

ORIGINAL DOCUMENTS IN SAFECase No. 187Date of filing: 18-Dec-87

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ 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: Concurring + Dissenting of Mr
Brouer
- Date 18-Dec-87
3 pages in English _____ pages in Farsi

109

DUPLICATE
ORIGINAL

نسخہ برابر اصل

CASE NO. 187
CHAMBER THREE
AWARD NO. 342-187-3GORDON WILLIAMS,
Claimant,

and

ISLAMIC REPUBLIC OF IRAN,
BANK SEPAH,
and BANK MELLAT (formerly
Bank of Tehran),
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	18 DEC 1987 1366/9/27
No.	187

CONCURRING AND DISSENTING OPINION OF JUDGE BROWER

1. I concur in the Award insofar as it grants the Claimant payment of the Bank Mellat letter of credit but I dissent from its denial of the Claimant's virtually identical claim against Bank Sepah.

2. I believe that the Tribunal insufficiently appreciated important facts which demonstrate a pattern indicating that Bank Sepah timely received the conforming documents from Claimant just as Bank Mellat did.

3. The first indication that the letter of credit documents Claimant states he mailed on 31 January 1980 arrived at Bank Sepah as well as Bank Mellat before the 10 February 1980 deadline appears in the letter of Mr. Ordubadi to the Claimant dated 18 February 1980. In that letter Mr. Ordubadi stated that on 2 February 1980 Lufthansa had "informed [Mr. Ordubadi] that the merchandise from [Claimant] had arrived and asked [Mr. Ordubadi] to contact the

Bank of Sepah and the Bank of Tehran [Bank Mellat] to arrange for the delivery of the consignment." As the Award correctly recites, the goods arrived in Tehran on 17 January 1980. One might ask, then, why Lufthansa waited until 2 February to notify Mr. Ordubadi of the arrival of the goods? It appears to me that Lufthansa's notification on 2 February of Mr. Ordubadi was prompted by Lufthansa's awareness that the shipping documents, mailed by the Claimant two days previously, had on or about that date reached both Banks and would be available to permit delivery.

4. The conclusion that the documents had arrived at both Banks by 2 February is borne out by the reasons given at the time by both Banks for their refusal to deliver to Mr. Ordubadi the air waybills to permit him to take delivery. When Mr. Ordubadi contacted each of the Banks "requesting the necessary documents to take charge and delivery of the consignment," the banks did not inform him that they had not yet received the documents. Rather, they explained "that Iranian banks had been nationalized by the Government and that further clarifications and confirmations were required." It must be accepted that had the documents not been in the banks' possession in due time they would have so informed Mr. Ordubadi, rather than relying on their nationalization as the reason for withholding delivery of the documents.

5. Finally, an exchange of telexes between Lufthansa's Tehran and Los Angeles offices also confirms that the shipping documents were timely received by both Banks. On 12 February 1980 Lufthansa in Tehran told the Los Angeles office of Lufthansa that Mr. Ordubadi had indicated that the shipments covered by both letters of credit should be returned and requested that the Los Angeles office contact the Claimant as to his intentions concerning the shipments. The response the next day from Los Angeles states that the Claimant's shipping agent was preparing an authorization to

return the goods to Los Angeles. No doubt the Claimant's instructions regarding the possible return of the goods to the United States were prompted by the banks' refusal, at least initially, to honor the letters of credit. This in turn confirms that the documents must have been received by the banks before 12 February, the date of the first telex.¹ It is relevant that Lufthansa is a party entirely disinterested in this matter.

6. Bank Mellat confirmed its timely receipt of the documents by affixing its stamps to the documents. Although no such conclusive proof exists in the case of Bank Sepah, the circumstances related above persuade me that it is more probable than not that both Bank Sepah and Bank Mellat received the documents by 10 February 1980.

7. I thus would have awarded the Claimant the amount of Bank Sepah's letter of credit as well as that called for in the case of Bank Mellat.

Dated, The Hague

/s/ December 1987

Charles N. Brower
Charles N. Brower

¹While this is two days after the 10 February expiration date of the Bank Sepah letter of credit, this delay can be explained by the time differences between Tehran and Los Angeles and the fact that 10 February, the deadline date of the Bank Sepah letter of credit, fell on a Sunday. As just noted, Bank Sepah did not seek to excuse payment at the time on grounds of untimely receipt but rather relied on other grounds.