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ORIGINAL DOCUMENTS IN SAFE

Case No. 199

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\*\* DECISION - Date of Decision \_\_\_\_\_  
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\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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199-108  
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CASE NO. 199  
CHAMBER THREE  
AWARD NO. 117-199-3

AMERICAN HOUSING INTERNATIONAL INC,

Claimant,

v.

HOUSING COOPERATIVE SOCIETY OF OFFICERS  
OF STATE GENERAL GENDARMERIE, BANK SADERAT  
IRAN and THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاری ایران - ایالات متحدہ
ثبت شد - FILED	
Date	۱۳۶۲ / ۱۲ / ۲۹ تاریخ 19 MAR 1984
No.	199 شماره

AWARD

Appearances:

For the Claimant:

Mr. Henry Morris  
President, American Housing  
International Inc.

For the Respondent:

Mr. Mohammad K. Eshragh  
Agent of the Islamic Republic  
of Iran  
Mr. Kosrow Tabasi  
Legal Advisor to the Agent  
Mr. Nematollah Farmin,  
Attorney for Housing Cooperative  
Society of Officers of State  
General Gendarmerie  
Mr. Houshang Rami  
Mr. Ali Asgher Mehabadi  
Legal Advisors, Housing  
Cooperative Society of Officers  
of State General Gendarmerie  
Mr. Mohsen Arbabian  
Representative of Bank Saderat

Also present:

Mr. Mr. John Crook  
Agent of the United States  
of America.

DUPLICATE ORIGINAL  
نسخه برابر اصل

I. FACTS and CONTENTIONS

AMERICAN HOUSING INTERNATIONAL INC. ("AHI") filed two separate claims on 8 January 1982 with the Tribunal against BANK SADERAT IRAN ("BANK SADERAT") and HOUSING COOPERATIVE OF OFFICERS OF STATE GENERAL GENDARMERIE ("THE COOPERATIVE"). THE GOVERNMENT OF IRAN was also named as a Respondent in both claims.

Claimant, in its claim against BANK SADERAT ("BANK CLAIM"), demands payment of approximately US \$156,000, stating that the equivalent of this sum in Iranian rials was deposited with BANK SADERAT. According to the Claimant's contention, BANK SADERAT bears responsibility for failing to honour checks drawn on Claimant's account by refusing to transmit any portion of the Claimant's funds.

BANK SADERAT, in its Statement of Defence filed on 14 June 1982, contends that: (i) the US nationality of the Claimant is not established; and (ii) since the claim is for a sum under US \$250,000, it should have been submitted by the United States Government. On the merits, it is conceded by BANK SADERAT that the Claimant did in fact open an account (account NO. 755) with the BANK, but it is contended further that 30,000 rials which was initially remitted to the said account was subsequently withdrawn by an authorized signatory of AHI. According to BANK SADERAT, the account has remained with nil balance since then. Affidavits have been filed by parties in support of their submissions.

As to the claim against the COOPERATIVE ("COOPERATIVE CLAIM"), the Claimant argues that the COOPERATIVE is an

entity controlled by the Government of the Islamic Republic of Iran as defined by the Claims Settlement Declaration. The Claimant further alleges that the Respondents are indebted to him in the amount of U.S. \$3,000,000 for expenses incurred and services rendered by AHI in connection with a construction project undertaken by the COOPERATIVE, for which AHI had submitted a bid that was accepted by the COOPERATIVE. These assertions have been contested by the Government of Iran and the COOPERATIVE. The said Respondents argue that the COOPERATIVE is privately managed in accordance with its own Articles of Association, and is hence clearly outside the definition of "Iran" provided in Article VII, paragraph 3 of the Claims Settlement Declaration. The Tribunal's jurisdiction is therefore contested by the Respondents.

## II. JURISDICTION

In support of its contention, AHI relies on an affidavit by a certified public accountant as well as on a copy of its Certificate of Incorporation and other documents to show that at all relevant times it met the nationality requirements set out in the Claims Settlement Declaration. In the absence of any valid challenge by the Respondents in this respect, the Tribunal concludes that the foregoing evidence satisfactorily establishes: (i) that AHI is a United States corporation; and (ii) that at all material times natural persons who are citizens of the United States did own interest equivalent to more than fifty percent of its capital stock.

The Tribunal further notes that, with respect to the BANK CLAIM, neither BANK SADERAT nor the Government of Iran has sought to challenge the Claimant's assertion that BANK SADERAT falls within the meaning of "Iran" as defined in the Claims Settlement Declaration. In the absence of any such challenge in the present case, the Tribunal, relying on the

evidence before it, concludes that the BANK CLAIM does fall within its jurisdiction.

It remains to be determined whether the COOPERATIVE CLAIM is a claim against "Iran" within the meaning of the Claims Settlement Declaration.

The Claimant argues that HOUSING COOPERATIVE SOCIETY OF OFFICERS OF STATE GENERAL GENDARMERIE is a controlled entity as defined by Article VII, paragraph 3 of the Claims Settlement Declaration. In reply, Respondents concede that the State General Gendarmerie is in fact a political subdivision of Iran, or, alternatively, an agency or instrumentality of the Government of Iran. They submit, however, that the COOPERATIVE has been formed as a society of officers of Iranian Gendarmerie and is controlled by company organs stipulated in its Articles of Association. Respondents deny, therefore, that the COOPERATIVE is controlled by the Government of Iran.

Review of the Articles of Association of the COOPERATIVE and pertinent Iranian commercial law is found to be helpful in an effort to discern the controlling authority of the COOPERATIVE. The Tribunal deems it particularly appropriate to seek assistance from the following provisions of the Iranian Commercial Code in determining the status of the COOPERATIVE. Article 20 of the Iranian Commercial Code provides that trading companies are of seven kinds, the seventh of which are "Producers and Consumers Cooperative Society".

Article 583 of the same Code states that "all trading companies mentioned in this Code have juridical personality". Article 589 of the Code further provides that: "the decisions of a juridical person are rendered by the authorities who, by virtue of the law or its Articles of Association, are entitled to do so".

Turning now to the relevant provisions of the Articles of Association of the COOPERATIVE, there is first Article 17, according to which "t[he organs of the company (society) consist of the General Assembly of the Shareholders, the Board of Directors, the managing director, and the inspectors of the company".

Article 31 of the said Articles of Association further stipulates that "each shareholder, irrespective of the shares held by him, will have the right of only one vote at meetings of the General Assembly, whether ordinary or extraordinary".

In accordance with Article 34, "t[he company (society) shall be managed by a Board of Directors composed of seven principle members, elected for two years by the General Meeting's majority votes from amongst the shareholders..."

Article 37 determines the duties, powers and responsibilities of the Board of Directors as follows:

1. To execute resolutions of the General Assemblies.
2. To draw-up the Balance Sheets, and Profit and Loss Accounts of the Society, and to submit reports to the General Meetings.
3. To appoint and remove from office the Managing Directors and to determine his duties and powers.
4. To approve the construction projects of the society.
5. To propose by-laws to the General Meetings.
6. To sign the contracts related to the execution of the construction projects.

7. To sign any kind of contract, with due regard to the provisions of the Articles of Association.
8. In order to perform the duties under these Articles of Association, the Board of Directors has full authority, and in respect of all the matters related to the company (society) it has the right to render decisions with the exception of those which are specified as falling under the duties of the General Meetings.

Finally, Article 38 defines the powers and duties of the Managing Director which include the authority to manage the current affairs of the company within the limits of powers delegated to him by the Board of Directors.

These provisions indicate that the COOPERATIVE is managed and controlled not by the State Gendarmerie but by individual members who own the COOPERATIVE's shares and in that capacity have the power to elect the members of the Board of Directors. The fact that the shareholders of the cooperative are all of the same profession does not mean that those shareholders lose their authority and control in favour of the professional organization to which they belong. By virtue of belonging to a particular professional organization they qualify to become shareholders of the cooperative. But then as shareholders they, and they alone, may control the COOPERATIVE on the basis of its Articles of Association.

Several letters issued by the COOPERATIVE and signed by General Mohagheghi have been submitted by the Claimant as evidence in support of the assertion that they constitute undertakings of the State Gendarmerie as well as the Government of Iran. The Tribunal notes that the title used by General Mohagheghi in these letters is "Chairman of the Board of Directors of Housing Cooperative society of

Officers of State General Gendarmerie". There is no indication that the undertakings, if any, assumed by these letters should be directed to the State Gendarmerie rather than to the COOPERATIVE.

Claimant asserts, and submits some evidence, that the Government of Iran was involved and gave assistance in the construction project of the COOPERATIVE, inter alia, in providing land, revising plans and other relevant documents and financing the project. The Tribunal finds, however, that even if there was such governmental involvement in the project, this fact in itself would not constitute sufficient proof of governmental control over the COOPERATIVE.

On the basis of the foregoing, the Tribunal concludes in the instant case that there is insufficient evidence that the COOPERATIVE is controlled by "Iran" within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. Consequently, the Tribunal decides that it has no jurisdiction over the COOPERATIVE CLAIM as against the COOPERATIVE itself.

### III. MERITS

#### A. The Bank Claim

AHI seeks remedy for funds alleged to have been deposited with LARESTAN branch of BANK SADERAT, which funds are said to be the equivalent of US \$156,000. According to the Claimant, BANK SADERAT has wrongfully refused to honour checks drawn by the Claimant on his account.

Respondent BANK SADERAT, while conceding that account No. 755 was in fact opened by AHI, argues that only 30,000 rials was deposited in this account, which amount was subsequently withdrawn by a check issued by the authorized

signatory of the company. Since then, the BANK states, the account has remained with a nil balance.

In support of their respective assertions, the Parties have submitted affidavits as well as copies of checks drawn by the Claimant and certain other banking documentations. Mrs. Farrideh Morris, an officer of the company and Henry Morris' wife, in her affidavit filed in support of the Claimants assertion states that she deposited the equivalent of US \$156,000 in Iranian currency in account No.755 in BANK SADERAT's LARESTAN branch. She further states that her subsequent checks were not honoured by the BANK. In response, BANK SADERAT has filed an affidavit by Mr. Khalil-Nejad, former manager of LARESTAN branch of BANK SADERAT, which affidavit refutes the affidavit of Mrs. Morris and testifies that BANK SADERAT's statement is a true reflection of facts.

According to Mr. Khalil Nejad's testimony, only two transactions have taken place in respect of Account No.755, namely the remittance of 30,000 rials and withdrawal of the same. He does point out that certain checks were drawn on the account at issue, but says that one was returned by BANK SADERAT, because no fund was available, while other checks were returned "due to currency regulations". With regard to those checks returned due to currency regulations, BANK SADERAT explains that in accordance with the BANK's adopted procedure these checks were first sent to the International Division of the bank. The International Division, acting in accordance with the then recently imposed exchange regulations, did not find it necessary to forward the checks to the branch concerned. Instead, it returned the checks, stating that under the existing regulations the bank was not in a position to order any payment abroad. In other words, since the existing of the regulations made it irrelevant whether or not any fund was available, the International

The Government of Iran has denied that the individual who signed the letter in question held any position with the Embassy at that time, arguing that immediately after the Revolution and as the result of the natural confusion, the Embassy's affairs fell into the hands of many self appointed groups who had no specific authority from the Central Government. But be that as it may, the point is that an Embassy, or its spokesman, has no competence in law to accept obligations on behalf of a private entity whose authorized and competent officials are specified in its Articles of Association. It may be argued, however, that the letter constitutes an independent guarantee by the Government of Iran to compensate the Claimant for services allegedly rendered. This argument, too, must fail, for it is the recognized law -- both of Iran and the United States -- that a guarantee in order to create any obligation should be specific. The letter in question, on the other hand, is a vague promise, if promise it is, that a claim by the Claimant against the Government of Iran will be honoured.

The Tribunal concludes, on the basis of the foregoing, that this claim cannot be granted.

### C. Costs

In the circumstances of this case, the Tribunal determines that each party should bear its own costs of arbitration.

IV. AWARD

The Tribunal hereby awards as follows:

The Claims are dismissed.

Each party shall bear its own costs of arbitration in this case.

Dated, The Hague

17 March 1984

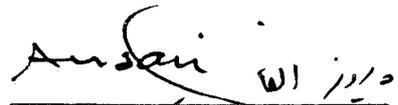


Nils Mangård  
Chairman  
Chamber Three

In the Name of God



Richard M. Mosk  
Dissenting opinion



Parviz Ansari Moin