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STATES CLAIMS TRIBUNAL

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دیوان داورى دعادى ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

Case No. 196

Date of filing: 16 March 88

** AWARD - Type of Award Final
- Date of Award 16 March 88
6 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

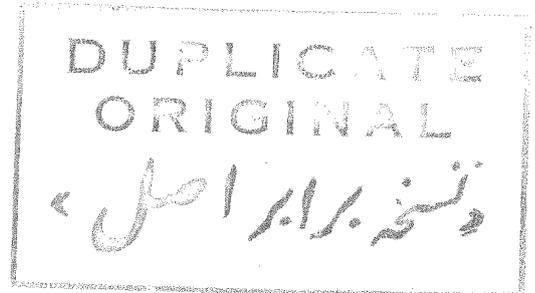
CASE NO. 196

CHAMBER TWO

AWARD NO. 353-196-2

MODERN FILM CORPORATION,
 Claimant,
 and
 THE GOVERNMENT OF THE
 ISLAMIC REPUBLIC OF IRAN,
 BANK MELLAT, BANK TEJERAT
 and BANK OF IRAN AND JAPAN,
 Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحدہ
FILED - ثبت شد	
Date	16 MAR 1988 تاریخ
	۱۳۶۶ / ۱۲ / ۲۶
No.	196 شماره

AWARDAppearances:

For Claimant:

Mr. Robert B. McKay,
Attorney

For Respondent:

Mr. Mohammad K. Eshragh,
Agent of the Government
of the Islamic Republic
of IranDr. Akbar Shirazi,
Legal Adviser to the
AgentMr. Mohsen Azadeh,
Legal Assistant to the
AgentMr. Morteza Khan Ahmadi,
Representative of
Bank Tejarat

Also present:

Mr. Timothy E. Ramish,
Agent of the Government
of the United States
of America

I. INTRODUCTION

1. The Claimant, MODERN FILM CORPORATION ("MFC"), a New York corporation, brings a claim against the Government of the Islamic Republic of Iran and, in particular, BANK TEJARAT¹ ("the Respondent") seeking reimbursement of the balances of four bank accounts, including interest on the accounts, held with the Respondent and of which MFC states it is the beneficial owner. MFC alleges that it was and continues to be deprived of the monies in these accounts and that Bank Tejarat has been unjustly enriched as a result.

II. THE CLAIM

2. MFC rents motions pictures worldwide, mainly to private companies with large numbers of expatriate employees. According to the Claimant, it commenced film rental operations in Iran in the 1960's through an Iranian company, Bardikard Co. In 1980, a second Iranian company, Mehras Co., was formed for the same purpose. It is not disputed that both are Iranian companies, entirely owned and managed by Iranian nationals. MFC asserts that it controlled both companies and that the companies' operations were treated as divisions of MFC. MFC states that to oversee its operations in Iran it appointed a Mr. Firuz Madon, who also held key management positions in both companies. Mr. Madon had signatory authority over two of the disputed accounts held in the names of Bardikard Co. and Mehras Co. respectively. In addition, MFC asserts that Mr. Madon held two other

¹The claim was initially directed against Bank Mellat, and the Bank of Iran and Japan as well as Bank Tejarat, but after some initial confusion Bank Tejarat emerged as the repository of the accounts in question.

accounts in his own name.² MFC alleges that it is the beneficial owner of each of the accounts and has continuously been the beneficial owner of each account since each was opened.

3. It appears that Mr. Madon and his wife left Iran in October 1980. They state in their affidavit:

We were unable to withdraw the money from the four accounts because of the disruptive situation in Iran and because we were told that there were Iranian regulations prohibiting the export of foreign exchange . . .

4. As a consequence of the alleged difficulties described by the Madons, MFC states that it has been denied access to the bank accounts and that Bank Tejarat has been unjustly enriched as a result, for which MFC seeks recompense. Bank Tejarat, for its part, contends that the accounts belong to Iranian nationals, that Bank Tejarat recognizes the rights of such persons to draw on the balance of the accounts, that Bardikard Co. continued its operations to date, and that checks signed by Mr. Madon have been drawn on the Bardikard account subsequent to the time Mr. Madon left Iran and made his affidavit in this Case.

5. A Hearing in this Case was held on 8 December 1987.

III. JURISDICTION

6. The Tribunal is satisfied that the Claim is that of a U.S. national as defined in Article VII, paragraph 2, of the

²During the course of the pleadings the Parties reached substantial agreement on the details of three of the four accounts in dispute. The existence and nature of the fourth account remains in dispute.

Claims Settlement Declaration,³ and that Bank Tejarat is included within the definition of "Iran" contained in Article VII, paragraph 3, of the Claims Settlement Declaration.

7. The Tribunal also finds that the claims satisfy the jurisdictional requirements under Article II, paragraph 1, of the Claims Settlement Declaration as claims arising "out of debts, contracts . . . expropriations or other measures affecting property rights."

8. While the evidence as to whether this claim was outstanding on 19 January 1981 is meager⁴ (See Harza Engineering Company and Islamic Republic of Iran, Award No. 19-98-2 (30 December 1982), the Tribunal finds it unnecessary to address this issue because of the decision reached below.

IV. THE MERITS

9. MFC bases its claim on its assertion that it is the beneficial owner of the monies in the bank accounts in question. The Tribunal notes that MFC has advanced no explanation, legal theory, or evidence as to the validity of this assertion.

10. Although MFC states that Bardikard Co. and Mehras Co., independent entities established under the laws of Iran, were ultimately controlled by it, the Tribunal finds that

³MFC, however, does not assert its claim on the basis of indirect ownership of the claim as defined in this Article.

⁴The Claimant asserts that it was unsuccessful in its attempt to reach Mr. Madon for a further deposition as to the nature of his attempts to withdraw the monies.

MFC has presented insufficient evidence of such control. MFC does not allege that it owned capital stock in the two companies. MFC's assertion that it treated the operations of the companies as divisions is insufficient, without more, to establish such control. Similarly, the Claimant has advanced no explanation as to its relationship with Mr. Madon so as to render it the beneficial owner of his bank accounts.

11. Finally, the Tribunal notes that, even if control over the companies could be established, MFC has not made clear under what theory such control would result in its beneficial ownership of the accounts in question. The Tribunal notes further that MFC has not presented any evidence that the monies in the accounts arose out of MFC operations or that the companies were acting as trustees for MFC. In the absence of such evidence, the Tribunal, therefore, does not have to address the issue whether such a trusteeship would enable the beneficial owner of bank accounts to prevail on a claim against the banks.

12. For the above reasons, the Tribunal dismisses this claim for lack of proof.

V. COSTS

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

VI. AWARD

14. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The claim of MODERN FILM CORPORATION is dismissed for lack of proof.

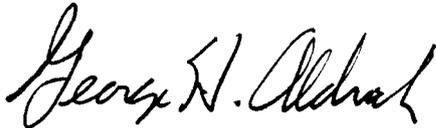
(b) Each of the Parties shall bear its own costs of arbitration.

Dated, The Hague
16 March 1988



Robert Briner
Chairman

In the name of God,



George H. Aldrich



Hamid Bahrami-Ahmadi

Concurring