

ORIGINAL DOCUMENTS IN SAFE

Case No. 144

Date of filing: 3 FEB 1984

** AWARD - Type of Award FINAL AWARD
- Date of Award 3 FEB 1984
6 pages in English 6 pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

Case No. 144

Chamber Two

Award No. 110 -144-2

JACK W. MACKAY JR. and
ROXANNA MACKAY,
Claimants,

and

IRAN BEVERAGES COMPANY,
BANK MARKAZI IRAN, and
THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعوی ایران - ایالات متحدہ	
ثبت شد - FILED		
Date	۱۳۶۲ / ۱۱ / ۱۹	تاریخ
03 FEB 1984		
No.	144	شماره

AWARD

Appearances:

For Claimant:

Mr. Frank B. Webb,
Mr. W. David Dunn,
Attornies

For Respondents:

Mr. Mohammad K. Eshragh,
Agent of the Islamic
Republic of Iran
Mr. Akbar Shirazi,
Counsel to the Agent and
Representative of the
Islamic Republic of Iran
Mr. Mahamoud Alizadeh,
Mr. Mohammad Ajoudani,
Mrs. Shirin Ershadi,
Representatives of Bank
Markazi

DUPLICATE
ORIGINAL

دستخبر برابر اصل

Also Present:

Mr. Arthur W. Rovine,
Agent of the United States
of America
Ms. Jamison Selby,
Deputy Agent of the
United States of America

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I. The Claims

The Claimants, nationals of the United States, have brought two alternative claims. One is against Bank Markazi for its alleged refusal to honor an irrevocable letter of credit dated 3 September 1979 in the amount of U.S. \$4,600,000. The other is against Iran Beverages Company and the Islamic Republic of Iran for breach of a Contract dated 2 August 1979 between Iran Beverages Company and the Claimant for the acquisition by the Company of certain agricultural real estate owned by the Claimants and located in the State of Mississippi, along with certain related equipment, rights, information and personal property. Although this property was eventually resold by the Claimants in March 1982, they claim damages in the total amount of U.S. \$3,872,244 for losses on resale, the loss of use of funds during the interim period before resale and farming losses incurred during the interim period. With respect to both alternatives, the Claimants seek interests and costs.

The Respondents deny liability under either alternative claim. Bank Markazi alleges that it has no record of the letter of credit or of its being presented and that, in any event, the letter of credit was a forgery. The Respondents deny jurisdiction over the claim against Iran Beverage Company, asserting that it is not controlled by the Government of Iran so as to be "Iran" as defined in Article VII, paragraph 3, of the Claims Settlement Declaration, and they further deny that Iran Beverages Company entered into the acquisition contract in question.

II. Jurisdiction

With respect to the claim based on the letter of credit, no serious jurisdictional issues are presented. The Claimants have proved that they are and were during the relevant time nationals of the United States. That the Respondent, Bank Markazi, is included within the definition of "Iran" in Article VII, paragraph 3, of the Claims Settlement Declaration cannot be disputed.

With respect to the alternative claim, however, the Respondents contend that Iran Beverages Company is not included within the definition of "Iran", as it was not controlled by the Government of the Islamic Republic of Iran, and they have provided Minutes of the 15 July 1980 annual meeting of the General Assembly of the Company, affidavits from the Managing Director and a major shareholder, documents from the corporate registration office, and a letter dated 26 September 1982 from Mr. Nejdedh Aslanian Avnessian (one of the major stockholders in the company) to support that contention. The Claimants provide as evidence merely an affidavit by an American attorney to the effect that an Iranian lawyer who cannot be identified had reviewed the records at the Registry of Companies in Tehran and had found that at some time not later than January 1980 all shares of stock of the Aslanian family were seized and taken over by the Foundation for the Oppressed. Although the Claimant also filed a brief "affidavit" by N.H. Aslanian (not witnessed or notarized) in which he

asserts that he was a director and employee of Iran Beverages Co. and confirms the facts of the transactions as set forth in the Statement of Claim, that "affidavit" does not deal at all with the question of the subsequent nationalization of the ownership interest of the Aslanian family in Iran Beverages Company. Moreover, the Tribunal notes that there appears to be enough difference between the signatures of the N.H. Aslanian who signed the acquisition contract and "affidavit" and the Nejede Aslanian Avanesian who signed the minutes of corporation meetings in 1978 and 1980 and the 1982 letter submitted by Respondents to raise a question as to whether they are the same person. The Tribunal notes that neither party has requested a hearing in this case. After review of all the evidence submitted relevant to this question, the Tribunal concludes that the Claimant has failed to prove that Iran Beverage Company has been controlled by the Government of Iran so as to be included within the definition of "Iran" in Article VII, paragraph 3, of the Claims Settlement Declaration. Therefore, the Tribunal holds that it has no jurisdiction over the alternative claim against Iran Beverages Company.

III. The Letter of Credit Claim

The original of the letter of credit in this case was not submitted to the Tribunal, but a photo copy was submitted. The Claimant alleges that the original was mailed to N.H. Aslanian, along with the deed, bill of sale, and certificate of title, all of which were presented to Bank Markazi by Mr. Aslanian. The only evidence presented to

support that contention was the brief "affidavit" by N.H. Aslanian. Bank Markazi denies any knowledge of the letter of credit, and submitted affidavits to prove that it has no record of either the issuance or presentation of such letter of credit, that it would not have been authorized to issue letters of credit except for government agencies, that purchase of land in other countries would not have been authorized in 1979, that Bank Markazi would have used a corresponding bank for any foreign transaction involving the letter of credit, and, in sum, that the letter of credit could not have been issued by it. Although the signatures shown on the copy of the letter of credit appear to be those of two persons authorized by Bank Markazi to sign letters of credit, the Bank points to differences in the format, terminology and numbering of the document as evidence that it was not an authentic document.

On the basis of the above considerations and taking into account all evidence submitted in this case, the Tribunal concludes that, while the Claimants may well have had no reason to believe that the letter of credit was in any way defective, refusal by Respondent, Bank Markazi to honor it, if in fact it was ever presented to the Bank, would have been justified. Therefore, the Tribunal holds that the claim based on the letter of credit must be dismissed on the merits.

IV. Costs

Each party shall be left to bear its own costs of arbitration.

AWARD

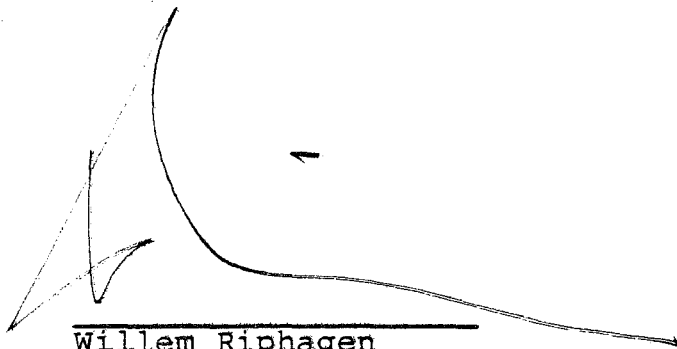
THE TRIBUNAL AWARDS AS FOLLOWS:

The claim against Bank Markazi based on the letter of credit is dismissed on the merits.

The alternative claim against Iran Beverages Company and the Islamic Republic of Iran is dismissed for lack of jurisdiction.

Each of the parties shall bear its own costs of arbitrating this claim.

Dated, The Hague
3 Feb. 1984

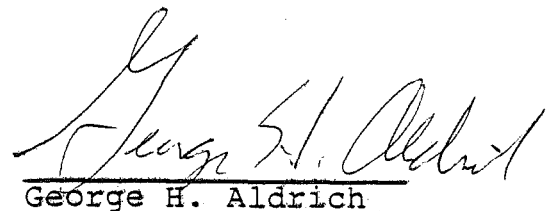


Willem Riphagen
Chairman
Chamber Two

In the name of God,



Shafie Shafeiei



George H. Aldrich