Nemazee family or their associates were able to take any relevant documents with them when they left Iran after the Islamic Revolution. He requested that the Respondent be required to produce various documents and records, which he contends would establish his ownership of the properties claimed and the Respondent's taking of those properties. The Respondent denies the existence of certain documents requested by the Claimant. It appears, however, to have produced all of the documents that the Tribunal specifically identified and required it to produce.

³ The Claimant alleges that Mehdi Nemazee transferred to him 1,900 shares in Dana Insurance Company; 48,279 shares in Fars and Khuzestan Cement Company; 45,696 shares in the Industrial Mining and Development Bank; 9,730 shares in the Bank of Iran and the Middle East; and 1,743 shares in the Roud Company. He contends that Hossein Nemazee transferred to him 16,500 shares in Fars and Khuzestan Cement Company; 20,000 shares in the Industrial Mining and Development Bank; and 1,200 shares in the Bank of Iran and the Middle East.

1. The Assets Allegedly Transferred from Mehdi Nemazee and Hossein Nemazee to the Claimant

a. The Claimant's Contentions

17. The Claimant initially stated that the transfers of property from his father and grandfather occurred in January 1979. Later pleadings put the date of the transfer from the Claimant's father at 5 February 1979, and that from his grandfather at 6 February 1979. However, in a videotaped deposition, submitted by the Claimant together with a transcript thereof, Mr. Abdolkarim Minoo, the long-time financial adviser to the family, consistently stated that the transfers occurred in 1978.

18. In support of his allegation that his father and grandfather transferred real property and stocks to him, the Claimant alleges that

[e]verything was done by my grandfather and father that was appropriate and necessary to complete these gift transfers. Letters of instruction were delivered to . . . Registry Office #64 in Tehran, directing the real estate transfers. Instructions were sent to all the named companies to change the registration of stock certificates on their books.

The principal evidence submitted by the Claimant in support of his \$225 million claim consists of photocopies of six letters allegedly written in 1979 by Mehdi Nemazee, Hossein Nemazee and Mr. Minoo. These letters are written in Persian, and the Claimant has provided English translations of them.⁴ The Claimant asserts that the copies of these six letters "show . . . that all steps were taken that could be taken to complete the formalities of the transfers indicated."⁵

⁴ The Tribunal's Language Services Division also provided translations of these letters. Where slight discrepancies arose, the Tribunal relied on those translations.

⁵ Both of the alleged grantors were dead by the time of the Hearing. Mehdi Nemazee died in December 1979, and Hossein Nemazee died in the early 1990s.

19. The first three letters are dated 5 February 1979 and bear the signature of Hossein Nemazee. The first letter is to the Bank of Iran and the Middle East. Hossein Nemazee informs the Bank that he and Mehdi Nemazee have transferred their shares in the Bank to the Claimant, and he requests that the Bank "make the necessary arrangements to issue new shares in [the Claimant's] name when the bank's capital has increased (as was determined at the last Board meeting)."

20. Hossein Nemazee's second letter is to Fars and Khuzestan Cement Company. It states that Hossein and Mehdi Nemazee "have transferred" all their shares to the Claimant, and it requests that the Company make arrangements "so that when shares are to be replaced or new shares issued, they will be in his name."

21. The third letter is from Hossein Nemazee to Notary Public Office Number 64 in Tehran. It informs the Notary Public Office that Hossein Nemazee has transferred all his assets to the Claimant and requests that the Office "arrange for all my deeds to be transferred to him."

22. The fourth and fifth letters proffered by the Claimant are dated 6 February 1979. The fourth letter is from Mehdi Nemazee to Mr. Minoo. In it Mehdi Nemazee informs Mr. Minoo that he "ha[s] given one-third of [his] assets" to the Claimant. He lists the shareholdings that are to be transferred, refers in very general terms to his real estate, and asks Mr. Minoo to carry out the official transfer of the assets, including the signing of all the necessary documents and ledgers on his behalf. Mr. Minoo is further directed to ensure that the Claimant "later" receives one-third of Mehdi Nemazee's "other properties, as well."

23. The fifth letter, also dated 6 February 1979, is from Mr. Minoo to Tehran Notary Public Office Number 64. In that letter, Mr. Minoo informs the Notary Public Office that Mehdi Nemazee "has given (transferred) one-third (two donghs) of all his real estate to his grandson, Dr. Reza Nemazee" and requests that the

Office "arrange for the necessary registration." The letter concludes by noting that "[a]ll taxes and expenses incurred will be paid by [Mehdi Nemazee]."

24. The sixth letter, dated 7 February 1979, is from Mr. Minoo to the Claimant. Mr. Minoo informs the Claimant that Mehdi Nemazee "with [Hossein Nemazee's] blessing and consent has legally transferred one-third of his assets" to the Claimant, but that "[h]e has . . . insisted that, as long as the situation requires, everything concerning these assets should be under Mr. Hossein Nemazee's supervision." Mr. Minoo writes further that it is Mehdi Nemazee's wish that "all the income from the assets earned during his lifetime will continue to belong to the said person." He goes on to note that

[t]he current value of the shares is significantly higher than that quoted by the Tehran Stock Exchange and your real estate holdings . . . are situated in the most sought-after locations in their respective cities and, therefore, continually increase in value.

25. As noted earlier (see para. 18, supra), the Claimant has produced photocopies of these six letters. According to the Claimant, Mr. Minoo obtained copies of the letters and other documents from Iran after he arrived in the United States. In the videotaped deposition referred to above (see para. 17, supra), Mr. Minoo asserts that the letters are authentic.⁶ The Claimant suggests that he is unable to produce the originals of the first three and the fifth letters described above because they were sent to the addressee organizations. However, in one of his briefs, the Claimant contends instead that the originals were confiscated from "safes in offices where . . . Minoo worked prior to mid-April 1979, by agents of Respondent, revolutionary committees personnel."

⁶ The videotaped deposition of Mr. Minoo was made in 1984. Mr. Minoo died in 1990, prior to the Hearing in this Case.

26. The Claimant asserts further that Mr. Minoo had the power to conduct transactions on behalf of Mehdi Nemazee by virtue of a power of attorney dated 16 February 1974 from Mehdi Nemazee to Mr. Minoo, a copy of which has been submitted to the Tribunal. The Claimant argues that on the basis of this power of attorney Mr. Minoo could have carried out the formalities necessary to transfer one-third of Mehdi Nemazee's properties to him.

27. In addition, the Claimant contends that under Article 10 of the Iranian Civil Code the letters are sufficient to constitute valid private contracts. Article 10 of the Iranian Civil Code provides that "[p]rivate contracts shall be binding on the contracting parties provided that they are not contrary to the express provisions of the law." The Claimant maintains that the alleged contracts were not contrary to any law. He also contends that under Article 190 of the Iranian Civil Code, which also relates to contracts, the letters were a valid means of transferring immovable property.

28. The Claimant's position regarding the formalities of transfer with respect to the subject properties has not been consistent during the proceedings in this Case. As noted earlier, the Claimant's basic contention is that the six letters he has submitted show that "[e]verything was done by my grandfather and father that was appropriate and necessary to complete these gift transfers" (see para. 18, supra). Throughout the written pleadings in this Case, however, the Claimant has also conceded that the formalities necessary to effect a de jure transfer of the assets from his father and grandfather to himself were not accomplished. He attributed the failure to complete these formalities to the facts that during February 1979 there was Revolutionary turmoil, most offices were closed and "[t]he postal service was not functioning, there were backlogs of mail, and letters were being opened in furtherance of the revolutionary changes." In his Rebuttal Memorial, the Claimant admits that for these reasons "complete execution of the formalities was not possible," and he refers to his interest in the properties allegedly transferred from his father and grandfather as a

"beneficial" interest. In his closing statement at the Hearing, the Claimant's counsel further said that

we do not contend that these letters themselves amounted to a formal transfer of title nor do we contend that the letters themselves standing alone operate as a contract of gift, but we believe that they adequately represent the intent of Mehdi Nemazee, the grandfather, and Hossein, the father, and that, therefore, they are suitable evidence which support and show, in part, a claim of beneficial ownership to these properties.

29. Also at the Hearing, however, the Claimant alleged for the first time that he had in fact visited a Notary Public Office in Tehran in connection with the transfer of real estate from his father and grandfather to himself, during which visit he had signed certain papers. He testified that this visit occurred approximately one week after the letters were written and that he was accompanied by his father and Mr. Minoo. However, neither Mr. Minoo nor the Claimant's father made any mention of the alleged visit in their affidavits. Moreover, the Claimant was unable to recall the date of the visit, the location of the Notary Public's Office, the name of the Notary Public, the exact nature of the papers he signed or the number of documents involved. The Claimant indicated that it was possible that the visit was intended to begin the process of the transfers rather than actually to complete the transfers.

30. The Claimant alleges that his grandfather's transfer of assets to him followed a decision by his grandfather to distribute his property equally among his three children during his lifetime. Mehdi Nemazee's three children were Hossein Nemazee (the Claimant's father); Mahin Nemazee (his aunt); and Mohammad Shafie Nemazee (his uncle). The Claimant's sister, Rowshan Golshayan, testified at the Hearing that she too was aware of a plan by Mehdi Nemazee to transfer one-third of his assets to each of his children.

31. The motivation for the transfers from Mehdi Nemazee to his three children allegedly was the fact that he suffered from

Parkinson's disease, a degenerative illness. At the Hearing, the Claimant presented the testimony of Dr. Parviz Sorouri, who confirmed that he had treated Mehdi Nemazee for Parkinson's disease from the mid-1960s until Mehdi's death in December 1979.

32. The Claimant asserts that, pursuant to his grandfather's decision to distribute his property, in the mid-1970s his grandfather gave the Claimant's uncle, Mohammad Shafie Nemazee, a Nemazee family business called Iran Machine, and that sometime between 1974 and 1976 his grandfather gave a large family home in Shiraz to his aunt, Mrs. Mahin Nemazee, as well as giving her an apartment in Paris and helping her to buy an apartment in New York. The Claimant alleges that his father, in contrast, specifically requested that Mehdi Nemazee not transfer property to him, but rather that he give it directly to the Claimant when the Claimant returned to Iran.

33. The Claimant states that he believed that his father asked Mehdi Nemazee to transfer his share of the assets directly to the Claimant in order to avoid inheritance taxes or double payment of gift taxes. The Claimant asserts that such "generation skipping" transfers are often used to reduce the payment of taxes and transfer fees associated with inheritance. The Claimant also contends that he thought that Mr. Minoo had dealt with the payment of gift taxes, but there is no evidence of such payments in the record, either in the Minoo affidavit or elsewhere. The Claimant was also unable to quantify the amount that may have been paid (or owing) in either gift or inheritance taxes, a somewhat surprising omission given the value of the alleged transfers and therefore the amount of tax that would have been due.

34. The Claimant also contends that he received the properties because he occupied a special place within the family, both as the eldest son of Mehdi Nemazee's eldest son, and because his father and grandfather were particularly proud of him as the first person in the Nemazee family not only to earn a college degree, but also to receive a doctorate.

35. At the Hearing the Claimant's sister, 'Rowshan Golshayan, testified that their father and grandfather had hoped to lure the Claimant back to Iran permanently by transferring the properties to him and involving him in the family businesses. The Claimant stated, however, that when he went to Iran in 1978, he intended to stay only temporarily. He alleged that it was his intention that after the transfers had been made, he would sell the properties and reinvest the proceeds in the United States. He contends that his father and grandfather were aware of this plan.

b. The Respondent's Contentions

36. The Respondent's basic position is that the alleged transfers from Mehdi and Hossein Nemazee did not occur and that the Claimant's evidence in support of this contention is fabricated. Although the Respondent admits that it expropriated Mehdi and Hossein Nemazee's properties, it argues that the Claimant did not own any of the confiscated property and therefore has no claim. Specifically, the Respondent states that it

does not deny that the property of . . . Mehdi Nemazee and . . . Hussain Nemazee was expropriated However, Reza Nemazee can bring a claim in this respect only if at the time of the expropriation order he personally owned property which was covered by that order so that in case of enforcement of that order and expropriation of the property, a claim could arise, he could become a party in interest in the claim and could acquire the right to bring that claim. The Respondent clearly states that nothing has been taken from Reza Nemazee so that he could bring a claim.

37. The Respondent denies that either it or any entity controlled by it possesses the originals of the six letters submitted by the Claimant and asserts that if the originals are not provided by the Claimant, the evidence should be rejected. Furthermore, the Respondent disputes the authenticity of the six letters, suggesting that they are "falsified[,] deficient and feigned." It contends that the signatures of Mehdi Nemazee and Mr. Minoo "do not conform" to their known signatures. In support of its contentions, the Respondent has submitted a report by a

forensic handwriting expert challenging the genuineness of Mehdi Nemazee's signature.

38. In response, the Claimant states that Mr. Minoo had two signatures: a Persian signature he used in Iran and an English signature he used abroad. He also contends that Mehdi Nemazee's signature changed in the course of time as his physical condition deteriorated due to Parkinson's disease, and he presents for comparison Mehdi Nemazee's signature on another document from the same period -- the Amendments to the Charter of the Mehdi Nemazee Foundation, dated 21 March 1979.

39. In further support of its contention that the transfers did not occur, the Respondent asserts that Mehdi Nemazee was in a coma at the time of the alleged transfers (February 1979), so that it would have been physically impossible for him to have arranged and executed a transfer of his assets to the Claimant. This allegation was supported by testimony at the Hearing from two of the Respondent's witnesses: Mrs. Mahin Nemazee, the Claimant's aunt and Mehdi Nemazee's daughter; and Mrs. Zahra Saffarian, who served as a private nurse to Mehdi Nemazee during his last years. Mrs. Nemazee testified that Mehdi Nemazee went into a coma during the summer of 1978 after suffering a fall, and that he never regained consciousness before his death in December 1979. Her testimony was supported by that of Mrs. Saffarian.

40. The testimony of Mrs. Nemazee and Mrs. Saffarian was challenged at the Hearing by the Claimant and the Claimant's two rebuttal witnesses, Dr. Parviz Sorouri, who was Mehdi Nemazee's personal treating physician, and Mrs. Golshayan. Dr. Sorouri testified that Mehdi Nemazee only fell into a coma in the last weeks before his death in December 1979. Moreover, he stated that this coma was caused by uraemic poisoning from malfunctioning kidneys and not by a fall experienced in the summer of 1978. Mrs. Golshayan also testified that Mehdi Nemazee was not in a coma until very shortly before his death in December 1979. She stated that Mehdi Nemazee had attended the Claimant's

wedding in June 1979 and that his presence there was recorded in a photograph that she had in her possession.

41. The Respondent contends that it is in any event implausible that Mehdi and Hossein Nemazee would have intended to transfer millions of dollars in assets to the Claimant, given his lack of business experience and limited knowledge of Persian. In response, the Claimant contends that by virtue of a general power of attorney that he had executed on 5 January 1977 in favor of his father for a period of 20 years, Hossein Nemazee had the security of being able to manage all of the Claimant's new wealth. The Claimant stated that

[w]ith that power of attorney that I'd given my father . . . they [Hossein and Mehdi] had a control over [the transferred properties] so that they could utilize the income and, because I wasn't experienced in business, I couldn't squander it all away.

42. The Respondent further argues that even if Mehdi Nemazee had intended to give property to the Claimant, Mr. Minoo lacked the authority to carry out the formalities of the transfers. The power of attorney in his favor submitted by the Claimant is in English only, and the Respondent queries why it would have been written in English rather than in Persian. The Respondent further points out that the power of attorney itself refers to another power of attorney, which the Respondent produced from the records of a Notary Public Office in Tehran. The Respondent contends that the effect of the two powers of attorney was merely to grant Mr. Minoo the power to deal with an apartment in London belonging to a third party who had given that power initially to Mehdi Nemazee.

43. In response, the Claimant contends that the English version of the power of attorney was prepared by the Official Translator of the Iranian Ministry of Justice, as indicated on the face of the document, and that the Persian original is still in Iran. The Claimant also contends that documents relating to the Nemazee Boarding School, a charitable project of the Nemazee family, and

submitted by the Respondent show that Mr. Minoo had a broad power of attorney from Mehdi Nemazee.

44. The Respondent further argues that whatever Mehdi and Hossein Nemazee's intent, the Claimant cannot qualify as the owner of the properties because the required legal formalities for the transfer of the real estate and the stocks were not accomplished. First, in relation to the real estate, the Respondent refers to the requirements set out in Iran's Registration of Deeds and Real Property Act, 1931. The specified formalities include the preparation of a notarial deed after formal identification of the parties, various inquiries by the notary into official records and, ultimately, registration of the transfer. The Respondent concludes that the six letters, even if genuine, were insufficient to transfer an interest in the real estate to the Claimant.⁷

45. The Respondent denies that the Claimant could have finalized the transfers of the real estate at a Notary Public's Office one week after the letters were written. The Respondent's witness, Mr. Ahmad Bafoghinia (Notary Public No. 64 in Tehran), testified, inter alia, that a transfer on the scale alleged by the Claimant would, under normal circumstances, take at least 20 to 25 days to prepare, and that under the conditions prevailing in Iran at the time it would have taken about 2 months.

46. The Respondent also disputes the Claimant's contention that it would have been impossible to complete the legal formalities for transfer in February-March 1979. Iran denies the Claimant's allegation that the postal service was not functioning in February 1979 and argues that, in any event, the Registry Offices were open by March 1979. In support of this allegation, the

⁷ The Respondent maintains that, even were the transfers to be characterized as gifts, if the formalities were not accomplished, the claim must fail because under Article 47 of Iran's Registration of Deeds and Real Property Act, 1931, a gift must be registered to be valid. As the transfers were not registered, the Respondent concludes, no valid gift was made.

Respondent points to amendments to the Charter of the Mehdi Nemazee Foundation, apparently signed by Mehdi Nemazee, which amendments were recorded at the Registry Office in March 1979.

47. With respect to the stock, the Respondent alleges that title to stock in the companies referred to by the Claimant can only be transferred by recording the transaction in the share register of the company in question and that the transferor or his legal representative should also sign the register. The Respondent contends that no transfer to the Claimant has been entered in the share registers of the companies in question and that the Claimant has never been registered as having an interest in any shares in those companies. Bank Tejerat has submitted an affidavit to this effect from its Legal Affairs Director. In addition, the Respondent denies that Fars and Khuzestan Cement Company received the letter addressed to it from Hossein Nemazee, a copy of which was submitted by the Claimant. In the case of certain of the companies, the Respondent also disputes the size or existence of shareholdings by Mehdi and Hossein Nemazee.

2. The Saman Vanak Apartment

a. The Claimant's Contentions

48. The Claimant asserts that, during his stay in Iran, he lived in and owned an apartment in the Saman development in the Vanak area of Tehran. In support of his claim the Claimant submitted an affidavit from his sister, Mrs. Rowshan Golshayan, stating that the Claimant owned the apartment in his own name. At the Hearing, she stated that she lived next door to the apartment and looked after it for her brother after he left Iran in August 1979.

b. The Respondent's Contentions

49. The Respondent argues that the Claimant did not own the Saman Vanak apartment and points out that he has submitted no documentary evidence of his ownership. The Respondent has

provided a written statement from the Saman Company, presumably the original owner of the apartment block. The Saman Company contends that it remains the owner of the apartment in question. At the Hearing, however, the Respondent indicated that its inquiries had revealed (after the rebuttal memorials were filed) that the apartment in question had in fact been leased by Mrs. Golshayan to some relatives. The Respondent did not explain the seeming contradiction between these two positions.

50. In response, Mrs. Golshayan stated that the apartment had been lent to relatives rather than leased, and she reiterated that the apartment "was in [the Claimant's] name." The Claimant asserted that he was unable to provide the deed for the apartment. Allegedly, at the time of his purchase no deed had yet been issued for the apartment because it was part of a new complex.

B. The Tribunal's Findings

1. The Assets Allegedly Transferred from Mehdi Nemazee and Hossein Nemazee to the Claimant

51. The Claimant alleges that he held a legal interest or, in the alternative, a beneficial interest in the real estate and stocks allegedly transferred to him by his father and grandfather. The Tribunal will consider each of these legal theories of ownership in turn.

a. Legal Ownership

52. Although the Claimant alleges that "[e]verything was done by [his] grandfather and father that was appropriate and necessary to complete these gift transfers" (see para. 18, supra), he has failed to provide any documentary evidence that any of the alleged \$38 million worth of real estate in question was registered in his name -- such as deeds of ownership or transfer, or proof of payment of transfer duties or taxes. Similarly, the Claimant has provided no proof that any of the

alleged \$187 million worth of stocks claimed were registered in his name or that stock certificates were issued to him. In his written pleadings the Claimant himself acknowledged that the requisite formalities for the transfer of real estate and stocks were not completed (see para. 28, supra). At the Hearing, the Claimant also conceded that the actions he undertook during his visit to the Notary Public Office together with his father and Mr. Minoo (an event first mentioned by him at the Hearing in very vague terms (see para. 29, supra)) could have been simply the beginning of the legal transfer process rather than its culmination.

53. In light of the above, the Tribunal concludes that the Claimant has not established that he became the legal owner of any of the real property or stocks allegedly transferred to him by his father and grandfather.

b. Beneficial Ownership

54. The Tribunal next turns to the question whether the Claimant has proven that he held a beneficial ownership interest in any of the properties allegedly transferred to him by his father and grandfather. It is well-established in the Tribunal's practice that under certain circumstances a claimant who is not the record owner of property nevertheless may be found to hold a beneficial interest in that property which, if taken, is compensable before this Tribunal. See, e.g., James M. Saghi, et al. and Islamic Republic of Iran, Award No. 544-298-2, paras. 18-26 (22 Jan. 1993), reprinted in __ Iran-U.S. C.T.R. __, __; Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, 101; Howard Needles Tammen & Bergendoff and Government of the Islamic Republic of Iran, Award No. 244-68-2 (8 Aug. 1986), reprinted in 11 Iran-U.S. C.T.R. 302, 313; Foremost Tehran, Inc., et al. and Government of the Islamic Republic of Iran, et al., Award No. 220-37/231-1 (11 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 228, 239-42; International Technical Products Corp., et al. and Government of the Islamic Republic of Iran, et al., Final Award No. 196-302-3

(28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 206, 231-33; Benjamin R. Isaiah and Bank Mellat, Award No. 35-219-2 (30 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 232, 235-36. To establish such a beneficial ownership interest, however, it is incumbent on a claimant to produce strong evidence that he or she, and not the person registered as the legal owner, was in reality the true owner of the property.

55. The Tribunal notes that contemporaneous letters may in appropriate circumstances constitute written confirmation that a transfer was agreed upon or intended. In the present Case, however, the Tribunal is concerned by the extreme informality of the letters that the Claimant has submitted and the lack of detail in them, particularly in light of the number and value (allegedly \$225 million) of the properties involved. For example, although three of the letters refer to a transfer of one third of Mehdi Nemazee's real estate, none of them provides a description or the deed numbers of the property or indicates in any other way which parcels of real estate were to be transferred. Such an omission is noteworthy given the fact that at least one of them allegedly was intended to serve as an instruction to the Notary Public to prepare the appropriate documents. The casual nature of the letters is especially surprising given the Nemazee family's undoubted access to professional advice. The Tribunal is also troubled by the Claimant's failure to produce, or account for the absence of, the original of the letter by Mr. Minoo addressed to him. The Claimant has not explained adequately how he came to have a photocopy, but not the original, of this letter.

56. Looking beyond the letters, the Tribunal notes that the Claimant has proposed different dates as being the date of the transfers (see para. 17, supra). In his earlier pleadings, when his recollections presumably would have been freshest, the Claimant alleged that the transfers had taken place in January 1979, while in later pleadings and at the Hearing he asserted that they occurred on 5 and 6 February 1979. Mr. Minoo, on the other hand, consistently stated in his videotaped deposition that

the transfers occurred in 1978. This latter discrepancy is quite disturbing, inasmuch as it was Mr. Minoo who allegedly was responsible for executing the transfers.

57. Furthermore, the Claimant has been unable to establish that Mr. Minoo was empowered to execute the transfers on behalf of Mehdi Nemazee. The power of attorney submitted by the Claimant, read together with the earlier power of attorney submitted by the Respondent, indicates that it related only to an apartment in London owned by a third person. Documents submitted by the Respondent and referred to by the Claimant show that Mr. Minoo acted for Mehdi Nemazee in some capacity in relation to the Nemazee Boarding School, but this does not establish that Mr. Minoo was empowered to act generally on behalf of Mehdi Nemazee.

58. The Claimant's allegations concerning his visit to a Notary Public's Office in connection with the transfers of real estate are significant in that under Iranian law, as described by the Respondent and not contested by the Claimant, the Notary Public bears primary responsibility for the preparation of documents relating to the transfer of land (including obtaining the necessary clearances beforehand) and also is responsible for registering the transfer documents; only a summary of the transaction is normally sent to the State Organization for the Registration of Deeds and Real Property. However, the Tribunal is troubled by the fact that neither the Claimant, his father nor Mr. Minoo made any reference to this important visit in the course of the pleadings and that the Claimant made the allegation for the first time at the Hearing. The Tribunal notes also that, as indicated in paras. 29 and 52, supra, the Claimant was unable to provide any significant detail about the visit. He could not specify, for instance, the location of the office; the name(s) of the Notary Public(s) involved; the nature of the papers he signed; or the number of documents he signed.

59. In addition, the Tribunal notes that there is no indication in the record that after the middle of February 1979 the Claimant, Hossein Nemazee, Mehdi Nemazee or Mr. Minoo had any

contact at all with the Notary Public's Office or any of the relevant companies concerning the transfers. While the record indicates that Nemazee family property was under some form of Government control from approximately April or June 1979,⁸ this does not fully explain why the Claimant would not at least have tried to contact these offices. The Claimant apparently made no attempt to bring his ownership of very valuable corporate stocks and real property to the attention of the companies and the Notary Public's Office concerned, whether to attempt to complete the transfers or to enquire whether the transfers had been properly registered.

60. As to the motivation for the alleged transfers, the Claimant contended that his grandfather had decided to divide his assets among his children and that there were tax advantages to transferring the Claimant's father's portion directly to the Claimant. Yet, when asked at the Hearing, the Claimant was unable to specify or quantify any of these advantages, and he has submitted no evidence that would clarify this matter. Indeed, the affidavits of Mr. Minoo and the Claimant's father, both of whom were alleged to be intimately involved with and knowledgeable about the business aspects of these transfers, contain no details about the tax savings that would have resulted.

61. Furthermore, the Claimant's sister provides a different motivation for the alleged transfers, describing the Nemazee family as making a conscious effort to lure the Claimant back to Iran. This latter scenario is somewhat inconsistent with the Claimant's own assertion that he intended to sell the assets and reinvest the proceeds in the United States and that his father and grandfather were aware of this intention. The Claimant's

⁸ The Respondent has argued that amendments made to the Mehdi Nemazee Charitable Foundation in March 1979 show that transfers could have been registered by the family. However, the amendments appear to be designed to incorporate Islamic ideals into the Foundation. Consequently, the registration of this document does not necessarily indicate that any private Nemazee transactions could have taken place.

allegation that he would sell the land in turn appears to be inconsistent with his further contention that the power of attorney that he gave his father in 1977 would have enabled his father to manage or oversee all of the Claimant's properties until such time as his father decided to retire.

62. To be sure, the Respondent's failure to submit copies of many documents that would support its denial that the alleged transfers took place, such as share registers of the companies in question, deeds of ownership, Registry ledgers or notarial records, brings into question the plausibility of its contentions. In appropriate circumstances, the failure of a party to produce evidence available to it may justify the Tribunal in drawing adverse inferences from that failure. See Jacqueline M. Kiaie, et al. and Government of the Islamic Republic of Iran, Award No. 570-164-3, para. 109 (15 May 1996), reprinted in __, Iran-U.S. C.T.R. __, __; Edgar Protiva, et al. and Government of the Islamic Republic of Iran, Award No. 566-316-2, para. 68 (14 July 1995), reprinted in __, Iran-U.S. C.T.R. __, __; Harold Birnbaum and Islamic Republic of Iran, Award No. 549-967-2, paras. 80, 106, 115, 124, 139 (6 July 1993), reprinted in __, Iran-U.S. C.T.R. __, __; Bechtel, Inc., et al. and Government of the Islamic Republic of Iran, et al., Award No. 294-181-1 (4 Mar. 1987), reprinted in 14 Iran-U.S. C.T.R. 149, 162; INA Corporation and Government of the Islamic Republic of Iran, Award No. 184-161-1 (13 Aug. 1985), reprinted in 8 Iran-U.S. C.T.R. 373, 382; Benjamin R. Isaiah and Bank Mellat, Award No. 35-219-2 (30 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 232, 238; RayGo Wagner Equipment Company and Star Line Iran Company, Award No. 20-17-3 (15 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 411, 413. However, given the crucial gaps in the Claimant's documentary evidence and the troubling questions raised by his contentions, as well as inconsistencies in his evidence, it would not be appropriate to draw such inferences in this Case.

63. In light of the considerations set out above, the Tribunal concludes that the Claimant has not met his burden of establishing that he held a beneficial ownership interest in the

real estate and stocks that he alleges were transferred to him by his father and grandfather in 1979.

2. The Saman Vanak Apartment

64. The Tribunal turns to examine the Claimant's contentions concerning the Saman Vanak apartment. As noted above, the Claimant has not submitted any documentary evidence of his alleged ownership of the Saman Vanak apartment, such as a deed of transfer or a title deed (see para. 16, supra). While he explained that at the time of purchase no deed had yet been issued for the apartment, he also failed to provide any corroborating evidence of ownership, such as a contract of sale or proof of payment.

65. The only support for the Claimant's allegations comes from the statements of his sister, Mrs. Golshayan, who asserted that the Claimant owned the apartment and that she had looked after it for him following his departure from Iran in August 1979. Although the Respondent earlier had submitted a document indicating that the apartment was still owned by the Saman Company, at the Hearing it argued that Mrs. Golshayan had leased the apartment to third parties during late 1979 (see para. 49, supra). However, it was not made clear in what capacity Mrs. Golshayan had leased the apartment, and Mrs. Golshayan herself denied that the apartment was leased at all.

66. In addition to the lack of supporting evidence with regard to ownership of the Saman Vanak apartment, there is no evidence showing that the apartment was taken (physically or by decree) or otherwise interfered with by the Respondent. Accordingly, because of the deficiencies of proof relating to both ownership and expropriation, the Tribunal concludes that the Claimant has not satisfied his burden of proving his claim in respect of the Saman Vanak apartment.

V. AWARD

67. For the foregoing reasons,

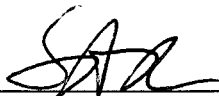
THE TRIBUNAL AWARDS AS FOLLOWS:

(a) REZA NEMAZEE's claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is dismissed for lack of proof.

(b) Each Party shall bear its own costs of arbitration.

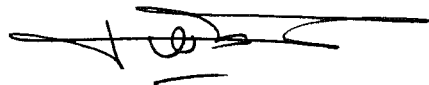
Dated, The Hague

10 December 1996




Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Mohsen Aghahosseini
Concurring



Richard C. Allison