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IRAN - UNITED STATES CLAIMS TRIBUNAL

دادگاه داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No. 200

Date of filing 12 April 1983

AWARD. Date of Award 11 April 1983

9 pages in English. 7 pages in Farsi.

DECISION. Date of Decision _____

_____ pages in English. _____ pages in Farsi.

ORDER. Date of Order _____

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DUPLICATE ORIGINAL
نسخه برابر اصل

CASE NO. 200
CHAMBER ONE
AWARD No. 36-200-1

HENRY MORRIS,

Claimant,

and

GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN, BANK MELLAT
(formerly IRAN-ARAB BANK),

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه دایمی دپاری ایران-ایالات متحده
ثبت شد - FILED
شماره ۲۰۰ No. 200
تاریخ 12 APR 1983 Date
۱۳۶۲ / ۱ / ۲۲

AWARD

Appearances

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Legal Adviser to the
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Mahvash Alerassool
Assistant to the Agent
Ferafdoun Hosseini
Attorney for Bank Mellat
Fatemeh Shirvani Shahenayati
Representative of
Bank Mellat

Also Present:

Arthur Rovine
Agent of the United
States of America

I. Facts and Contentions

Henry Morris, a United States national, filed this claim on 8 January 1982 seeking the dollar equivalent of 79,000,000 Rials as the face value of a bank guarantee issued in his favor on 3 April 1979 by Bank Mellat's predecessor, the former Iran-Arab Bank. The guarantee was allegedly issued in connection with certain arrangements between Morris and Mohammad Baghdassarian pursuant to which Morris was to receive US \$710,000 as a finder's fee for arranging a \$35,500,000 loan to Baghdassarian. Half of that finder's fee was to have been secured by a letter of guarantee in Morris' favor; the other half was to have been paid out of the loan's proceeds.

The guarantee at issue here provided that the bank would pay Morris the sum of 79,000,000 Rials if Morris gave the bank a written demand for payment based on his own "opinion and judgement" that Baghdassarian had failed to meet any of his commitments under the loan arrangements. The guarantee had a validity period extending from 3 April through the close of business on 13 April 1979, with provision for a maximum of two extensions of 10 days each on written request from Morris. In addition, the last paragraph of the guarantee provided:

In case the bank is unable, or does not wish to extend the period of this letter of guarantee or if Mr. Mohammad Ali Baghdassarian (Baghbani) fails to provide the bank requirements needed for the extension, then this bank shall pay the above amount [of 79,000,000 Rials] to, or in favor of Mr. Henry Morris without any need for a repeated demand.

The guarantee was advised through Iran-Arab Bank's U.S. correspondent, the American Security Bank ("ASB"). On 5 April 1979 ASB telexed Iran-Arab Bank seeking clarification whether any demand by Morris on the Rial guarantee could be paid by a debit to Iran-Arab Bank's dollar account at ASB. On 6 April 1979 Iran-Arab Bank telexed ASB in response that existing foreign exchange restrictions would bar such a transaction. On 9 April 1979, Morris gave a written demand on the guarantee to ASB for transmission to Iran-Arab Bank, seeking payment either in Rials or, if possible, its dollar equivalent. ASB transmitted that demand the same day, along with a sight draft payable in Rials to Morris against Iran-Arab Bank in Tehran.

On 11 April 1979, prior to Iran-Arab Bank's taking any action on the 9 April demand, Morris telexed Iran-Arab Bank seeking a first extension under the guarantee from 13 April through 23 April 1979. On 15 April Iran-Arab Bank responded by telex to ASB acknowledging Morris' request, and extending the validity date to 23 April 1979. The bank noted: "All other terms and conditions remain unchanged." On 23 April 1979, Morris requested Iran-Arab Bank to effect a second 10-day extension through 3 May 1979. On 25 April 1979, Iran-Arab Bank responded acknowledging the request and extending the validity date. The bank again noted that all other terms and conditions remained unchanged, and that the 3 May "extension is final."

On 27 April 1979 Morris telexed Iran-Arab Bank requesting the transfer of 39,000,000 Rials to the account of Baghdassarian, following a reduction of the guarantee by that amount. On 29 April 1979 Iran-Arab Bank acknowledged Morris' request, though misstating it to be for a reduction to rather than of 39,000,000 Rials, and making no reference to Morris' transfer request. On 30 April 1979, nevertheless, Morris approved in writing an amendment to the guarantee which reduced it by 40,000,000 Rials, leaving 39,000,000 Rials as the guarantee amount. On 3 May 1979, the term of the guarantee expired. Morris took no further action until filing a suit against the bank in New York courts some nine months later.

Morris claims simply that he has never been paid the 79,000,000 Rials, despite a proper demand. The bank's response is equally simple: Morris was never paid because his requests for the extensions and other conduct had the effect of overriding his 9 April payment demand. No subsequent demand being received by the final expiration date, the bank states that it paid the 79,000,000 Rials back into Baghdassarian's account.

The Government's defence is that it took no action which might give rise to liability on this claim.

II. Reasons

As a threshold matter, the Tribunal notes that this claim is, by Morris' own evidence, at best a claim for the dollar equivalent of 39,000,000 Rials, not of 79,000,000 Rials. Morris agreed -- one presumes for valuable consideration -- to reduce the amount of the guarantee by 40,000,000 Rials. Any dispute whether or not the bank thereafter transferred that amount to Baghdassarian cannot figure into Morris' claim here, since the injured party, if any, would be Baghdassarian. The Tribunal need not therefore reach the disputed issue whether Baghdassarian received credit for the 40,000,000 Rials.

The remaining question is thus whether the Iran-Arab Bank remained obligated to pay Morris the 39,000,000 Rials remaining in the guarantee after 3 May 1979. The Tribunal holds that the bank had no such obligation. Morris, in seeking to extend the life of the guarantee beyond 11 April 1979 only two days after demanding payment, was plainly giving Baghdassarian more time to perform his underlying obligations. The guarantee was issued as a security for that performance, not a substitute. Were Morris intent on maintaining his demand, he had only to let 13 April 1979 come and go, by which date the bank would have become liable to honor his demand.

Morris' actions after 11 April 1979 indicate a recognition that the demand was no longer in effect. First, he requested a further extension on 23 April 1979. Second, he effected a reduction in the amount of the guarantee a week later, thus leaving a balance subject to a later demand. Third, when the guarantee expired, Morris took no action for nine months. In light of the frequency of his contacts with both ASB and Iran-Arab Bank during the one month life of the guarantee, such silence would have been most curious for a man genuinely expecting to receive a large sum of money.

The last paragraph of the guarantee, quoted in full above, supports the view that Morris received not because he asked not. The bank in that paragraph undertook to pay Morris the 79,000,000 Rials if, on his request to extend the guarantee, the bank was either unable, or did not wish to effect the extension. The bank's failure to do so would have thus constituted a breach of its obligation to extend for a maximum of 20 days if so requested. That breach would have entitled Morris to the guarantee amount "without any need for a repeated demand." It follows that if, as here, the bank did honor its maximum extension commitments, Morris, to obtain payment, would have had to make a further demand. Indeed, the bank explicitly retained the requirement of a further demand by stating with each extension that all of the guarantee's terms and conditions other than the prior expiration date remained unchanged.

It is incorrect to suggest, as Morris does, that the bank had committed itself to pay him the guarantee amount on the mere expiration of the guarantee period. Such a reading is inconsistent with the purpose of a bank guarantee -- to secure the performance within a specified time of certain obligations. The guarantee not being called by the end of the period, it must be presumed that the promised performance was either rendered to, or waived by, the beneficiary of the guarantee, Henry Morris.

The Tribunal accordingly dismisses the claim of Henry Morris against Bank Mellat. With respect to the Government of the Islamic Republic of Iran, no acts of that Government were ever proved entitling Morris to recover from it. The claim against the Government is therefore also dismissed.

In view of the foregoing, the Tribunal need not reach other issues raised in this case.

In the circumstances of this case, Bank Mellat is entitled to costs of arbitration under Rules 38 and 41 of the Provisionally Adopted Tribunal Rules. Since the bank submitted no specific evidence of its costs, the Tribunal determines the reasonable amount of those costs to be \$15,000.00.

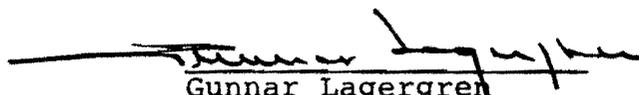
III. Conclusions

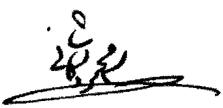
In view of the foregoing:

The claim of Henry Morris is dismissed.

The Claimant, Henry Morris, is obligated to pay costs to Respondent Bank Mellat in the sum of U.S. \$15,000.00.

Dated: The Hague
11 April 1983


Gunnar Lagergren
Chairman
Chamber One

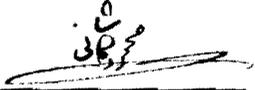

Mahmoud M. Kashani


Howard M. Holtzmann

The UNCITRAL Arbitration Rules Article 40(2) allows an arbitral tribunal, taking into account the circumstances of the case, to determine which party is appropriate to bear the costs of legal representation or that each party shall bear its own costs. This provision is flexible enough not to award costs by an arbitral tribunal whose own

expenses are borne equally by the two governments and which adjudicates governmental disputes. This view is supported by the law and practice of the International Court of Justice and of several claims commissions to which the United States has been a party.

But awarding the prevailing party a reasonable amount for costs of legal representation in particular circumstances of this case is exclusively based on frivolousness of the claim and the Claimant's resorts to a series of actions to circumvent the imperative regulations of exchange control. On this exceptional basis awarding the costs of legal representation by the Tribunal is justifiable.



Mahmoud M. Kashani