

163-93

ORIGINAL DOCUMENTS IN SAFE

Case No. 163

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** AWARD - Type of Award _____
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** DECISION - Date of Decision 23 APR 93
6 pages in English 7 pages in Farsi

** CONCURRING OPINION of _____
- Date _____
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DUPLICATE
ORIGINAL
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CASE NO. 163

CHAMBER TWO

DECISION NO. DEC 109-163-2

MARINE MIDLAND BANK, N.A.,
Claimant,
and

IRAN-UNITED STATES
CLAIMS TRIBUNAL
دیوان داورى دعاوى
ایران - ایالات متحده
ثبت شد
FILED
DATE 23 APR 1993
تاریخ ۱۳۷۲ / ۲ / ۳

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
BANK MARKAZI OF IRAN, BANK IRANSHHR,
IRANIANS BANK, BANK SEPAH, BANK PARS,
BANK SHAHRYAR, INTERNATIONAL BANK OF
IRAN AND JAPAN, INDUSTRIAL AND MINING
DEVELOPMENT BANK OF IRAN and BANK SENAYE IRAN,
Respondents.

DECISION

1. On 18 December 1981, MARINE MIDLAND BANK, N.A. ("MMB") brought a Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("IRAN"), BANK MARKAZI OF IRAN ("Bank Markazi"), BANK IRANSHAHR, IRANIANS BANK, BANK SEPAH, BANK PARS, BANK SHAHRYAR, INTERNATIONAL BANK OF IRAN AND JAPAN, INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN and BANK SANAYE IRAN to recover the principal and interest due on a variety of banking and other transactions.

2. Pursuant to a Joint Request of the Parties, the Tribunal by its Order of 19 December 1983 terminated the proceedings of all claims in this Case except for the seventh. Subsequently, a certain part of the seventh claim was repaid and accordingly only a claim for interest remained outstanding.

3. A separate case, Case 789, which involved a claim brought by Bank Markazi against MMB seeking payment of various sums of principal and interest, was terminated by the Tribunal on 15 April 1986 as a result of the Tribunal's decision in Case No. A17, United States of America and Islamic Republic of Iran, Decision No. DEC 37-A17-FT (18 June 1985), reprinted in 8 Iran-U.S. C.T.R. 189. In terminating Case 789, the Tribunal reminded the parties that if the Iranian bank claim involved in Case 789 "relates to a claim by a United States banking institution ... then a party in such other Case may request that the Iranian bank claim be decided as a counterclaim in that other Case."

4. On 1 May 1986, Bank Markazi, which was a named Respondent in Case 163, requested the Tribunal to decide the not previously settled portion of its claim in Case 789 as a counterclaim in Case 163. By its filing of 31 July 1986, MMB objected to Bank Markazi's request. By its Order of 2 October 1986, the Tribunal "defer[red] taking a decision regarding the admissibility of the Counterclaim until such time as the proceedings in this Case [were] no longer suspended." This had been the case since late 1983.

5. On 27 June 1990, the Tribunal issued an Order requesting the Parties to inform the Tribunal by 15 August 1990 of the present status of the Case. The Tribunal also requested the Parties to identify the extent to which there remained any disputes between the Parties with respect to the claims and counterclaims, if any, in the Case. The Parties were further requested to indicate whether the suspension should be continued and, if so, the reasons therefor.

6. In a submission dated 15 August 1990 the Agent of the Islamic Republic of Iran informed the Tribunal that with respect to the remaining claim in Case 163 "final agreements have been signed by respective banks' representatives, and, upon payment of the amount involved, ... all claims ... will be settled. The Counterclaims ... have not yet been resolved." The Claimant in its letter filed on 10 September 1990 stated that all of its outstanding claims had been settled, and renewed its request for dismissal of the Counterclaim for lack of jurisdiction.

7. In its Order of 5 November 1990, the Tribunal noted the Parties' submissions and requested the Parties to inform the Tribunal by 2 January 1991 whether the payment by the Federal Reserve Bank had been made and whether the Counterclaim had been settled. The Tribunal also indicated that it "intends to decide as to the termination of the proceedings with respect to the Claim pursuant to Article 34 of the Tribunal Rules and as to the admissibility and jurisdictional aspects of the Counterclaim on the basis of the documents before it."

8. On 3 January 1991, MMB informed the Tribunal that it had received the payment called for by the settlement agreement which had settled the remaining part of the seventh claim, and that the Counterclaim had not been settled. The Respondents have not filed any comment in response to the Tribunal's Order or MMB's submission. In view thereof, and in accordance with its Orders of 2 October 1986 and 5 November 1990, the Tribunal must now decide whether the Counterclaim is within its jurisdiction.

9. Bank Markazi presents two alternative arguments for the Tribunal's jurisdiction over this Counterclaim. First, it argues that its Counterclaim in this Case is based on Article 2 (B) of the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, dated 19 January 1981 ("Undertakings") and that Article 2(B) does not restrict counterclaims to those arising out of the same contract, transaction, or occurrence as the claim. However, in Case A17, the Tribunal held that:

"To the extent that such claims purport to be based on Paragraph 2 (B) of the Undertakings, the Tribunal determines that it has jurisdiction over such claims only to the extent, if any, that they are disputes as to amounts owing from Dollar Account No. 2, for the types of debts payable out of that account. It is evident from the text of Paragraph 2 (B) that its payment provisions deal solely with the disposition of the funds deposited in that account. Paragraph 2 (B) gives no jurisdiction over 'claims' by one bank seeking payment from another but establishes a limited jurisdiction over 'disputes', which may have been referred to the Tribunal by either Bank Markazi or the United States banking institution involved, as to 'amounts owing' from Dollar Account No. 2."

Case No. A17 supra, at 11-12, 8 Iran-U.S. C.T.R. at 197 (footnote omitted). Bank Markazi acknowledged, in a letter filed on 8 April 1986 in Case 789, that "the claim[] brought before the Tribunal is [not] payable from Dollar Account No. 2." Consequently, the Tribunal has no jurisdiction pursuant to the Undertakings over such a claim whether styled as a claim or a counterclaim. If jurisdiction exists, it must be found under the Claims Settlement Declaration.

10. Bank Markazi's second argument is that its counterclaim fulfills the requirement of Article II, paragraph 1, of the Claims Settlement Declaration, according to which a counterclaim must arise "out of the same contract, transaction or occurrence that constitutes the subject matter" of MMB's Claim. Bank

Markazi does not identify the "same contract, transaction or occurrence" of both the claim and the counterclaim, but merely states that "all [banking] transactions fall within the scope of banking transactions and they constitute reciprocal transactions."

11. The Tribunal notes that MMB claimed in this Case the principal amount and interest from Industrial and Mining Development Bank of Iran under a syndicated Loan Agreement dated 10 September 1976. Bank Markazi's Counterclaim arises out of funds which MMB held in different accounts for various Iranian agencies, i.e., Bank Melli, Bank Iranshahr, Bank Etebarat, Bank Iranian, and International Bank of Iran and Japan, none of which are named in the syndicated loan agreements. Consequently, the Tribunal holds that Bank Markazi's Counterclaim does not arise out of the "same contract, transaction or occurrence" as MMB's claim and, therefore, that it has no jurisdiction over Bank Markazi's Counterclaim under Article II, paragraph 1, of the Claims Settlement Declaration.¹

12. For the foregoing reasons,


THE TRIBUNAL DECIDES AS FOLLOWS:

- a) Bank Markazi's Counterclaim is dismissed for lack of jurisdiction.
- b) The remaining arbitral proceedings in this Case are

¹ See also The First National Bank of Boston and The Islamic Republic of Iran, et al., Decision No. Dec. 83-202-2 (19 Sept. 1988), reprinted in 19 Iran-U.S.C.T.R. 307.

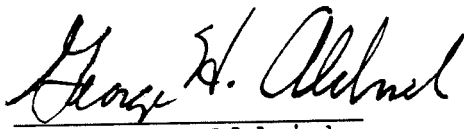
terminated pursuant to Article 34, paragraph 2 of the
Tribunal Rules.

Dated, The Hague
23 April 1993

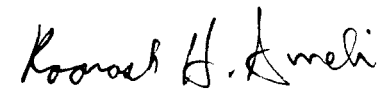


José María Ruda
Chairman
Chamber Two

In the Name of God



George H. Aldrich
George H. Aldrich



Koorosh H. Ameli
Koorosh H. Ameli
Concurring