

968-117

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** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

* DECISION - Date of Decision 30 Oct '96
5 pages in English 5 pages in Farsi

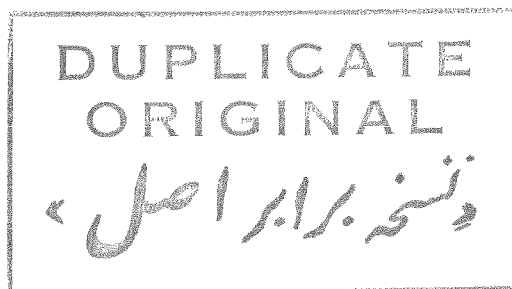
** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
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** DISSENTING OPINION of _____
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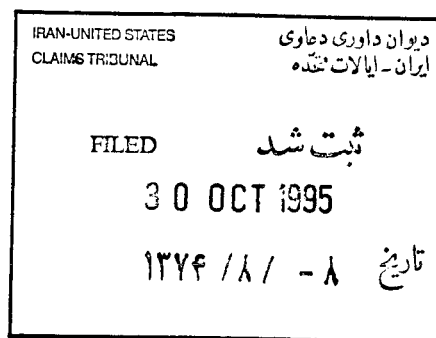


CASE NO. 968

CHAMBER TWO

DECISION NO. DEC 123-968-2

FEREYDOON GHAFFARI,
Claimant,
and
THE ISLAMIC REPUBLIC OF IRAN,
Respondent.



DECISION

1. On 7 July 1995, the Tribunal rendered Award No. 565-968-2 (the "Award"). The Award decided a claim arising out of the expropriation of Claimant Fereydoon Ghaffari's 8.6 percent interest in Abdolaziz Farmanfarmaian & Associates ("AFFA"), an Iranian engineering and architectural partnership, by the Government of the Islamic Republic of Iran on 28 July 1979.

2. On 4 August 1995, the Claimant submitted a request for correction (the "request") of the Award pursuant to Article 36, paragraph 1, of the Tribunal Rules. In the request, the Claimant contends that the 8 percent interest rate used by the Tribunal, in paragraph 112 of the Award, "must be the result of a calculation, typographical or similar error."

3. The Claimant argues, in substance, that the Tribunal erred in ruling that an interest of 8 percent would fairly compensate the Claimant for damages that he had suffered due to the delayed payment. The Claimant bases his argument on the fact that his claim arose out of the same set of facts as the claimant in Harold Birnbaum and Islamic Republic of Iran, Award No. 549-967-2 (6 July 1993) (hereinafter "Birnbaum"). The Tribunal granted the claimant in Birnbaum an interest rate of 9.75 percent as compensation for delayed payment.

4. The Claimant asserts that the 8 percent interest rate used by the Tribunal violates the standard of "fairness" cited by the Tribunal in the Award for fixing the rate of interest, since he suffered the identical deprivation as that suffered by the claimant in Birnbaum for at least the first fourteen years of delayed payment. The 1.75 percent rate difference, the Claimant contends, amounts to U.S.\$272,778 less in compensation than that to which the Claimant would have been entitled had the Tribunal used the same 9.75 percent rate of interest it had in Birnbaum.

5. The Claimant alleges that the Parties in this Case submitted no "new and convincing evidence and argument compel[ling] such a modification" from the 9.75 percent rate of interest used in

Birnbaum. This change in the Tribunal's previous decision, the Claimant insists, flies in the face of the "considerations of legal certainty and the need to avoid conflicting decisions" cited by the Tribunal in paragraph 30 of the Award.

6. Finally, the Claimant suggests that the 8 percent rate of interest used by the Tribunal could not have been the result of a decline in interest rates since the filing of the Award in Birnbaum. According to the Claimant, interest rates during each of the two years since the filing of the Award in Birnbaum would have to have averaged -4.25 percent in order to drop from the 9.75 figure used by the Tribunal in Birnbaum to 8 percent for the entire 16-year period of the delayed payment, an obvious impossibility.

7. The Claimant concludes by requesting the Tribunal "to do the right and fair thing by correcting Award No. 565 to award an additional 1.75 % in interest for the first fourteen years of the claim."

8. Award No. 565-968-2 was served on both the Agent of the Government of the Islamic Republic of Iran and the Agent of the United States of America on 10 July 1995. Thus, the request was submitted within thirty days after the receipt of the Award, as provided for in Article 36, paragraph 1, of the Tribunal Rules. Accordingly, the Tribunal finds that the request was made in a timely manner.

9. Article 36, paragraph 1, of the Tribunal Rules provides that a party may request the Tribunal to "correct" in an award any "errors in computation, any clerical or typographical errors, or any errors of similar nature."

10. Were the 8 percent rate employed by the Tribunal in paragraph 112 of the Award the result of an error envisioned by Article 36, paragraph 1, of the Tribunal Rules, the Tribunal would not hesitate to correct the error. See Birnbaum, Correc-

tion to Award No. 549-967-2 (19 July 1993). Such a computational error, however, did not occur in this Case.

11. The Tribunal was fully aware of the consequences of its choice, and, considering the evidence and arguments submitted in the present claim, determined that an 8 percent rate of interest fairly compensated the Claimant for damages suffered due to delayed payment. The difference from the rate of interest awarded by the Tribunal in Birnbaum did not result from an error in calculation or otherwise and is consequently not subject to correction pursuant to Article 36 of the Tribunal Rules.

12. Insofar as the request constitutes an attempt to reargue certain aspects of the Case, to disagree with the conclusions of the Tribunal in its Award, or to request that the Tribunal explain its reasons for the Award, there is no basis in the Tribunal Rules or elsewhere for a request of this kind on such grounds. See Paul Donin de Rosiere, et al. and Islamic Republic of Iran, et al., Decision No. DEC 57-498-1, para. 4 (10 Feb. 1987), reprinted in 14 Iran-U.S. C.T.R. 100, 101; Norman Gabay and Islamic Republic of Iran, Decision No. DEC 99-771-2, para. 8 (24 Sept. 1991), reprinted in 27 Iran-U.S. C.T.R. 194, 195.

13. In view of the foregoing, the Tribunal finds that there is no basis under the Tribunal Rules for making the change requested.

14. For the foregoing reasons:

THE TRIBUNAL DECIDES AS FOLLOWS:

The request submitted on 4 August 1995 by the Claimant, Fereydoon Ghaffari, is denied.

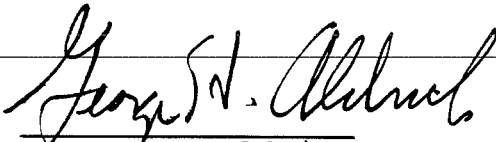
Dated, The Hague

30 October 1995

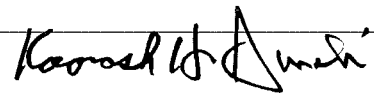


Krzysztof Skubiszewski
Chairman
Chamber Two

In The Name of God



George H. Aldrich



Koorosh H. Ameli