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** AWARD - Type of Award _____
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 - Date _____
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Correction to
 ** SEPARATE OPINION of Aghahassini _____

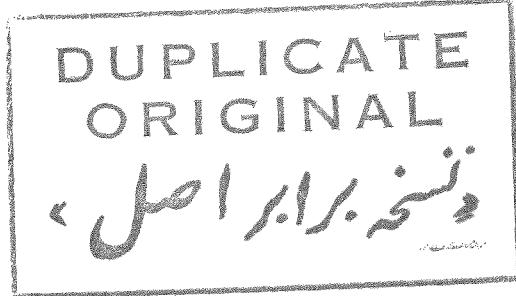
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IN THE NAME OF GOD



Case No. 812
Chamber Three
Award No. 546-812-3

ABRAHIM RAHMAN GOLSHANI,
Claimant,

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحده
FILED	ثبت شد
DATE	8 JUN 1993 ۱۴۷۲ / ۲۱ / ۱۸ تاریخ

Correction to the English Version of
Separate Opinion of Mohsen Aghahosseini

A. The following corrections are hereby made to the English version of my Separate Opinion, filed 2 March 1993.

1. On page 11, footnote 14, the reference should be to footnote 11.
2. On page 32, line 21, and footnote 59, the date of the Act should read "1966."
3. On page 33, line 4, Article 73 should read "Article 74."

4. On page 33, footnote 63, the date of the Act should read "1975."

5. On page 34, footnote 64, the reference should be to footnote 40.

6. On page 37, line 31, were should read "where."

7. On page 51, footnote 100, Doc. 3 should read "Doc. 4."

B. Copies of the corrected pages are attached.

Dated, The Hague,

8 June 1993



Mohsen Aghahosseini

- a) Omits all references, in the Statement of Claim and in Mr. Golzar's Affidavit, to the transfer of 30% shares of TRC, in early November 1978,¹⁴ from Mr. Daneshvar to Mr. Golzar. Mr. Golzar, under the new version, is presented as the former owner, not of 90%, but of 60% of TRC's shares.
- b) Retracts from the earlier assertion, in the Statement of Claim and in Mr. Golzar's and Mr. Golshani's Affidavits, that Mr. Golzar had transferred to Mr. Golshani all his ownership interest in TRC and in his other holdings. Mr. Golzar, according to the new version, "retained one-sixtieth (1/60th) of his interest in TRC in order to permit him to participate in management of the Project"¹⁵
- c) Contradicts the earlier contention, repeated more than ten times in the Statement of Claim and in the Affidavits of Messrs Golzar and Golshani, that the alleged transfer took place in the Spring of 1979. The transfer, says the new version, took place on 15 August 1978, through Deed No. 25345 drawn up by NPO No. 319 in Tehran.¹⁶
- d) Retains the references, in the Statement of Claim and in the two Affidavits, to the events after 11 February 1979, when the Provisional Government came to power in Iran, but adds a few words about the disturbances in Iran as from January 1978. All references to Mr. Golshani's United States' nationality, and to his acquaintanceship among members of the Provisional Government -- previously given as two reasons for the transfer -- are withdrawn.

¹⁴. Or early 1978, as Mr. Golzar's first Affidavit has it. See supra, footnote 11.

¹⁵. Amended Statement of Claim, Doc. 4, para. 24.

¹⁶. Id., para. 12.

parties themselves. Some of these have already been dealt with. A few other, absolutely essential requirements will now be referred to.

First, before any real property can be transferred, the seller must pay all the past due taxes and obtain a Certificate of Tax Clearance from the Ministry of Finance. The notary public is required, by law, to reflect the number of the Certificate in the Deed. Here are the relevant provisions:

"For the absolute transfer of any real property, the notary public has the duty to demand from the seller the Tax Clearance Certificate for the past dues, and to reflect the Certificate's number in the deed."⁵⁹

In order to implement this, a Registration Circular⁶⁰ stipulates:

Before receiving the Tax Clearance Certificate, a notary public may not, with due regard to the Provisions of Direct Taxation Act, proceed to formulate deeds pertaining to the transfer of real property.⁶¹

Second, there is the requirement to pay taxes imposed on transfer income. Under Article 19 of the Direct Taxation Act, 1966, any income derived from the transfer of real property situated in Iran is subject to income tax. Further provisions of the said Act provide for the rate of the imposed tax, and for the duty of the notary public to collect the same against official receipt.

⁵⁹. Article 34 of the Direct Taxation Act, 1966. Under Article 24 of the same Act, any transfer of property against consideration by means of an accord or conveyance is subject to identical taxes.

⁶⁰. See Supra, footnote 40.

⁶¹. Paragraph 113 of the Code of Registration Circulars, supra, footnote 40.

Third, there is the duty imposed on a notary public to seek and to obtain the Clearance Certificate for the Municipality Charges levied upon the real property intended to be transferred:

Under a Proviso to Article 74 of the Municipalities Act, 1955:

Prior to effecting any transaction, the notary public is duty bound to seek in writing from the relevant Municipality a Clearance Certificate for the charges imposed on the real property. The Municipality is required, within ten days after the receipt of the inquiry, either to issue the Certificate or to inform the notary public of the amount of the charges due.

Fourth, the notary public is by law required⁶² not to execute any deed for the transfer of a previously registered real property, before he has inquired from the pertinent local Registration Department, and has been informed by the same, that there exists no impediment to such a transfer. Under a proviso to the said Article, for transfer of any real property situated in Tehran, the notary public must inquire and ensure that the property in question is not subject to any judicial attachments.

Fifth, if the property intended to be transferred is a factory, the notary public is required to receive from the seller a Clearance Certificate issued by the Social Security Organization, indicating that all social security dues have been satisfied.⁶³

⁶². Article 31 of the NPO's By-laws, 1970.

⁶³. Article 37 of the Social Security Law, 1975.

Finally, in accordance with a Circular issued by the State Organization for the Registration of Deeds and Real Property⁶⁴, whenever a notary public seeks to draw a single deed for the transfer of more than one piece of real property, he must prepare and send a separate inquiry for each of them, and separately reflect the replies in the deed.

These are the clear provisions of the law. The Respondent, citing the same, has presented the Tribunal with legal opinions by experts on the Iranian law, including one by a former Judge of the Supreme Court of Iran, and another by the present Dean of the Faculty of Law of Tehran University. They all have expressed the view that these imperative provisions may not be dispensed with. Practitioners, including the current Director General of Iran's Registration Organization have submitted affidavits to the same effect, and have orally testified before the Tribunal. A great number of deeds executed by NPO No. 319 on or close to the date of the Deed in question have been deposited with the Tribunal's Registry. Each deed contains detailed references to the inquiries made by the NPO and the replies received. Each contains references to the numbers and other particulars of the received certificates.

Yet the Deed is simply silent on all these. There is no reference to any inquiry, no reference to any approval, no reference to any tax clearance certificate, no reference to any municipality charges, and no reference to the collection by the NPO of any transfer tax. It is worth noting that this last one alone, the transfer tax, would, in view of the magnitude of the asserted transaction, amount to the equivalent of tens of millions of dollars. The question must then be inevitably asked whether a Deed with so many irregularities and with such blatant disregard for every one of a host of imperative rules governing

⁶⁴. The Code of Registration Circulars, supra, footnote 40.

assets in question which, in terms of value, can only be described as astronomical.

The problems, according to the Affiants, began with the accession to power of the Provisional Government in Iran, on 11 February 1979. A day by day account of the alleged difficulties of the Affiants with, and their harassment by, the Provisional Government, the armed militants, and the local Committees, occupies more than five pages of Mr. Golzar's Affidavit. The account is too extensive to quote in full, but to get the flavor, a summarized version may be provided:

"The circumstances in early May 1979 and in the immediately preceding three months in Iran were particularly dire for myself personally... Commencing with the day of February 11, 1979, when the provisional government came to power, the following events occurred affecting both my personal safety and the validity of continued operation of TRC and my other businesses under my management....

On February 12, 1979, the day after the accession to power of the provisional government, a group of armed militants came to my residence and fired their guns... These militants were under control of the local Niavaran Committee...

On or about the evening of February 14, 1979, two nights after the provisional government assumed power, the militants forcibly broke into my residence and held me captive at gun point. The militants announced that I and my businesses were under "investigation" by the Niavaran Committee, and they interrogated me. The following morning they took me to the Central Committee of the provisional government... where I was detained... by representatives of the provisional government....

Third, The Deed was, as admitted by Mr. Golshani,⁹⁸ hidden in a safe place.⁹⁹ Messrs. Golzar and Golshani, therefore, knew precisely where it was. Between May 1979 and January 1982, they had well over nineteen months to either direct someone to bring it out of Iran (for which there were no conceivable legal or practical impediments) or, alternatively, request someone to look at the document and refresh their memories with regard to its contents. Had they done so, they would not have made those "minor mistakes", provided, of course, that the document did exist at that time.

2.2.7.2 In the Persian version of Mr. Golshani's Affidavit, attached to the Amended Statement of Claim¹⁰⁰, he asserts that "I acquired all my rights, title, privileges and interest in these companies and projects in August 1978 as a gift from Mr. Rahman Golzar" (emphasis added).

In the English version, the reference to acquiring the assets as a gift is simply omitted.

2.2.7.3 In his last Affidavit,¹⁰¹ Mr. Golzar refers to a telephone conversation with Mr. Golshani in early 1978. "After this conversation", he says, "I began considering transferring

⁹⁸. Doc. 146, Ex. 2, p. 4.

⁹⁹. Mr. Golzar has made a similar admission. When he was asked by the Claimant's counsel at the Hearing whether a copy of the alleged Deed was subsequently found, he replied: "It had not been lost to be found. Mr. Golshani had entrusted it with somebody who, through certain means, could take it out and bring it abroad afterwards." Transcript, p. 247.

¹⁰⁰. Doc. 4, Ex. G, para. 3.

¹⁰¹. Doc. 146, Ex. 3, pp. 3-4.