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Case No. 190

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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
 - Date _____
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** SEPARATE OPINION of _____
 - Date _____
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** DISSENTING OPINION of _____
 - Date _____
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IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داورى دعاوى ایران - ایالات متحدہ
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CASE NO. 190

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CHAMBER TWO

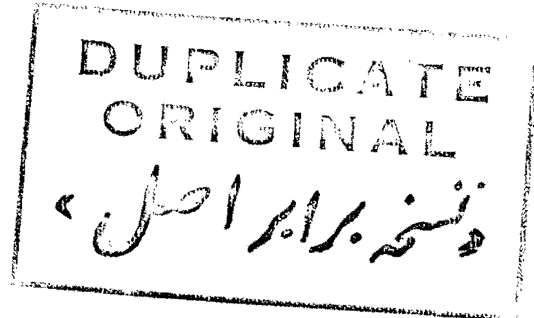
AWARD NO. 356-190-2

AMERICAN FARM PRODUCTS
INTERNATIONAL, INC.,
Claimant,

and

CYRUS CONSULTING ENGINEERS,
THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondents.



AWARD

Appearances:
For Claimant:

Mr. Joseph J. D'Erasmus,
Attorney;
Mr. Joseph J. Morris,
President of the
Claimant;
Mr. Robert W. Brezina,
Brezina Construction
Co.

For Respondents:

Mr. Mohammad K. Eshragh,
Agent of the Govern-
ment of the Islamic
Republic of Iran;
Mr. Ali Heyrani Nobari,
Deputy Agent;
Mr. Akbar Shirazi,
Legal Advisor to the
Agent

Also Present:

Mr. Michael F. Raboin,
Deputy Agent of the
Government of the
United States of
America.

I. THE CLAIM

1. AMERICAN FARM PRODUCTS INTERNATIONAL ("the Claimant") brought a claim against CYRUS CONSULTING ENGINEERS ("Cyrus") as an alleged agent and the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran") as the alleged principal seeking recovery of expenses incurred in an amount to be more than U.S.\$300,000 and lost profits in an amount of U.S.\$3,900,000 as a result of an alleged breach of contract for the design and construction of a slaughterhouse in Iran. A Prehearing Conference was held on 24 September 1982, at which the Claimant raised an alternative theory for recovery of expenses on the basis of quantum meruit. A Hearing was held on 19 January 1988.

II. THE FACTS

2. The Claimant contends that at some unspecified date, apparently prior to or during 1976, a company was formed in Iran with partly Government and partly private ownership for the purpose of expanding Iranian meat production and that this company, called the Company for Production and Packing of Red Meat ("the Red Meat Company"), contracted with a private Iranian company, Cyrus, for the design and construction of a slaughterhouse and meat processing plant.

3. The Claimant further contends that it learned of this project and discussed it on several occasions in Iran with officials of both Cyrus and of the Red Meat Company and that the Claimant, apparently along with other companies, was invited to submit a proposal. The proposal it apparently first made in April 1977 was for what the Claimant's President described as a "state of the art" facility with an estimated cost of U.S.\$90,000,000 and was rejected as too expensive. The Claimant was asked by Cyrus to submit a new and less expensive plan. In the succeeding months, working with the Brezina Construction Co. and Consolidated Engineers

of Omaha, Nebraska, the Claimant produced and submitted to Cyrus a revised design with an estimated construction cost of U.S.\$39,000,000. The Claimant asserts that, on 7 October 1977, its President met with the principal owner and Managing Director of Cyrus, Mr. Habib Moallem, and that they agreed the Claimant would construct the project for U.S.\$39,000,000. The Claimant acknowledges that no written contract was ever signed, asserts that it proceeded with the work in reliance on the oral agreement, and alleges that in January 1978 it sent a telex to Moallem complaining that it had not been able to reach him by telephone and stating that it had proceeded with its work and needed to know when it could draw on Cyrus's accounts and what were the desired delivery dates. No response was received, and the Claimant asserts that it hired lawyers in Iran to pursue the matter, but without success, and that it abandoned in December 1978 the office it had opened in Tehran.

III. JURISDICTION

4. The Claimant asserts that it was incorporated under the laws of the State of South Dakota on 10 March 1976 and that it has been owned continuously by two nationals of the United States, Mr. Morris, who is the Claimant's President, and Mr. Brezina. The only evidence submitted in this connection was an affidavit by an attorney who states that he was responsible for organizing the corporation and declaration by Mr. Morris at the Hearing. The Claimant did not produce any certification from the State of South Dakota, any affidavit by an independent auditor with respect to ownership, or any documentary proof of the nationality of the two owners. While the Tribunal has not established fixed requirements that must be met if it is to be satisfied as to the nationality of a claim, the paucity of evidence in the present case is difficult to understand. On the other hand, the Respondents presented no evidence that casts doubt on the Claimant's nationality. In any event, while the

Tribunal is obliged to establish ex officio whether it has jurisdiction, in the present Case the Tribunal need not decide whether it is satisfied that the Claimant was a U.S. national during the relevant period from the date the Claim arose in early 1978 until 19 January 1981 in view of its decisions in Section IV below.

5. The Claimant contends that Cyrus was an agent of Iran and that it was controlled by Iran. While the agency contention is relevant to the question of the attributability of the Claim to Iran, which is dealt with in Section IV, control of Cyrus by Iran, as defined in Article VII, paragraph 3 of the Claims Settlement Declaration, would be required for the Tribunal to have jurisdiction over Cyrus itself. No evidence of such control has been submitted, and, indeed, the Respondents submitted evidence to the contrary. The Tribunal therefore concludes that it has no jurisdiction over the Claim against Cyrus.

6. There is no doubt that Iran is a Respondent over which the Tribunal has jurisdiction. The question whether the Claimant has proved that its Claim is attributable to Iran is a question that goes to the merits rather than to jurisdiction, and is considered in Section IV.

IV. REASONS FOR THE AWARD

7. The evidence submitted by the Claimant to support its contention that Cyrus was acting as an agent of Iran was quite limited. If viewed most favorably to the Claimant, it shows that one of the organizers of the Red Meat Company was Mr. Eskandar Afshar, who was President of the Agricultural Development Bank of Iran, that the Red Meat Company had its offices in the same building as the Bank, that, when discussing the project, Mr. Morris attended meetings that included Mr. Afshar, a person allegedly called Prince Mohammed Reza, an unidentified customs official, and an

Iranian aide to the Agricultural Attaché of the United States Embassy, that Mr. Morris understood that the Iranian Government owned at least 40 percent of the Red Meat Company, and that all present at these discussions appeared to accept the authority of Cyrus to contract for the construction of the slaughterhouse and processing facility. All evidence for these contentions consists of an affidavit by an individual who stated that he had been "involved in facilitating communications" between the Iranian promoters of the project and the Claimant and the declaration by Mr. Morris. The only arguably relevant contemporaneous documents submitted by the Claimant were a set of drawings for a slaughterhouse dated in 1976 and apparently prepared by Cyrus, which stated on each drawing that the client was the Red Meat Company.

8. The Tribunal notes that the Tribunal requested the Respondents to submit copies of the articles of association or other organizational documents of the Red Meat Company and that the Respondents failed to do so. At the Hearing, the attorney for Iran stated that no record of such company could be found and asserted that the Agricultural Development Bank was not owned by the Government at the time the Claim arose. The Claimant suggests that an adverse inference should be drawn from Iran's failure to produce the requested documents, which were subject to Iran's exclusive control. However, the failure of the Claimant to file significant, contemporary documentary evidence weakens such a suggestion, and the Tribunal concludes, in any event, that any such adverse inference concerning the ownership of the Red Meat Company would still leave the Claimant far short of proof that Cyrus was acting as agent of Iran and was able to obligate Iran as a result of any contract between Cyrus and the Claimant. In a case such as this where the Claimant has filed no contemporaneous documents other than the 1976 drawings and its revised 1977 proposal to Cyrus, adverse inferences about the ownership of the Red Meat Company have

only a limited value. Even if the Tribunal were willing to assume that Iran owned 40 percent of the Red Meat Company, as the Claimant alleged, or even 100 percent, that would not, by itself, establish an agency relation with Cyrus.

9. The Tribunal concludes that the evidence submitted is inadequate to prove that Cyrus, in its dealings with the Claimant, was acting as agent of Iran. Therefore, the attributability of the Claim for breach of contract to the only other Respondent in the Case, Iran, has not been proved, and the Claim must therefore be dismissed.

10. With respect to the alternative Claim based on quantum meruit, the Claimant has produced no evidence that either the submission of its revised proposal to Cyrus or the work it performed subsequent to the 7 October 1977 meeting resulted in any benefit being conferred on Iran. Moreover, the Claimant has alleged that the Red Meat Company paid 3 million touman (equivalent, it says, to U.S.\$466,666) to Cyrus for the design of the project. Therefore, this Claim also is dismissed for lack of proof.

V. COSTS

11. Each Party shall bear its own costs of arbitration.

VI. AWARD


12. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. All Claims of AMERICAN FARM PRODUCTS INTERNATIONAL INC., in this Case are dismissed.

b. Each of the Parties shall bear its own costs of arbitration.

Dated, The Hague
5 April 1988




Robert Briner
Chairman



George H. Aldrich

In the Name of God



Seyed K. Khalilian
Concurring