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LAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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Case No. 184 Date of filing: _____

** AWARD - Type of Award _____

- Date of Award _____

_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision _____

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** CONCURRING OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of MR AMELI

- Date 20 oct 87

5 pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

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- Date _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

In His Exalted Name

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CASE NO. 184
CHAMBER ONE
AWARD NO. 320-184-1

GRANGER ASSOCIATES,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN, THE RADIO AND TELEVISION ORGANIZATION OF THE ISLAMIC REPUBLIC OF IRAN, THE TELECOMMUNICATION COMPANY OF IRAN; THE CIVIL AVIATION ORGANIZATION OF IRAN,

Respondents.

DISSENTING OPINION OF MR. AMELI

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1. It is regrettable that this Tribunal is unable to render even an accurate award on agreed terms in this Case, due to lack of proper deliberation. An ex parte examination of the documents not served on the party concerned is a wrong procedure, which raises major problems.

2. It would have been appropriate for the Tribunal to direct that the copies of the documents the Claimant deposited with the Tribunal's Registry be served on the Respondents in this Case and to seek their comments on them in view of the doubts as to whether they conformed

with the Settlement Agreement. The Respondents, who are the ultimate recipients and in fact the intended owners of the documents, would then have either waived any non-conformity between the documents and their Settlement Agreement, whether or not noted by the Tribunal's ex parte examination, or would have come to another solution with the Claimant. The Tribunal was not entitled to deprive the Respondents of this right.

3. The second sentence of Article V(i) of the Settlement Agreement in this Case stated that the "Claimant shall prepare and submit to the Tribunal, together with this Settlement Agreement, any and all ownership documents in their possession...." But on 21 August 1987, the United States rather than the Claimant itself, wrote a letter enclosing certain documents on behalf of the Claimant and stating that "[t]he United States has been informed by the Claimant in Case No. 184, Granger Associates, that it does not have in its possession any 'ownership documents' and therefore has none to submit to the Tribunal." This is not acceptable. To begin with, the United States has no standing in this Case. Nor is it an attorney or otherwise representative of record for the Claimant in this Case, particularly where it denies the existence of any diplomatic protection or espousal of claims by it for the United States claimants in this Tribunal.

4. Secondly, from the wording of the above-quoted clause of the Settlement Agreement, it is clear and certain that the Claimant must have had in its possession some ownership documents. Otherwise no undertaking would have been made to submit them. The only uncertainty would have been as to the number of the existing documents, rather than whether any such documents existed. Thus, it is obvious that the above clause does not mean that the Claimant should submit ownership documents only

if in its own judgment it had any in its possession. It should also be noted that the Claimant's obligation in this clause is both to "prepare and submit" the ownership documents rather than being limited to submission of the existing ones.

5. Moreover, the above clause in no way entitles the Claimant to become the judge of its own cause, so that with no explanation and through a third-party it can merely inform the Tribunal that it has in its possession no ownership document to submit. It is an insult to the intelligence if one can so easily be allowed to escape from performing its obligation. If the Respondents' agreement to this new assertion of the Claimant is not necessary, which in my view it is, then at least the Claimant must convince the Tribunal of its assertion and a statement similar to my original compromise proposal be included in the bill of sale. The Respondents' agreement is necessary, because of the non-performance of the Claimant's obligation under the Settlement Agreement and the Tribunal not being entitled to accept such a non-conforming performance. In a recent award on agreed terms the Tribunal precisely confirmed this view although this time in favour of a United States claimant. RCA Global Communications, Inc. et al. and The Islamic Republic of Iran, et al. Award No. 318-160-1 (23 September 1987) p.3: "Although paragraph (b) of Article XII of the Settlement Agreement referred only to 'the originals' of the documents, RCA filed a letter on 24 August 1984, confirming that the documents [i.e. copies] filed by the Respondents were satisfactory."

6. If there had been a question as to whether the Claimant possessed none of the ownership documents in question, the Settlement Agreement would have indicated this. Otherwise, it would have expressly provided for either Party, or a third party to ascertain this by

checking the Claimant's records, a discretion which must be exercised reasonably and with sufficient explanation. None of these are available in this Case. Besides, "any and all" means "every and all" rather than "if any."

7. Moreover, the requirement for the provision of ownership documents in the Settlement Agreement covers both properties located in Iran and U.S.A. since the term "those parts..." in the second sentence of Article V(i) refers to the "parts" described in the first sentence which in turn covers both categories of documents. If a contrary interpretation was correct the bill of sale should not have covered the properties located in the U.S.A., but only those in Iran, since the second sentence of Article V(i) is the only clause providing for the bill of sale. The last sentence of Article V(ii) is only a reference to the bill of sale to indicate that it must be detailed in respect of the properties located in U.S.A. rather than that it must be prepared by the Claimant, what terms it must contain and to whom it must be submitted. It may be noted here that the Claimant's bill of sale in both its earlier and recently submitted versions actually covers both properties located in Iran and U.S.A.

8. Moreover in view of paragraphs 4 and 5 of the Award, it is highly questionable how the Claimant knew of the Tribunal Order of 30 September 1987 which called for modification and submission of a new bill of sale, so that on 1 October 1987, that is the same date the United States Agent was served with the Order, it submitted the new bill of sale. The new bill of sale had been signed, sworn to and notarized on 18 September 1987, three days after the first draft of the Order of 15 September 1987. The draft being essentially the same as the one issued on 30 September 1987, was proposed by the Chairman adopting two of my points. And on 16 September 1987 I circulated

a few modifications to it with an additional paragraph which, in my view, would have resolved the problem that now has caused me to dissent. Regrettably the problems referred to in my Dissenting Opinion of 17 July 1987 to the Order of 2 July 1987 in The Ministry of Defence of the Islamic Republic or Iran and The Government of the United States of America, Case No. B1, claims 2 and 3, likewise persist in this Case.

The Hague,
Dated 20 October 1987

Koorosh H. Ameli

Koorosh H. Ameli