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IRAN-UNITED STATES CLAIMS TRIBUNAL

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دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

دنسخه برابر اصل

CASE NO. 968
CHAMBER TWO
AWARD NO. 565-968-2

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحده
FILED ثبت شد
DATE 7 JUL 1995
تاریخ ۱۳۷۴/۴/۱۶

FEREYDOON GHAFFARI,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances :

For the Claimant :
Mr. Mark Clodfelter, Attorney,
Mr. Fereydoon Ghaffari, Claimant,
Ms. Elizabeth Ghaffari,
Ms. Cynthia Walter,
Mr. Harold Birnbaum,
Persons Appearing for the Claimant,
Mr. Majid Zarrinkelk,
Expert Witness.

For the Respondent :
Mr. Ali H. Nobari, Agent of the Government of the Islamic Republic of Iran,
Dr. Jafar Niaki,
Mr. Seifollah Mohammadi,
Legal Advisers to the Agent,
Mr. Ismaeil Bakhshi Dezfouli, Attorney,
Mr. Hossein Fathi,
Mr. Nasrollah Najee,
Representatives of the Respondent,
Mr. Behrooz Vaghti,
Expert Witness.

Also present : Mr. D. Stephen Mathias,
Agent of the Government of the United States of America,
Ms. Mary Catherine Malin,
Deputy Agent of the Government of the United States of America.

I. INTRODUCTION

1. The Claimant, FEREYDOON GHAFFARI, an Iran-United States dual national, is a professional urban planner. As a United States national, he claims against THE ISLAMIC REPUBLIC OF IRAN (the "Respondent") for the value of his 8.6 percent proprietary interest in Abdolaziz Farmanfarmaian & Associates ("AFFA"), an Iranian engineering and architectural partnership, which he alleges was expropriated by the Government of the Islamic Republic of Iran on 28 July 1979, when a temporary manager appointed by the Plan and Budget Organization of the Government of Iran took over the management of AFFA. According to his final pleadings, the Claimant seeks U.S.$2,984,726 as compensation for the value of his share in AFFA. He further seeks interest and legal costs.

2. On the merits, this claim is virtually identical to the claim in Case No. 967, Harold Birnbaum and Islamic Republic of Iran, decided by Tribunal Award No. 549-967-2 of 6 July 1993 (hereinafter "Birnbaum"). The claimant in that Case, Harold Birnbaum, a professional engineer and, like the Claimant here, an AFFA partner, had sought compensation for the deprivation by the Government of the Islamic Republic of Iran of an identical 8.6 percent ownership interest in that firm. In Birnbaum, the Tribunal found that "the Respondent effectively took control of AFFA in July 1979 through the appointment of a provisional manager pursuant to the Law of 16 June 1979,[1] thereby depriving the Claimant of his ownership interests in the firm." Id. para. 31. The Tribunal set the date of this deprivation at 28 July 1979, the date the government manager assumed his duties at AFFA.

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[1] "Law Concerning the Appointment of Provisional Manager(s) to Supervise Productive, Industrial, Commercial, Agricultural and Services Units in the Private and Public Sectors" of 16 June 1979.

3. The Respondent denies that AFFA was expropriated. It also contests the Tribunal's jurisdiction over this claim, arguing that because the Claimant violated certain provisions of the United States Immigration and Nationality law, he did not validly acquire United States citizenship nor did he subsequently seek recognition of this U.S. nationality under Iranian law; thus, he is a national of Iran and as such ineligible to assert a claim before the Tribunal. Even if the Claimant is held to be a national of both Iran and the United States, the Respondent argues, his dominant and effective nationality is that of Iran and, therefore, the claim is outside the Tribunal's jurisdiction. The Respondent further argues that in any event, even if the claim were to fall within the Tribunal's jurisdiction, it would be barred by the A18 caveat.

4. At the Hearing in this Case, which was held on 13 and 14 September 1994, the Parties requested the Tribunal to modify certain of the conclusions it reached in Birnbaum.

II. JURISDICTION

a. The Nationality of the Claimant

5. In its Decision in Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251 (hereinafter "A18"), the Full Tribunal held that the Tribunal has jurisdiction over claims brought against Iran by Iran-United States dual nationals only when the "dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." A18, at 25, 5 Iran-U.S. C.T.R. at 265. Thus, in accordance with its holding in A18, the Tribunal first must determine whether during the relevant period, Fereydoon Ghaffari was a national of both Iran and the United States. If the Tribunal concludes that this was indeed the case, it will then have to determine which nationality

was dominant and effective during the relevant period and, consequently, must prevail for purposes of jurisdiction in these proceedings.

6. The Claimant was born in Anzali (formerly Bandar Pahlavi), Iran, on 27 November 1928. He received his elementary and secondary education in Tehran, Iran, and graduated in June 1947 from Alborz High School. In September 1947, at the age of 18, he went to the United States to pursue academic studies at Pasadena College and the University of California at Los Angeles (U.C.L.A.) and, eventually, the University of Southern California's (U.S.C.) School of Architecture. He graduated from U.S.C. in 1955 with a Bachelor's degree in architecture.

7. The Claimant's brother had moved to the United States already prior to the Claimant's departure from Iran. After the Claimant had taken residence in the United States, his father and mother also emigrated to that country. Subsequently, both became permanent residents, and the Claimant lived with them and his brother in Los Angeles. The Claimant's sister and another brother remained in Iran.

8. After graduation, the Claimant became a professional trainee with Victor Gruen Associates (later Gruen Associates), a United States planning, architectural, and engineering firm. In 1957 he became an employee of the firm, working in the Planning Department. Also in 1957 the Claimant married Darlene Peterson, a United States citizen by birth. They had two children, Cynthia, born in 1958, and Hans, born in 1963. In March 1958 the Claimant became a permanent United States resident, and he was naturalized as a United States citizen by the United States District Court for the Southern District of California on 28 January 1966.

9. Prior to his naturalization as a United States citizen, in 1965, the Claimant made a series of business trips to Iran, which he had not visited since his departure in 1947. Subsequently,

the Iranian Government selected the Claimant's employer, Gruen Associates, to develop a plan for the city of Tehran in a joint venture with the Iranian architectural firm of Abdolaziz Farmanfarmaian & Associates ("AFFA"). Gruen Associates then asked the Claimant to accept an assignment in Iran to represent the firm on the project. The Claimant accepted this assignment.

10. The Claimant went to Tehran in February 1966. His family joined him later that year, in June. Between 1966 and 1969 the Claimant made a number of trips to the United States, together with his family or alone. In 1968 the Claimant's wife and his son, and subsequently his daughter, returned to the United States. In October 1969 the Claimant finished his assignment and he also returned to the United States. After his return, in 1970, he became a Vice President of Gruen Associates.

11. In 1971, the Claimant and his wife were divorced in Los Angeles. In July 1975, he married Elizabeth Peterson, a United States citizen by birth, in Los Angeles. Then, in August 1975, the Claimant together with his second wife moved to Tehran to become a partner in AFFA and head of the firm's City and Regional Planning Department. While the Claimant and his family took domicile in Iran, he alleges that their move was intended to be a temporary one, for about five years.

12. In August 1978, the Claimant and his wife went temporarily to Athens, Greece where he supervised AFFA's branch office's affairs. When turmoil increased in Iran during the second half of 1978, AFFA met with financial difficulties and decided to close its Athens branch office on 31 December 1978. The Claimant continued to stay in Athens to follow up matters, but as the situation in Iran deteriorated, he and his wife left Athens for Paris, to join other AFFA partners and work on plans to develop business for the firm elsewhere in the Middle East.

13. On 22 April 1979, the Claimant, with his wife, returned to the United States, where he became a manager of the Hillcrest

Development Co., a United States corporation in which he had remained a General Partner for seventeen years. He and his wife subsequently formed Ghaffari Associates to provide planning and economic consulting services and interior design services. In March 1980, they formed Ghaffari Corporation to pursue real estate development and management activities, and engaged in a number of other activities.

14. The Claimant states that since becoming eligible to vote upon his naturalization in 1966, he has voted in every election while in the United States. He has paid U.S. taxes and social security premiums ever since he began to earn income in the United States. He has been a member of a number of professional organizations in the United States; has held bank accounts with United States banks at least since 1956; and has received medical treatment mostly in the United States, even when living abroad.

15. The Claimant used his Iranian passport to enter and exit Iran and also often when travelling in third countries. He registered with Iranian authorities his marriage and the birth of his two children. He paid Iranian income taxes while residing in Iran in accordance with the Iranian law, and held a bank account with an Iranian bank. The Claimant states that he has never voted or registered to vote in Iran. He has never owned real estate in Iran, renting apartments while living there.

16. While there is no dispute between the Parties that the Claimant at all relevant times was, and still is, an Iranian national, the Respondent contests before this Tribunal the validity and effectiveness of the Claimant's United States citizenship. The Respondent argues that the Claimant failed to comply with the requirements of the United States Immigration and Nationality Act concerning continuous residence in the United States. According to the Respondent, the Claimant's trips to Iran in 1965 and his residence in Iran from February 1966 until October 1969 violated the provision of the United States Immigration and Nationality Act requiring continuous residence

in the United States during the pendency of his petition for naturalization and during the five years following naturalization.

17. The Tribunal is satisfied that the evidence presented by the Claimant, which includes, inter alia, a copy of a Certificate of Naturalization, No. 8886221, as well as copies of United States passports issued on 22 February 1971, 1 August 1976, and 14 October 1981, establishes that the Claimant is a United States citizen. There is no evidence on record that the United States Government started, let alone concluded, the proceeding provided for in Section 304 (d) of the U.S. Immigration and Nationality Act, 8 U.S.C. §1451 (d), to authorize the revocation and setting aside of the order admitting the Claimant to United States citizenship and the cancellation of the certificate of naturalization.

18. In the absence of manifest ground to the contrary, the Tribunal shall not question the validity or effectiveness of an act of naturalization by a competent national authority. See, e.g., Afrasiab Assad Bakhtiari and Islamic Republic of Iran, Award No. 500-290-1, para. 17 (27 Dec. 1990), reprinted in 25 Iran-U.S. C.T.R. 289, 295-96; Albert Berookhim, et al. and Islamic Republic of Iran, et al., Award No. 499-269-1, para. 12 (27 Dec. 1990), reprinted in 25 Iran-U.S. C.T.R. 278, 283-84; Reza Nemazee, et al. and Islamic Republic of Iran, para. 21, note 3 (10 July 1990), reprinted in 25 Iran-U.S. C.T.R. 153, 157, note 5. The Tribunal finds no reason to act differently here. Although international tribunals may consider a party's nationality to determine its effectiveness, in the circumstances of this Case, the evidence in the record does not warrant such an investigation. See the Flegenheimer Case (1958), 14 RIAA 327, 337-38; the Pinson Case (1928), 5 RIAA 327; the Polish Nationals in Danzig Case (1931), Ser. A/B, no. 44, p. 24.

19. Having established that the Claimant is an Iran-United States dual national, the Tribunal must now determine the

Claimant's dominant and effective nationality during the relevant period from 28 July 1979, the date the claim arose, until 19 January 1981, the date of the Claims Settlement Declaration. In making this determination, the Tribunal must consider "all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment." A18, at 25, 5 Iran-U.S. C.T.R. at 265. Acts and events preceding the relevant period remain relevant to the determination of the Claimant's dominant and effective nationality during the relevant period; indeed, the Tribunal has held that such a determination must reflect the center of gravity of the Claimant's entire life. See Reza Said Malek and Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51:

> Although [the relevant] period is crucial for the determination of the Tribunal's jurisdiction, it is not the only one to be considered in order to determine if the United States (or Iranian, as the case may be) nationality of a Claimant is his "dominant and effective nationality" at the relevant time. Obviously, to establish what is the dominant and effective nationality at the date the claim arose, it is necessary to scrutinize the events of the Claimant's life preceding this date. Indeed, the entire life of the Claimant, from birth, and all the factors which, during this span of time, evidence the reality and the sincerity of the choice of national allegiance he claims to have made, are relevant.

20. The evidence before the Tribunal points to the conclusion that the Claimant is a dominant and effective United States national. Although the Claimant is a natural-born Iranian citizen who from the date of his birth until the date the claim arose spent approximately the same time in Iran and the United States -- approximately 25 years in both -- other factors indicate that his ties to the United States outweighed those to Iran.

21. While the Claimant spent his childhood and part of his youth in Iran, he moved to the United States at the early age of 18,

where he resided continuously until 1965, when, at the age of 37, he took his first trip back to Iran since his departure. Moreover, although the Claimant returned to live in Iran on two different occasions, in 1966, when he stayed there for three years, and in 1975, when he likewise lived in Iran for a period of three years, it is clear that measured by the criteria listed in A18, supra, para. 19 -- "center of interests, family ties, and participation of public life, and other evidence of attachment" -- the center of gravity of the Claimant's life was situated in the United States. The evidence provided by the Claimant also demonstrates that when he returned to Iran in 1975, he intended to reside there for five years.

22. Because the Tribunal finds that all the relevant factors point to the same conclusion, it need not weigh the relative importance of each of those factors. The Tribunal wishes to point out, however, that generally, what is important in determining the Claimant's dominant and effective nationality is what he did rather than what he said or intended to do. Therefore, for instance, the Tribunal finds it immaterial what the Claimant's intentions were in 1975 when he returned to Iran. Even if he intended to reside in Iran for an indefinite period of time, or permanently, which he denies, the fact remains that he left Iran for Athens, Greece, in August 1978, and he returned to the United States in April 1979, where he has resided since then.

23. Although the Claimant's stay and work in Tehran from 1975 through 1978 clearly strengthened his links with Iran, yet his links with the United States persisted and there was no break in them. In perspective, the period from 1975 through 1978 did not eliminate the overall dominant and effective character which his United States nationality acquired before 1975. Issues like the Claimant's delay for several years in applying for United States citizenship, or the use of his Iranian passport when visiting third countries, although they could be important in some circumstances, are of limited importance in the context of all

the evidence presented in this Case.

24. Consequently, the Tribunal determines that the Claimant was a dominant and effective United States national at all relevant times and that he is eligible to bring his claim before this Tribunal.

b. Other Jurisdictional Issues

25. The claim is for the deprivation of the Claimant's property interest in AFFA and therefore falls within the Tribunal's subject matter jurisdiction of claims arising "out of . . . expropriations or other measures affecting property rights." Article II, paragraph 1, of the Claims Settlement Declaration.

26. Further, the Tribunal is satisfied that this claim was owned continuously by a national of the United States, in accordance with Article VII, paragraph 2, of the Claims Settlement Declaration and that it was outstanding on 19 January 1981, as required by Article II, paragraph 1, of the Claims Settlement Declaration.

27. Based on the foregoing, the Tribunal determines that it has jurisdiction over this Case.

III. MERITS

a. Introduction

28. This claim is for the value of an 8.6 percent proprietary interest in AFFA, an interest identical to the proprietary interest that was the subject of the claim in Birnbaum. As noted, in that Case the Tribunal determined that AFFA was taken by the Respondent on 28 July 1979, see supra, para. 2. The Tribunal went on to conclude that AFFA's net worth at that date

was 976,861,044 rials. See Birnbaum, Correction to Award No. 549-967-2, para. 2 (19 July 1993).

29. At the Hearing, the Parties requested the Tribunal to modify several of its determinations in Birnbaum. Specifically, the Claimant requested the Tribunal to reconsider (1) the value of AFFA's 50 percent interest in TAMS-AFFA[2]; (2) the value of AFFA's office building[3]; (3) the inclusion in AFFA's worth of loans from AFFA to AFFA partners[4]; and (4) the inclusion in AFFA's worth of accounts receivable from Bank Markazi, Vanak Park, and TAMS-AFFA.[5] The Respondent, for its part, requested the Tribunal to modify (1) the date of the taking of AFFA[6]; (2) the conclusions the Tribunal reached with respect to the issues of the ownership and value of AFFA's office building[7]; (3) the value of the tax prepayment account on AFFA's balance sheet[8]; and (4) several of the conclusions the Tribunal reached in determining AFFA's tax liability.[9]

30. The Parties did not ask the Tribunal to make a formal reconsideration of its Award in Birnbaum. The present proceedings are separate and distinct from those in that Case, and the Tribunal's task here is to render a new Award based on the facts and circumstances of this Case. However, the facts and circumstances underlying the merits of this claim are virtually identical to those in Birnbaum. In such a situation, considerations of legal certainty and the need to avoid

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2 See Birnbaum, paras. 65-72.

3 See id. paras. 62-64.

4 See id. paras. 92-96.

5 See id. paras. 73-91.

6 See id. para. 32.

7 See id. paras. 53-61.

8 See id. para. 91.

9 See id. paras. 99-141.

conflicting decisions dictate that the Tribunal exercise caution before modifying the conclusions it reached in its previous Award. In a similar situation in Birnbaum, the Tribunal held that "[a] party requesting modification of a valuation in a previous Tribunal award bears a strong burden of persuasion." Id. para. 71. This standard of evidence is not limited to valuations.

31. Certainly, the Tribunal may modify a decision it made in an earlier Award when new and convincing evidence and argument compel such a modification. The Party requesting the modification is required persuasively to address the concerns and objections expressed by the Tribunal when it decided the issue in the previous Award as well as to remedy any evidentiary shortcomings then identified by the Tribunal.

32. The Tribunal will examine the Parties' requests for modification of certain of the conclusions the Tribunal reached in Birnbaum in light of the considerations set forth in the foregoing paras. 30 and 31.

b. Value of AFFA's Fifty Percent Interest in TAMS-AFFA

33. In Birnbaum, the Tribunal found that AFFA's fifty percent interest in TAMS-AFFA, the Iranian partnership AFFA set up with the United States engineering and architectural consulting partnership of Tippetts, Abbett, McCarthy, Stratton ("TAMS"), was worth 447,000,000 rials. See id. para. 72. The Tribunal based this conclusion on its Award in Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA, et al., Award No. 141-7-2 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219 (hereinafter "Tippetts"). In Tippetts, the Tribunal determined TAMS-AFFA's net worth on 1 March 1980 to be 800,000,000 rials, with TAMS-AFFA owing AFFA "approximately IR 47,000,000 more than it owed TAMS for reimbursement of costs." Id. at 16, 6 Iran-U.S. C.T.R. at 228.

34. In Birnbaum, the claimant, Mr. Birnbaum, argued that evidence he had submitted in that Case, which was not on record in Tippetts, showed that TAMS-AFFA's worth in March 1980 was substantially higher than that indicated in Tippetts. The new evidence relied on by Mr. Birnbaum consisted, primarily, of a report stating TAMS-AFFA's financial position as of 20 March 1980, seemingly prepared under the supervision of TAMS-AFFA's government manager in 1980. Mr. Birnbaum asserted that this financial report, which valued TAMS-AFFA at 571,135,863 rials, understated TAMS-AFFA's real value by 1,280,688,397 rials because it recorded an account receivable in that amount from the Civil Aviation Organization both as an asset under the item "Debtors" and as a liability under the item "Creditors." Mr. Birnbaum argued that the off-setting effect of this double entry on TAMS-AFFA's balance sheet was an accounting device called "contra-account," used to indicate fees that had not yet been paid. Mr. Birnbaum concluded that the true value of TAMS-AFFA at 20 March 1980 was 1,851,824,260 rials and that the value of AFFA's 50 percent interest therein was approximately 893,559,753 rials. See Birnbaum, paras. 68-70. The Tribunal, however, was not persuaded by Mr. Birnbaum's "contra-account" argument, and it confirmed its findings in Tippetts. See Birnbaum, para. 72.

35. The Claimant in this Case reiterates Mr. Birnbaum's "contra-account" argument. Based on the same 20 March 1980 TAMS-AFFA financial report proffered in Birnbaum ("TAMS-AFFA financial report"), he asserts that because the account receivable from the Civil Aviation Organization ("CAO") was recorded both as an asset and as a liability on TAMS-AFFA's balance sheet, the value of TAMS-AFFA was understated on the firm's books. Accordingly, at the Hearing the Claimant requested the Tribunal to reconsider the conclusion it reached in Birnbaum concerning this issue.

36. At the Hearing, the Claimant presented an expert witness, Mr. Majid Zarrinkelk, an Iranian who is a certified public accountant in the United States. He testified concerning the entries in the TAMS-AFFA financial report. Mr. Zarrinkelk

explained that the balance sheet included in this report contains a current assets entry for 1,281,369,705 rials under the item "Debtors."[10] He noted that the TAMS-AFFA financial report also includes a break-down of this entry, in which the account receivable from the CAO is listed, together with six other entries, under the heading "Debtors" in the amount of 1,280,688,397 rials. In this connection, Mr. Zarrinkelk explained that there are two types of accounts receivable, "Trade Accounts Receivable," representing uncollected income for goods or services sold, and "Miscellaneous Accounts Receivable," which include items such as cash advances to employees, petty cash, and the like. According to Mr. Zarrinkelk, of the seven receivables listed in the break-down, only the receivable from the CAO represents a trade account receivable.

37. Mr. Zarrinkelk went on to explain that trade accounts receivable are usually recorded as income receivable on the Profit and Loss Statement when, as in TAMS-AFFA's case, accounts are prepared on an accrual basis. However, he pointed out, the income from the CAO is not recorded in TAMS-AFFA's Profit and Loss Statement. In order to understand why this entry is missing, Mr. Zarrinkelk continued, one has to look at TAMS-AFFA's balance sheet, where on the liability side under the item "Creditors,"[11] there is an entry for 1,482,360,864 rials. Mr. Zarrinkelk observed that the report's break-down of that entry lists ten creditors, among which is the CAO for a credit in the amount of 1,280,688,397 rials. He then explained that the government auditors who prepared the TAMS-AFFA financial report offset the account receivable from the CAO with an account payable to the CAO for an identical amount, rather than recording it as income receivable on the profit and loss statement. Mr. Zarrinkelk asserted that in cash basis accounting, this type of

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[10] According to Mr. Zarrinkelk, the technically more accurate rendition of this item is "Accounts Receivable."

[11] According to Mr. Zarrinkelk, the technically more accurate rendition of this heading is "Accounts Payable," which represent expenses yet to be paid.

entry is called a "contra-account."

38. Mr. Zarrinkelk said he did not believe that the account payable to the CAO represented a real liability. He observed that it would be astonishing if an engineering firm such as TAMS-AFFA owed a debt of this magnitude to one of its clients, especially in the exact amount as the debt owed the firm by the same client. He also said he did not believe that this treatment of the receivable from the CAO reflected any concerns or doubts about its collectibility. If the auditors who prepared the financial statement had had any such concerns or doubts, Mr. Zarrinkelk asserted, they would have created a provision for that receivable in TAMS-AFFA's financial statements.

39. Mr. Zarrinkelk stated that in his opinion, therefore, the double entry on TAMS-AFFA's financial statements was incorrect. He asserted that the result of this operation was to understate TAMS-AFFA's income and, thus, the partners' equity by 1,280,688,397 rials. Mr. Zarrinkelk expressed the view that this treatment could not have been an accident, but rather was a deliberate attempt by the government auditors to understate the value of TAMS-AFFA. Mr. Zarrinkelk concluded that the 1,280,688,397 rials receivable from the CAO properly should have been recorded in TAMS-AFFA's income statement; as a result, the firm's real net worth would be 1,851,824,260 rials.

40. In Birnbaum, the Tribunal held that Mr. Birnbaum's "contra-account" argument failed to meet the heavy burden of persuasion shouldered by a party requesting the modification of a valuation in a previous Tribunal award. It observed:

> Nothing in the TAMS-AFFA financial report indicates that the double entry of the account receivable was in fact a "contra-account." Nor is there any indication that the report used this accounting device for any of the other accounts receivable. In view of the foregoing reasons, the Tribunal is not persuaded by the evidence in the present Case that the valuation it made in its earlier Award should be changed for the purposes of the present Award.

Id. para. 71. In order to persuade the Tribunal that the valuation it made in Birnbaum of AFFA's fifty percent interest in TAMS-AFFA should be changed for the purposes of this Award, the Claimant here, at a minimum, was required satisfactorily to address the objections and concerns raised by the Tribunal when it considered this issue in Birnbaum. This the Claimant has not done.

41. Mr. Zarrinkelk explained the difference between trade accounts receivable and miscellaneous accounts receivable and said that trade accounts receivable, when the accounting is done on an accrual basis, are reflected as income receivable on the profit and loss statement. The Tribunal understands from Mr. Zarrinkelk's explanations that of the seven receivables listed in the TAMS-AFFA financial report, only that from the CAO is a trade account receivable. In the Tribunal's view, however, this distinction between different types of accounts receivable, as explained, does not sufficiently address the concern raised by the Tribunal in Birnbaum, namely why the alleged "contra-account" was not used for any of the receivables other than the receivable from the CAO. The Claimant's contention, in this context, that the double entry on TAMS-AFFA's books was a deliberate attempt by the government accountants to understate TAMS-AFFA's net worth is unsubstantiated and must therefore be rejected for want of proof.

42. The Claimant also failed to address the Tribunal's other concern in Birnbaum that nothing in the TAMS-AFFA financial report indicates that the double entry in question was in fact a "contra-account." This concern, therefore, remains with the Tribunal. Moreover, despite the large amount of the CAO account receivable, the Claimant has provided no supporting document. Nor does the deposition of the former government-appointed manager, Mr. Zarrin-Nejad, which was submitted by the Claimant, provide support on this matter.

43. For the foregoing reasons, the Tribunal rejects the

Claimant's request that the Tribunal abandon its decision in Birnbaum concerning the value of AFFA's fifty percent investment in TAMS-AFFA. Accordingly, the Tribunal confirms that that interest was worth 447,000,000 rials.

c. Ownership of AFFA's Office Building at 28 Takhte Jamshid

44. In Birnbaum, the Tribunal held that AFFA owned the building located at 28 Takhte Jamshid in Tehran that housed AFFA's main offices. Consequently, it included the value it placed on this building, 133,986,036 rials, in AFFA's valuation. See id. paras. 61 and 64.

45. In Birnbaum, the Respondent denied that AFFA owned the office building and, based on the deed to the building, contended instead that certain individuals did. The Tribunal found that the deed was irrelevant to the question of ownership because, inter alia, contemporaneous documentary evidence -- namely, copies of letters exchanged in 1984 among AFFA's liquidator (who had been appointed by the Plan and Budget Organization), the Plan and Budget Organization, and the Islamic Propaganda Agency -- showed that the office building had been purchased in 1353 (21 March 1974 - 20 March 1975) "'from the financial resources'" of AFFA for 107,188,829 rials "'although the deed was issued and registered under the names of the shareholders and their families.'" The Tribunal also took into account that in 1982, AFFA (in liquidation) had sold the office building to the Islamic Propaganda Agency. See id. paras. 56-57. In concluding that AFFA owned the property, the Tribunal reasoned:

> Th[e] evidence shows that the Plan and Budget Organization, who had brought AFFA under government management, AFFA's government manager, and AFFA's liquidator all considered AFFA as the owner of the building, irrespective of whom the 1974 deed named as the original buyers. The Tribunal finds that it would be unjustified now to regard the 1974 deed as relevant to the question of ownership when the Plan and Budget Organization, AFFA's government manager, and AFFA's

> government-appointed liquidator never so regarded it. In this context, the Tribunal considers it particularly telling that the Islamic Propaganda Agency's 50,000,000 rial payment towards the purchase price of the building was in fact made to AFFA . . . .

Id. para. 61.

46. The Respondent reiterates in this Case its contention that AFFA did not own the office building at 28 Takhte Jamshid. In support of its position, the Respondent proffered new documentary evidence and the affidavit and oral testimony of an expert witness, Mr. Behrooz Vaghti, a chartered accountant in Iran and expert in Iranian taxation. The Tribunal reviews this evidence below.

47. The Respondent produced a series of "real estate tax assessments" issued by the Iranian tax authorities in 1980. These assessments identify the office building in question as the real property that was generating the alleged rental income on which the tax was being levied. The assessments also list as taxpayers the individuals whom the title deed to the building names as purchasers: AFFA partners Farmanfarmaian, Majd, and Moaveni, as well as members of their families. In the Respondent's view, apparently, the fact that the tax authorities taxed the individuals named in the deed, rather than taxing AFFA, demonstrates that AFFA did not own the office building.

48. As noted, in Birnbaum the Tribunal rejected the Respondent's argument based on the 1974 deed to the building. In light of the compelling evidence presented in that Case, the Tribunal favored AFFA over the purchasers mentioned in the deed and, accordingly, held that the firm was the true owner of the office building. In reaching this conclusion, the Tribunal reasoned that because that evidence showed that the government agency which had brought AFFA under government management, the firm's government manager, and its liquidator all considered AFFA as the owner, the title deed could not be regarded as dispositive of the question of ownership. The Respondent's present, new argument based on the

"real estate tax assessments" -- which list as taxpayers the same persons mentioned in the deed -- is, in essence, a restatement of its previous deed argument in Birnbaum. Thus, it is equally unpersuasive. Those tax assessments add nothing significant to the evidence in Birnbaum; most importantly, they do not rebut the Tribunal's key findings in that Case that in the early 1980s, AFFA's liquidator, the Plan and Budget Organization, and the Islamic Propaganda Agency viewed AFFA as the owner of the building, and that the Islamic Propaganda Agency's 50,000,000 rial payment toward the purchase price of the building was in fact made to AFFA.

49. The tax assessments, moreover, are not accompanied by any supporting material, and they do not explain the basis for the calculation of the tax. In particular, these assessments are silent as to whether the tax was calculated based on rent that had in fact been paid to the persons whom the assessments identify as "taxpayers," or whether, on the contrary, the tax amount was based on the average rent prevailing in downtown Tehran for property in the same range as AFFA's office building. In this connection, it is noteworthy that the assessments reference Article 38 of the Iranian Direct Taxation Act which, in paragraph 1, provides as follows: "The lease value of properties, when it must be assessed on the basis of rent on similar property in accordance with Note 4 to Article 20, shall be determined by the Tax Assessor of the district where the property is located."[12] Further, all the tax assessment forms, under the heading "Monthly Rent," indicate: "as per report." The Respondent has not proffered the report to which the tax assessment forms allude, although the Respondent presumably would have had access to it. Had this report been submitted, it might have been possible for the Tribunal to determine whether and, if

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[12] Note 4 to Article 20 of the Direct Taxation Act, in pertinent part, reads as follows: "Rental shall be ascertained on the basis of the relevant notarial lease agreements; and where no notarial lease agreements exist or the landlord refuses to submit the agreement or a copy thereof, they shall be assessed on the basis of rental for similar property. . . ."

so, to whom rent for the office building had been paid.

50. Based on the foregoing considerations, the Tribunal rejects the Respondent's argument based on the real estate tax assessments.

51. The Tribunal next turns to the evidence of Mr. Behrooz Vaghti. In his affidavit testimony, which he confirmed at the Hearing, Mr. Vaghti testifies that AFFA did not own the building at 28 Takhte Jamshid. In this connection, he contests the accuracy of the letter dated 10 September 1984 from AFFA's liquidator to the Plan and Budget Organization, which was relied on by the Tribunal in Birnbaum. This letter related that in the year 1353 (21 March 1974 - 20 March 1975), the building "[had been] purchased from the financial resources of [AFFA] for the amount of Rls. 107,188,829, although the deed was issued and registered under the names of some of the shareholders and their families by the Registry Office." Id. para. 56. See also supra, para. 45.

52. In support of his testimony, Mr. Vaghti proffers an internal AFFA "transfer and withdrawal sheet" dated 6 November 1974. This voucher appears to show that on or about that date, a total of 107,188,829 rials was debited from the current accounts of the AFFA partners as follows:

Partner Farmanfarmaian	rials	53,594,415
Partner Majd	rials	17,150,212
Partner Moaveni	rials	12,862,660
Partner Zucker	rials	12,862,660
Partner Birnbaum	rials	10,718,882
Total	rials	107,188,829

At the date of this transaction, AFFA consisted of the above-mentioned partners only. Moreover, it seems to be undisputed that on that date, Abdolaziz Farmanfarmaian held a 4 percent ownership interest in AFFA, Mohammad Reza Majd a 66 percent

interest, and Khosrow Moaveni, Joseph Zucker, and Harold Birnbaum each held a 10 percent interest. Partners Ghaffari, Tabibzadeh, and Tassooji, see Birnbaum, para. 6, joined the firm at a later date.

53. Mr. Vaghti testifies that the 107,188,829 rials recorded in the 6 November 1974 internal AFFA "transfer and withdrawal sheet," which is also the sum referred to in the 10 September 1984 letter from AFFA's liquidator, "is not related to the building which was used by AFFA" because that amount was not debited from the partners' current accounts in proportion to their shares in the firm. For example, Mr. Vaghti points out, although Mr. Farmanfarmaian held a 4 percent interest in AFFA, his current account was debited by 50 percent of the voucher amount.

54. Without further evidence, the Tribunal finds Mr. Vaghti's proposition to be unpersuasive. The possible existence of debts among the AFFA partners might explain why the building's purchase price was not allocated among them in proportion to their shares in the firm.

55. When weighed in the light of these considerations, the 6 November 1974 internal AFFA "transfer and withdrawal sheet" relied on by Mr. Vaghti, rather than refuting it, supports the Tribunal's conclusion in Birnbaum that AFFA's office building was a company asset. Significantly, this document shows that in November 1974, the current accounts of the AFFA partners were debited by a total of 107,188,829 rials, exactly the same amount that the 10 September 1984 letter from AFFA's liquidator quoted as being the original 1353 (1974/75) purchase price of the building, see supra, para. 51. It shows, further, that all of the then AFFA partners -- and only those partners -- participated in the transaction; hence, it bolsters the conclusion that the other persons mentioned in the 1974 title deed to the building -- the non-partners -- in actual fact made no contributions toward the building's purchase price.

56. For all these reasons, the Tribunal affirms that AFFA owned the office building at 28 Takhte Jamshid.

d. Value of AFFA's Office Building at 28 Takhte Jamshid

57. In Birnbaum, the Tribunal based its valuation of AFFA's office building on the property's original 1353 (1974/75) purchase price as stated in the 10 September 1984 letter from AFFA's liquidator, 107,188,829 rials, see supra, para. 51. It adjusted upward this purchase price to account for inflation from the date of the purchase to the date of the taking, and then adjusted it downward to account for the negative effects of the Islamic Revolution on the commercial real estate market in Tehran during 1979. Citing the 1988 International Financial Statistics (published by the International Monetary Fund) 421, the Tribunal observed that "[b]etween 1974 and 1979, the consumer price index for Iran increased by 40.9 points." Birnbaum, para. 63. After taking into consideration the deflationary effect of the Revolution on the value of AFFA's office building, "based on the evidence before it and taking into account all the circumstances of this Case," the Tribunal considered it "fair and reasonable" to value AFFA's office building at 133,986,036 rials, the 1974/75 purchase price increased by 25 percent. See id. para. 64.

58. At the Hearing, both Parties contested the Tribunal's conclusion in Birnbaum concerning the office building's value. The Claimant contended, first, that the Tribunal underestimated the effects of inflation in Iran between 1974 and 1979. In support, the Claimant presented a chart allegedly showing the annual inflation rate in Iran for the years 1974 to 1979, and he concluded that the cumulative inflation for the period was 189.75 percent. Counsel for the Claimant stated that the figures included in the chart had been derived from the International Monetary Fund's 1993 International Financial Statistics. Second, the Claimant argued that a discount for the effects of the Iranian Revolution was unwarranted because those effects had

already been taken into account in the compilation of the financial statistics. Based on the inflation data he presented at the Hearing, the Claimant concluded that AFFA's office building was worth 203,390,048 rials at the date of the deprivation.

59. The Claimant further stated, for the first time, that after AFFA purchased the office building in 1353, it made significant improvements and renovations to it that enhanced the building's value.

60. The Respondent, conversely, contended that in Birnbaum the Tribunal overvalued AFFA's office building. The Respondent argued, first, that because Mr. Birnbaum never sought any adjustment of the building's purchase price to account for inflation, the Tribunal's decision to make such an adjustment was unwarranted. Second, the Respondent went on, the Tribunal unjustifiably failed to consider the dramatic decrease in the value of real estate in Tehran in 1979. Finally, the Respondent maintained that the Tribunal properly should have discounted the building's original purchase price by a certain factor to account for depreciation. Mr. Vaghti testified that the depreciation factor should be 27 percent of the base price.

61. Upon analysis, the Tribunal finds that the Parties presented no new evidence or argument sufficient to convince the Tribunal to abjure its determination in Birnbaum concerning the fair market value of AFFA's office building and site. In particular, nothing that has been argued undermines the significance that the Tribunal attached to the financial data underlying its decision in that Case. With respect to the Claimant's contention that AFFA made improvements to the building that increased its value, no evidence was presented as to the scope and nature of this work, nor was there even an estimate by the Claimant as to the value of those improvements.

62. In light of the foregoing, the Tribunal affirms that AFFA'S

office building was worth 133,986,036 on 28 July 1979.

e. Partners' Loans

63. In Birnbaum, the Tribunal observed that the financial report prepared in 1979 by the government-appointed financial supervisor for AFFA (hereinafter "the 1979 Financial Report"), which stated AFFA's financial position as of 28 July 1979, see Birnbaum, paras. 12 and 50-51, included among AFFA's assets "an adjusted amount of 106,099,844 rials for debts owed by AFFA partners to AFFA." Id. para. 92. While Mr. Birnbaum agreed with the 1979 Financial Report's conclusion, the Tribunal found, instead, that because most AFFA partners had left Iran by the date of the taking, "on that date AFFA had no reasonable prospect of collecting these debts." Id. para. 95. Consequently, the Tribunal concluded that those partners' loans could "not properly be included as valid AFFA assets" and therefore should be written off as uncollectible. See id.

64. The Tribunal made an exception for Mr. Birnbaum's acknowledged debt to AFFA, 12,944,377 rials. It reasoned: "Because this debt must be deducted from amounts due [Mr. Birnbaum] under this Award . . . it would be unfair not to include it as part of AFFA's assets." Id. para. 96.

65. At the Hearing, the Claimant disagreed with the Tribunal's determination in Birnbaum concerning the partners' loans. He contended that if AFFA had not been expropriated, the partners very likely would have repaid the loans to the firm. The Claimant pointed to the principle, which is a well-settled in the Tribunal's practice, as elsewhere, that the taking itself must not be considered as an element adversely affecting the value of the property taken. Hence, he concluded, the fact that the loans had become uncollectible due to the expropriation is not a legitimate consideration in deciding whether to include those loans in AFFA's value.

66. It is undisputed that most of the partners left Iran prior to the taking of AFFA as a consequence of the Islamic Revolution and the resulting changes in the general political, social, and economic conditions in the country. In the Tribunal's view, therefore, it was the Iranian Revolution, rather than the taking of AFFA, that rendered uncollectible the loans that AFFA had extended to the partners. In light of these considerations, the Claimant's argument that the uncollectibility was an effect of the taking itself must be dismissed. Consequently, the Tribunal affirms that the partners' loans cannot properly be factored into AFFA's worth.

67. The Claimant argued, further, that in any event, even if the Tribunal declines to reconsider its decision in Birnbaum concerning the partners' loans, the Claimant's acknowledged debt to AFFA, 5,517,071 rials, should be included as part of AFFA's assets in this Case, as was Mr. Birnbaum's debt in Birnbaum, see supra, para. 64. The Claimant contended, moreover, that precisely because Mr. Birnbaum's debt was taken into account in that Award, it should be included as an AFFA asset in this Case.

68. The 1979 Financial Report concludes that the loans AFFA extended to the Claimant amounted to 5,517,071 rials. In application of the principle it enunciated in Birnbaum, see supra, para. 64, the Tribunal holds that this debt must be included in AFFA's assets, as must Mr. Birnbaum's debt of 12,944,377 rials. In connection with the latter, given that the Tribunal, in Birnbaum, deducted Mr. Birnbaum's debt to AFFA from the amounts due him under that Award, this debt, in effect, was "collected"; thus, it cannot reasonably be written off as uncollectible in this Case.

f. Accounts Receivable from Bank Markazi, Vanak Park, and TAMS-AFFA

69. In Birnbaum, the claimant asserted that AFFA's accounts

receivable were worth 1,125,357,388 rials at the date of the deprivation, the total amount allegedly due from twenty-two AFFA clients. The Respondent, for its part, asserted that at that date, eleven clients owed AFFA a total of 469,546,649 rials. The Tribunal discussed "in detail only three substantial accounts receivable about which the Parties disagree[d]," id. para. 76; it included in the valuation the receivables about which the Parties agreed, see id. para. 88; and, in application of the general valuation principles it outlined and applied in its discussion of the three accounts receivable, it valued the remaining disputed receivables at 141,040,173 rials, see id. Accordingly, the Tribunal concluded that the gross value of AFFA's total accounts receivable on 28 July 1979 was 563,991,374 rials, see id. para. 89.

70. At the Hearing, the Claimant asked the Tribunal to reconsider its decision in Birnbaum not to include in AFFA's value accounts receivable from Bank Markazi, Vanak Park, and TAMS-AFFA. The first two were among the disputed receivables that the Tribunal did not specifically discuss in Birnbaum. As the Claimant correctly inferred from that Award, the Tribunal did not include them as part of AFFA's assets.

71. The Tribunal in Birnbaum did specifically address the receivable from TAMS-AFFA. The Tribunal agreed with the Respondent that the Tribunal's valuation of TAMS-AFFA in Tippetts already took into account TAMS-AFFA's debts to TAMS and AFFA. Consequently, the Tribunal concluded that "AFFA'S net worth cannot include the value of the receivables from TAMS-AFFA in addition to AFFA'S interest in that firm." Id. para. 87.

72. The Claimant has neither introduced new evidence nor provided new argument in support of his requests for reconsideration of the Tribunal's conclusions in Birnbaum about the three accounts receivable in question. In these circumstances, therefore, there is nothing upon which the Tribunal could base a reexamination of those issues.

Consequently, the Claimant's requests are denied.

g. Date of the Taking of AFFA

73. As noted, supra, at para. 2, the Tribunal in Birnbaum found that "the Respondent effectively took control of AFFA in July 1979 through the appointment of a provisional manager . . . ." Id. para. 31. The Tribunal set the date of this taking of AFFA at 28 July 1979, the date the government manager assumed his duties at the firm. See id. para. 32.

74. At the Hearing, the Respondent asked the Tribunal to change the date of AFFA's taking from 28 July 1979 to 1 March 1980, the date the Tribunal, in Tippetts, found the taking of TAMS-AFFA to have occurred. See Tippetts, supra, at 10, 6 Iran-U.S. C.T.R. at 225. In support, the Respondent pointed to the fact that the Plan and Budget Organization appointed Mr. Azad Zarrin-Nejad as temporary manager for both AFFA and TAMS-AFFA on the same date, 24 July 1979.

75. The Tribunal was, of course, fully aware of its earlier decision in Tippetts when it decided Birnbaum. The Respondent has presented neither new evidence nor new argument with respect to the question of the date of the taking of AFFA. In these circumstances, the Tribunal affirms that AFFA was taken by the Respondent on 28 July 1979, the date the government manager assumed his duties at the firm.

h. Tax Prepayments

76. In Birnbaum, the Tribunal deducted from the gross amount of AFFA's accounts receivable (net of a discount for disputed accounts) "5.5 percent for contractor's tax, as it would have been deducted from each payment in accordance with practice and with Article 76 of the Iranian Direct Taxation Act." The

Tribunal included the amount of this deduction, 29,468,549 rials, in AFFA's tax prepayment account as part of AFFA's assets. Id. para. 91.

77. Based on Mr. Vaghti's testimony in this Case, the Respondent contends that in Birnbaum the Tribunal erred in including 5.5 percent of AFFA's gross accounts receivable in AFFA's tax prepayment account. Mr. Vaghti states in his affidavit that pursuant to Note 2 to Article 79 of the Iranian Direct Taxation Act ("DTA"), only 1.5 percent of a contractor's revenues may be credited against that contractor's income tax liability, while "the equivalent of 4% out of the 5.5% of the calculated tax is non-reimbursable and should be taken into account as definitive costs." Hence, Mr. Vaghti appears to conclude, withholdings totalling a mere 1.5 percent of the value of AFFA's gross accounts receivable (net of any discount for disputed accounts) may properly be included as an AFFA asset in the tax prepayment account.

78. Article 76 DTA, in relevant part, provides:

> In respect of contracts . . . for any type of construction work . . . designing and planning of buildings and installations . . . the employers shall be required, as a general rule . . . and to withhold, when effecting each payment, 5 1/2% of the amount thereof which they shall pay to the local Finance Office within 30 days at the latest . . . .

Note 2 to Article 79 DTA, in turn, provides as follows:

> One and half per cent of the amounts payable to the contractor as have been withheld and paid over to the local Finance Office by employers in the manner stated under Article 76 shall be deducted from the amount of the applicable tax when computing the amount of tax payable by taxpayers who are subject to the provisions of the said Article.

79. The provisions found in Article 76 DTA and Note 2 to Article 79 DTA are clear, and the Tribunal has applied them in Birnbaum.

As both Ernst & Young, the claimant's financial expert, and Mr. Vaghti testified in Birnbaum, the Iranian Ministry of Finance, in implementing these provisions, as a matter of practice has adopted the procedure of adding 4 percent of a contractor's receipts to the final tax assessment; thus, when the 5.5 percent withholding is deducted from the contractor's tax liability on payment, it results, in effect, in a credit of 1.5 percent. In determining AFFA's tax reserve in Birnbaum, the Tribunal followed that procedure in all respects except in relation to AFFA's receipts during the year 1358. Consequently, in calculating AFFA's tax reserve in this Case, the Tribunal includes 4 percent of AFFA's receipts during the year 1358, which adds 3,051,204 rials to the tax liability of AFFA.

i. AFFA's Tax Liability

(1) Taxes on Alleged Hidden Payment from TAMS-AFFA

80. In Birnbaum, the Respondent asserted that in the year 1357, the AFFA partners received a total of 141,000,000 rials in undisclosed payments from TAMS-AFFA that escaped taxation. Accordingly, the Respondent argued that that amount should be considered in determining AFFA's tax reserve at 28 July 1979. The claimant denied that the AFFA partners received any such hidden income. The Tribunal found that the evidence relied on by the Respondent failed to prove any of the Respondent's assertions, see id. paras. 123-24. Consequently, it "reject[ed] for lack of proof the Respondent's allegation that in the year 1357 the AFFA partners received undisclosed and untaxed income from TAMS-AFFA." Id. para. 125.

81. At the Hearing in this Case, without presenting either new evidence or new argument, the Respondent reiterated its claim that in 1357, the AFFA partners received hidden, untaxed income from TAMS-AFFA. The Respondent alleged that it had no access to the documents supporting its hidden income claim because these

documents were kept in AFFA's Athens office, which was managed by the Claimant. The Claimant, the Respondent continued, wound up this office in January 1979 but did not return any documents to AFFA's Tehran office. Accordingly, the Respondent requested the Tribunal to modify the conclusion it reached in Birnbaum about the TAMS-AFFA hidden income issue.

82. Absent any new evidence or argument, there is no reason for the Tribunal to revisit the TAMS-AFFA hidden income question, see supra, para. 72. Consequently, the Respondent's request is dismissed.

(2) Taxes for Years 1354 through 1357

83. In Birnbaum, the Respondent contended that AFFA owed 15,152,655 rials in income taxes for the years 1350 (March 1971 - March 1972), 1354 (March 1975 - March 1976), and 1355 (March 1976 - March 1977). The Respondent based this contention on a letter dated 2 December 1987 from the "General Department for Corporate Tax" of the Ministry of Finance and Economic Affairs, stating AFFA's alleged tax liability as of 20 March 1980. The Respondent also relied on a number of AFFA "income tax assessment sheets" issued by the tax authorities for 1350, 1354, and 1355. The 1979 Financial Report stated that AFFA's income taxes for years prior to 1356 "had been settled" by 28 July 1979.

84. The Tribunal in Birnbaum rejected the Respondent's unpaid taxes allegations for want of proof. Id. para. 107. In reaching this conclusion, the Tribunal observed:

> The Respondent has not produced evidence adequate to show that the government-appointed financial supervisor for AFFA was wrong in concluding in the 1979 Financial Report that no income taxes for years prior to 1356 were outstanding on 28 July 1979. The 2 December 1987 letter from the Director General of the Technical Bureau of Taxation cannot, by itself, be regarded as sufficient evidence of AFFA's liability for any income taxes. It is not accompanied by any

> supporting material, and it does not explain in any way the basis for its calculations. [citing cases] The tax assessments for AFFA, also relied on by the Respondent, suffer from similar infirmities. In addition, they are silent as to what payments, if any, AFFA made to the tax authorities.

Id. para. 106.

85. The Respondent reiterates in this Case that AFFA owes income taxes for the years 1354 and 1355. It claims that in addition, AFFA owes income taxes for the years 1356 and 1357. To corroborate these allegations, the Respondent points to the testimony of Mr. Vaghti, an expert in Iranian taxation. In his affidavit, Mr. Vaghti testifies that subsequent to the appointment of the government manager for AFFA in July 1979, "[g]overnmental auditors found access to the books and vouchers of the Company, and they came to know that part of taxable income had not been declared." As a result, he goes on, the tax authorities issued a number of tax assessments taxing AFFA for this unreported income. In support, Mr. Vaghti produced six such "final tax assessment sheets," which seemingly account for a total of roughly 36,000,000 rials in income taxes. These documents are dated between July 1980 and September 1982 and cover AFFA operation years 1354 through 1357. Moreover, they appear to indicate that the government audits to which Mr. Vaghti alludes were carried out in 1980, 1981, and 1982.

86. Based on the six "final tax assessment sheets" just described, as well as on an "initial certificate which was issued for the revenue year 1356 (1977-78), and which was accounted for in the tax advance payment account, submitted herewith . . . , as well as taking into consideration the fines accrued, which are specified in respective assessments as finalized," Mr. Vaghti concludes that AFFA owes a total of 99,679,455 rials in unpaid taxes for the period 1354-1357.

87. The Respondent has not provided the Tribunal with any material supporting the six "final tax assessment sheets" offered

by Mr. Vaghti. The Tribunal has already found that such documents, by themselves, are insufficient proof of AFFA's liability for any income taxes. See Birnbaum, para. 106 and cases cited therein. Nor has the Respondent submitted the alleged "initial certificate" for the revenue year 1356 (1977-78), relied on, but not proffered, by Mr. Vaghti, see supra, para. 85. The Tribunal finds that in light of the above deficiencies, the Respondent's evidence falls short of meeting the standard of proof set by the Tribunal in Birnbaum for allegations of unpaid taxes and hidden income, see supra, para. 83.

88. Quite apart from these evidentiary shortcomings, the Respondent's present allegations with regard to unpaid taxes are unconvincing in light of documents that the Respondent itself produced in Birnbaum. In that Case, as noted, the Respondent proffered a letter dated 2 December 1987 from the "General Department for Corporate Tax," stating AFFA's total outstanding tax liability at 20 March 1980 for operation years 1350 and 1354 through 1358. It also produced a number of tax assessment sheets issued by the tax authorities for those years. The Tribunal is unable to reconcile these documents with the six "final tax assessment sheets" produced by the Respondent in this Case.

89. Specifically, the Tribunal has not been provided with any information that would enable it to square the tax amounts reflected in the documents that the Respondent produced in Birnbaum with the amounts reflected in the six tax assessments the Respondent submitted in this Case. This is so even though both sets of documents cover allegedly outstanding AFFA income taxes for the years 1354 through 1357. In this connection, it is noteworthy that the six "final tax assessment sheets" offered by the Respondent in this Case all predate by several years the 2 December 1987 letter from the "General Department for Corporate Tax" submitted in Birnbaum. Hence, it would seem only plausible to conclude that they were taken into account by the General Department when it prepared its 2 December 1987 declaration

concerning AFFA's total outstanding taxes for the years 1354-1357.

90. For all the foregoing reasons, the Tribunal rejects for lack of proof the Respondent's contention that on 28 July 1979, AFFA still owed income taxes for the years 1354 through 1357.

(3) Taxable Income

91. In Birnbaum, the Parties agreed that the value of AFFA's earned advance payments and the gross value of its accounts receivable from clients were subject to income tax for valuation purposes. They disagreed, however, as to the extent of AFFA's taxable income. The claimant argued that pursuant to Articles 76 and 79 of the Iranian Direct Taxation Act, AFFA's income tax at the date of the taking was to be calculated on a "deemed income basis." This means that only eight percent of AFFA's gross receipts from engineering and architectural contracts would be taxable. The Respondent, in contrast, contended that AFFA's income tax was to be calculated on an "actual profits basis." Pursuant to this method, the totality of AFFA's net income would be taxable. See id. paras. 133-36.

92. The Tribunal in Birnbaum deemed it unnecessary to determine which of the two methods of taxation represented the general rule for taxation of income derived from architectural and engineering contracts. The Tribunal took into account that the Respondent had failed to submit any contemporaneous documentary evidence to prove that in 1358 (21 March 1979 - 20 March 1980), the year of the deprivation, AFFA had been taxed on an actual profits basis, "although AFFA's tax assessment for that year, together with all the underlying documentation, was in the Respondent's possession," id. para. 139; it noted that the Parties agreed that AFFA had been taxed on an 8 percent deemed income basis from 1352 through 1357, id.; and, consequently, it pronounced that "it would be unjustified to tax AFFA on an actual profits basis on

the date of the deprivation." Id. The Tribunal added:

> In any event, the Respondent has not submitted evidence adequate to enable the Tribunal to calculate AFFA's income tax on an actual profits basis.

Id. For all of the foregoing reasons, the Tribunal calculated AFFA's income tax at the date of the taking on the basis of 8 percent of AFFA's gross receipts. See id. para. 140.

93. The Respondent maintains in this Case that in Birnbaum the Tribunal applied the wrong method for determining AFFA's 1358 income tax. Accordingly, the Respondent urges the Tribunal to abandon its decision in Birnbaum concerning this issue and to calculate AFFA's income tax for that year based on the actual profits method of taxation. In support of this request, the Respondent relies on Mr. Vaghti's testimony. Mr. Vaghti testifies that under the Iranian tax system, the rule is to assess income taxes based on the actual profits received by the taxpayer. He states that the deemed income basis of taxation is used only in exceptional circumstances specifically enumerated by the law, such as the taxpayer's failure to submit company financial statements to the tax authorities, or the authorities' rejection of a company's statutory books due to their nonconformity with the law. In this connection, Mr. Vaghti states that AFFA was taxed on a deemed income basis from 1352 through 1357 because it had failed to present its financial statements to the tax authorities.

94. Mr. Vaghti reiterates that in 1358 (21 March 1979 - 20 March 1980), AFFA was taxed on an actual profits basis. To prove this, he offers a "final tax assessment sheet" for AFFA issued by the tax authorities on 22 July 1981 for the operation year 1358. Mr. Vaghti states that this tax assessment sheet shows that AFFA had been taxed on an actual profits basis for that year. Mr. Vaghti did not provide the documentation underlying the tax assessment.

95. In Birnbaum, in rejecting the Respondent's actual profits

argument, the Tribunal observed, inter alia, that the Respondent had not presented any evidence that would enable the Tribunal to calculate AFFA's income tax on an actual profits basis, see supra, para. 91. The Respondent has failed to supplement the record in this Case with any new evidence on this point, although the Respondent has access to AFFA's financial records. Thus, it has failed to rectify a critical evidentiary deficiency identified by the Tribunal in Birnbaum. As a result, the Tribunal is in no better position to determine AFFA's actual profits in this Case than it was in Birnbaum. The Tribunal, therefore, need not concern itself with the question whether the tax assessment for 1358 produced by Mr. Vaghti, by itself, without any underlying documentation, represents evidence adequate to prove that AFFA's income tax for that year was assessed on an actual profits basis.

96. In view of the foregoing considerations, the Tribunal finds here, as it did in Birnbaum, that AFFA's income tax at the date of the taking must be determined on the basis of 8 percent of AFFA's gross receipts.

97. Mr. Vaghti, moreover, states that in cases where the taxpayer violates the requirements laid out in the Iranian Direct Taxation Act concerning the submission of company financial statements to the tax authorities, and the tax authorities, as a result, assess the income tax on a deemed income basis, "violation of tax law as provided in Article [137 DTA] would make the culprit liable for payment of a fine equal to 50% of the tax due." Based on this statement from Mr. Vaghti, the Respondent seems to argue that if the Tribunal calculates AFFA's 1358 income tax on a deemed income basis, then it must add to the tax so calculated the penalty provided for in Article 137 DTA. Article 137 DTA reads as follows:

> As to tax-payers who are required to have books in accordance with the provisions of this law, the penalty for failure to submit balance sheet and profit and loss account or present the books shall be 50% of taxes and for rejection of books 20% thereof.

98. Tax assessments supplied by the Respondent indicate that when the tax authorities assessed AFFA's income tax on a deemed income basis in relation to years prior to 1358, without exception they added to the income tax so assessed a penalty or surcharge of 25 percent of 50 percent of the tax. Although referred to as "penalty," it seems to the Tribunal that this item, in fact, is a corollary of the deemed income basis of taxation since it is routinely applied by the tax authorities when assessing income taxes on that basis. Because the Tribunal calculated AFFA's income tax for the year 1358 based on the deemed income method, in light of the practice of the tax authorities, it seems only fair to add the amount of the surcharge, 25 percent of 50 percent of AFFA's income tax, or 2,787,840 rials, to AFFA's total tax liability, and the Tribunal so decides. While the Tribunal normally would not enforce penalties under a tax law, the consistent practice of the Iranian tax authorities, as evidenced by the tax assessments on record, justifies including that amount in AFFA's valuation.

j. Conclusions

(1) Liability

99. Based on its findings in Birnbaum, paras. 4-36, as well as on its findings in this Award, supra, at para. 75, the Tribunal determines that the Respondent deprived the Claimant of his 8.6 percent ownership interest in AFFA on 28 July 1979, the date the government-appointed manager assumed his functions at AFFA.

(2) Standard of Compensation

100. In this Case, as in Case No. 298, James M. Saghi, et al. and Islamic Republic of Iran, and Case No. 178, Faith Lita Khosrowshahi, et al. and Islamic Republic of Iran, et al., the

Tribunal has used the Treaty of Amity[13] standard of compensation without deciding whether it is applicable to claims of dual nationals whose dominant and effective nationality in the relevant period under A18 has been that of the United States or Iran, as the case may be. See James M. Saghi, et al. and Islamic Republic of Iran, Award No. 544-298-2, para. 79 (22 Jan. 1993); Faith Lita Khosrowshahi, et al. and Islamic Republic of Iran, et al., Award No. 558-178-2, para. 34 (30 Jun. 1994). In none of these cases, including the present one, was that question raised or argued by the Parties.

(3) The Value of the Claimant's Ownership Interest

101. Based on its conclusions in Birnbaum, paras. 37-149 (as corrected in the Correction to Award No. 549-967-2 of 19 July 1993), as well as on its conclusions in this Award, the Tribunal determines that for the purposes of this Case, AFFA's dissolution value as of 28 July 1979 is 976,539,071 rials. This amount is the sum of AFFA's dissolution value as determined by the Tribunal in Birnbaum, 976,861,044 rials, id. para. 143, plus the value of the Claimant's acknowledged debt to AFFA, 5,517,071 rials, see supra, para. 68, minus 4 percent of AFFA's receipts during the year 1358, 3,051,204 rials, see supra, para. 79, and minus the amount of the surcharge on AFFA's income tax, 2,787,840 rials, see supra, para. 98. The gross value of the Claimant's 8.6 percent ownership interest is thus 83,982,360 rials.

102. For the same reasons stated in Birnbaum, para. 144, the Tribunal determines the Claimant's net share in AFFA by deducting the amount of AFFA's loan to the Claimant, 5,517,071 rials, from

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[13] Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 900. The Tribunal has already found that the Treaty was in force at the time the claim in this case arose. See e.g., Phelps Dodge, et al. and Islamic Republic of Iran, Award No. 217-99-2, para. 27 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 131-32.

the Claimant's gross interest. See also supra, paras. 64 and 68. The value of the Claimant's net share in AFFA is, accordingly, 78,465,289 rials.

k. A18 Caveat

103. The Respondent argues that the A18 caveat bars the Claimant from seeking recovery before the Tribunal for the deprivation of his interest in AFFA because when he acquired that interest, the Claimant acted as an Iranian rather than as a United States national. Specifically, the Respondent asserts that the Claimant "made certain gains [in Iran] which he could never have made with his American nationality, and could never have enjoyed them as an American national." The Respondent points out that as a foreign national, the Claimant was required by Iranian law to obtain a visa for entry in Iran, a residence permit to live there, and a work permit for his activity in AFFA. The Respondent alleges that the Claimant failed to satisfy any of these requirements and, thus, his entry, residence, and professional activity in Iran as a U.S. national were contrary to Iranian law. The Respondent concludes that therefore, "the gaining of the rights alleged in this case would become unlawful and illegitimate," thereby constituting a bar to the Claimant's presentation of his claim before the Tribunal.

104. The Respondent contends, in addition, that the Claimant's claim is barred because it relates to benefits that he acquired by using his Iranian nationality rather than his United States nationality.

105. The Claimant denies that he deliberately concealed or otherwise abused his dual nationality when dealing with the Iranian authorities at the times here relevant. The Claimant further contends that his claim does not relate to any benefits that were restricted to Iranian nationals. The Claimant argues that on the contrary, the rights at issue in this claim were

legally obtainable -- and indeed actually obtained -- by non-Iranians. Thus, he concludes, the caveat cannot bar his claim.

106. In its Decision in Case No. A18, the Tribunal held that "where the Tribunal finds jurisdiction based upon the dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim." A18, at 26, 5 Iran-U.S. C.T.R. at 265-66. In its Interlocutory Award in Case No. 316, the Tribunal held:

> This jurisdictional determination of the Claimants' dominant and effective nationality remains subject to the caveat added by the Full Tribunal in its decision in Case No. A18 . . . . The Tribunal will therefore in the further proceedings examine all circumstances of this Case also in light of this caveat, and will, for example, consider whether the Claimants used their Iranian nationality to secure benefits available under Iranian law exclusively to Iranian nationals or whether, in any other way, their conduct was such as to justify refusal of an award in their favor in the present Claim filed before the Tribunal.

Edgar Protiva, et al. and Islamic Republic of Iran, Interlocutory Award No. ITL 73-316-2, para. 18 (12 Oct. 1989), reprinted in 23 Iran-U.S. C.T.R. 259, 263.

107. In its Award in James M. Saghi, et al., supra, the Tribunal held:

> The caveat is evidently intended to apply to claims by dual nationals for benefits limited by relevant and applicable Iranian law to persons who were nationals solely of Iran. However . . . [e]ven when a dual national's claim relates to benefits not limited by law to Iranian nationals, the Tribunal may still apply the caveat when the evidence compels the conclusion that the dual national has abused his dual nationality in such a way that he should not be allowed to recover.

James M. Saghi, et al., supra, para. 54.

108. The Tribunal holds that the right to acquire and hold

proprietary interests in partnerships such as AFFA is not a benefit limited by relevant and applicable Iranian law to Iranian nationals. This is also demonstrated by the fact that Harold Birnbaum, an American, and Josef Zucker, an Austrian, owned 8.6 and 10.32 percent shares in AFFA, respectively, see Birnbaum, para. 6.

109. Moreover, the Respondent has failed to prove that the Claimant, when becoming a partner in AFFA, concealed or otherwise abused his dual nationality in such a way that he should not be allowed to recover on his claim.

110. In light of the foregoing considerations, the Tribunal concludes that there is no evidence that the Claimant obtained any benefit available by law only to Iranian nationals, or in any other way his conduct was such as to justify the refusal of an award in his favor with respect to this claim. Accordingly, the Claimant's claim should not be barred by the caveat.

1. Award

111. Based on the foregoing, having fully and thoroughly considered all of the evidence and arguments presented by both Parties, the Tribunal determines that the Claimant is entitled to 78,465,289 rials as compensation for the deprivation by the Respondent of his 8.6 percent ownership interest in AFFA. This amount is equivalent to U.S.$1,113,378 when converted at the rate of exchange of 70.475 rials/U.S.$1. This was the rate of exchange prevailing during all of 1979. See Petrolane, Inc., et al. and Islamic Republic of Iran, et al., Award No. 518-131-2, para. 147 (14 Aug. 1991), reprinted in 27 Iran-U.S. C.T.R. 64, 115. The Tribunal therefore awards the Claimant U.S.$ 1,113,378.

IV. INTEREST

112. In order to compensate the Claimant for the damages he has suffered due to delayed payment, the Tribunal considers it fair to award interest at the rate of 8 percent from the date of the deprivation, 28 July 1979.

V. COSTS

113. Each Party shall bear its own costs of arbitrating this claim.

VI. AWARD

114. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent, THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, FEREYDOON GHAFFARI, One Million One Hundred Thirteen Thousand Three Hundred Seventy Eight United States Dollars and No Cents (U.S.$1,113,378.00), plus simple interest at the rate of 8 percent per annum (365-day basis) from 28 July 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(b) This obligation shall be satisfied by payment out of the Security Account established by paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

(c) Each Party shall bear its own costs of arbitrating this claim.

(d) This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
07 July 1995

Krzysztof Skubiszewski
Chairman
Chamber Two

In The Name of God

George H. Aldrich

Koorosh H. Ameli
Dissenting Opinion