

ORIGINAL DOCUMENTS IN SAFE

Case No. 148

Date of filing 19 Aug 1983

AWARD. Date of Award 19 Aug 1983

7 pages in English. — pages in Farsi.

DECISION. Date of Decision _____

_____ pages in English. _____ pages in Farsi.

ORDER. Date of Order _____

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CONCURRING OPINION of _____

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DISSENTING OPINION of _____

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OTHER; Nature of document: _____

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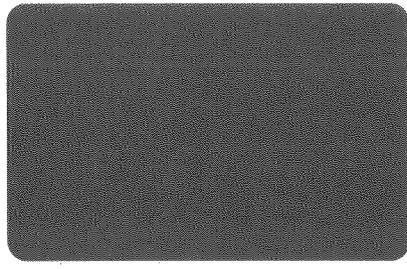
IRAN UNITED STATES
CLAIMS TRIBUNAL

دادگاه داورى دعاوى
ایران - ایالات متحدہ

ثبت شد - FILED

No. 148 / 148 شماره

Date 1362 / 5 / 28 تاریخ
19 AUG 1983



CASE NO. 148
CHAMBER ONE
AWARD NO. 67-148-1

RAM INTERNATIONAL INDUSTRIES, INC.,
UNIVERSAL ELECTRONICS, INC.,
GENERAL AVIATION SUPPLY, INC.,
GALAXY ELECTRONICS CORP.,
Claimants,
and
THE AIR FORCE OF THE ISLAMIC
REPUBLIC OF IRAN,
Respondent.

DUPLICATE
ORIGINAL
نسخه برابر اصل

AWARD

Appearances:

For Claimants:

Barry D. Epstein, Attorney
Marvin Charter, President Ram
International Industries,

For Respondent:

A. A. Riazi, Representative of
the Air Force,
M. S. Tehrani,
R. Ramazani,
R. H. Moghadam,
Technical Advisers,

E. Bakhschi, Secretary,

Also present:

Mohammad K. Eshragh, Deputy
Agent of the Islamic Republic
of Iran,
Arthur W. Rovine, Agent of
the United States of America.

I. Facts and Contentions

Ram International Industries, Inc., Universal Electronics, Inc., Galaxy Electronics Corp. and General Aviation Supply, Inc. are all corporations organized under the laws of the State of New Jersey. These corporations filed with the Tribunal on 10 December 1981 a claim in the amount of \$277,094.39 for certain accounts receivable which represented monies owed for goods sold and delivered to the Air Force of the Islamic Republic of Iran. It was alleged that these debts arose out of various contracts entered into between the Claimants and the Air Force. The Claimants also referred to the payment conditions indicated on the respective invoices regarding these goods and requested the Tribunal to award 10% interest on the claim as from a date 30 days after delivery until payment was made.

There is no dispute in the case that electronic goods covered by these contracts were delivered to Behring International, Inc. in New Jersey, admittedly the Air Force's agent for receipt of goods, in accordance with invoices made out to the "Imperial Iranian Air Force Purchasing Mission" located on Worth Street, New York City. Neither is there any dispute as to the amounts of these invoices.

The Respondent has raised an issue as to who the proper Claimants are for these amounts and has further questioned whether the Tribunal has jurisdiction over any claim by Galaxy Electronics. In this respect the Respondent has argued that the evidence submitted by the Claimants shows that Galaxy Electronics ceased to exist as a New Jersey corporation on 16 April 1980.

The Respondent has also denied that the goods were ever received in Iran and has argued that they were delivered to Behring after the time for delivery provided by the contracts.

The Parties also disagree as to the method of payment to be used in respect of the goods at issue. The Claimants argue that the goods were sold on open credit, and that their sole obligation was to deliver the goods to Behring which would forward the original on-board Bill of Lading to the Purchasing Mission. Thereafter, the Purchasing Mission would draw a cheque in favour of the Claimants on its account at Manufacturers Hanover Trust Company in New York where a letter of credit in favour of the Mission was opened. The Respondent, on the other hand, contends that payment was to be effected against letters of credit in favour of the Claimants upon presentation to the bank by the Claimants of certain original shipping documents. The Respondent argues that such letters of credit were opened in favour of the Claimants in accordance with the contracts and that the Claimants have failed to show why they were not paid from these letters of credit. The Respondent further states that it would have been prepared to pay for the goods on presentation of the necessary original documents.

II. Procedural and jurisdictional issues

The Claimants have specified that the total amount of \$277,094.39 consisted of the following claims for goods

delivered by Universal Electronics, General Aviation and Galaxy Electronics:

1. Universal Electronics	\$ 263,315.00
2. General Aviation Supply	\$ 10,241.46
3. Galaxy Electronics	\$ 3,537.93

As to the claim by Galaxy Electronics the Claimants have admitted that this company was not in existence on the day that the claim was filed but argue that Galaxy Electronics' assets and liabilities had been taken over by Ram International, referred to as the "parent company" of the other three corporations. However, in view of the small amount of Galaxy Electronics' claim the Claimants have informed the Tribunal that they did not find it worthwhile to submit any evidence to substantiate the allegation that Galaxy Electronics' claim has been taken over by Ram International. The Tribunal therefore concludes that the Claimants' position in this respect is tantamount to a withdrawal of the claim for \$3,537.93.

The evidence shows that Universal Electronics and General Aviation were owned directly by two United States citizens, Marvin Charter and Richard Graham. There is no evidence that any of these two corporations were owned by individuals indirectly through other corporations. The Tribunal therefore finds that it has jurisdiction over the remaining claims.

III. Reasons

The pleadings in another case before the Tribunal (Case

No. 382; Chamber Three) indicate that Behring and the Air Force are involved in a dispute, and it has been alleged in that case that Behring failed to ship to Iran some of the goods that it received on behalf of the Air Force. However, as far as the goods at issue in this case are concerned the Respondent has admitted that Behring was authorised to receive the goods on behalf of the Air Force.¹ Therefore, regardless of whether the goods were ever in effect shipped to Iran, delivery to Behring as agent was effectively delivery to the Air Force.

As to the contention by the Respondent that the goods were delivered to Behring only after the time for delivery provided by the contracts, the Claimants refer to a letter of 15 February 1978 from the "Imperial Iranian Air Force Logistics Support Center" to Mr. Marvin Charter in which the Air Force has agreed to extend the delivery dates regarding all items at issue in the case to 30 June 1980. The letter states that this action was taken as a result of the Air Force's lateness in making payment due to the re-organization of their Logistics Support Center. The Respondent does not deny that the goods were delivered within the delivery date agreed to by the Air Force in this letter but has questioned the authenticity of the letter.

¹ Subsequent to the Hearing in this case the Tribunal ordered the Claimants to submit a certificate by a public accountant containing specified information regarding the question of the Claimants' nationality. The Tribunal also invited the Respondent to file a Response regarding this information. It seems that the Respondent in its Response has withdrawn its previous admission that Behring was authorised to receive the goods. However, in view of the earlier admission and the untimeliness of this change of position, the Tribunal finds that the Respondent's submission in the Response, which was permitted only on a different issue, should be disregarded.

The letter is written on the stationery of the "Imperial Iranian Air Force Logistics Support Center" and is signed by A. Sadighi on behalf of the Support Center. The Respondent has not presented any evidence to substantiate its allegation regarding the authenticity of the letter. In these circumstances it must be held for the purposes of this case that the letter is authentic and was signed by a person authorised to represent the Air Force in this matter.

Consequently, the Tribunal holds that the goods have been delivered to the Air Force within the agreed time for delivery. The Respondent has not submitted any evidence that the goods have been paid for. In these circumstances the Tribunal does not find it necessary to go further into the question of the payment procedure. The Tribunal accordingly finds the Air Force liable for the payment of the amounts owed Universal Electronics and General Aviation for goods sold and delivered, plus interest at the rate of 10% per annum as from 30 days following the date of the respective invoices covering such goods.

IV. Conclusion

The claim of \$3,537.93 relating to Galaxy Electronics and Ram International, not having been pursued, is dismissed.

The Air Force of the Islamic Republic of Iran is therefore obligated to pay:

1. Universal Electronics, Inc. US \$263,315.00, plus interest at the rate of 10% per annum as from 2 February 1979 to the date of this Award;

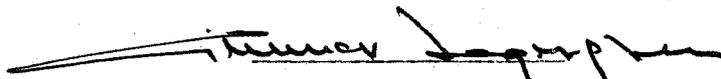
2. General Aviation Supply, Inc. US \$10,241.46 plus interest at the rate of 10% per annum as from 16 November 1978 to the date of this Award.

Since Universal Electronics, Inc. and General Aviation Supply, Inc. are the prevailing Parties, they are entitled to their costs of arbitration. The Claimants have left the determination of those costs to the Tribunal's discretion, in the exercise of which it is determined that the Respondent shall pay Universal Electronics, Inc. US \$7,500.00 and General Aviation Supply, Inc US \$7,500.00.

The above obligations shall be satisfied out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

This Award is submitted to the President of the Tribunal for the purpose of notification to the Escrow Agent.

Dated, The Hague,
19 August 1983



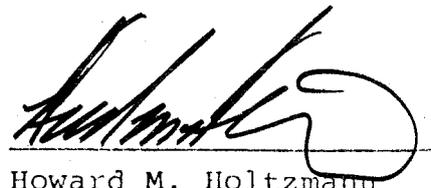
Gunnar Lagergren

Chairman

Chamber One



Mahmoud M. Kashani
Dissenting Opinion



Howard M. Holtzmann