
Date of filing: 25,02,1997

1 pages in Farsi

pages in Farsi

pages in Farsi

pages in Farsi

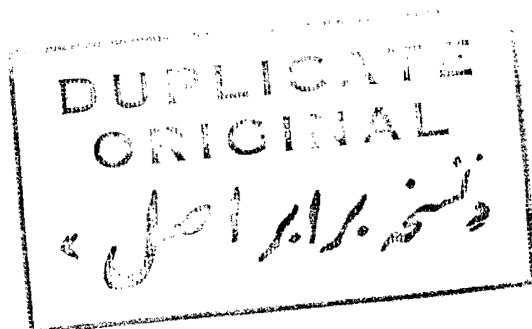
pages in Farsi

[illegible]

pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داورى دعاوى ایران - ایالات متحدہ



CASE NO. 214

CHAMBER THREE

AWARD NO. 578-214-3

DADRAS INTERNATIONAL,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
KAN CONSULTING ENGINEERS and
KAN RESIDENTIAL CORPORATION,
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	25 FEB 1997
	تاریخ ۱۳۷۵ / ۱۲ / ۷

AWARD

Appearances:

For the Claimant:

Prof. Aly S. Dadras,
Claimant;
Mr. Gordon W. Paulsen,
Mr. John C. Koster,
Attorneys for the Claimant;
Mr. Theodore Liebman,
Rebuttal Witness;
Mr. George K. Duvé Sr.,
Party Witness.

For the Respondents:

Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran;
Dr. Bijan Izadi,
Deputy Agent;
Dr. Nemat Mokhtari;
Mr. Nozar Dabiran,
Legal Advisers to the Agent;
Mr. Alireza Nazembokaei,
Technical Representative of TRC;
Mr. Zabihollah Alavi Harati,
Legal Adviser of TRC;
Mr. Mohammad Jazayeri,
Attorney of TRC;
Mr. Mirsadredin Amirkhalkhali;
Mr. Mohammad Taghi Entezari,
Mr. Mohammad Habibi,
Expert Witnesses;
Mr. Keyvan Ramian,
Witness;
Mr. Hashem Atifeh Rad,
Rebuttal Witness.

Also present:

Mr. D. Stephen Mathias,
Agent of the United States of
America;
Ms. Mary Catherine Malin,
Deputy Agent of the United States
of America.

TABLE OF CONTENTS

	<u>Para.</u>
I. <u>INTRODUCTION</u>	1
II. <u>PROCEDURAL HISTORY</u>	5
III. <u>JURISDICTIONAL ISSUES</u>	12
A. <u>Use of the name "Dadras International"</u> . . .	13
B. <u>Dominant and Effective Nationality of Prof. Dadras</u>	16
C. <u>Kan Consulting Engineers as an Indispensable Party</u>	19
D. <u>Jurisdiction of the Tribunal over Kan Residential Corporation</u>	22
IV. <u>THE MERITS</u>	41
V. <u>AWARD</u>	46

I. INTRODUCTION

1. The Claimant in this Case is DADRAS INTERNATIONAL, the trade name used by Professor Aly Shahidzadeh Dadras, an architect with dual Iran-United States nationality.¹ The Respondents are THE ISLAMIC REPUBLIC OF IRAN (the "IRI") and KAN RESIDENTIAL CORPORATION ("Kan"), a housing construction company operating in Tehran, Iran, in the 1970s.²

2. Prof. Dadras seeks compensation from the Respondents for architectural work he allegedly performed for the Kan Residential Project in Tehran, Iran. The Kan Residential Project (the "Project") was a housing project of the Kan Residential Corporation, which was owned and managed by members of the Rezaie family. The original architectural plans for the Project were drawn up by Kan Consulting Engineers. Prof. Dadras maintains that he (as Dadras International) entered into a Contract with Kan Residential Corporation on 18 January 1978 to perform structural calculations and alterations to the pre-existing drawings for the Project to accommodate the use of the Dyna-Frame Celdex System ("D-F-C system"). The D-F-C system is a proprietary technique for the construction of the superstructure of buildings that involves the use of prefabricated structural components. At all times relevant to this Case, Prof. Dadras held the exclusive license in Iran for the D-F-C system.

¹ The Claimant's other claims before the Tribunal were adjudicated in Dadras International, et al. and The Islamic Republic of Iran, et al., Award No. 567-213/215-3 (7 November 1995), reprinted in _ Iran-U.S. C.T.R. _ [hereinafter "Dadras International"].

² The Statement of Claim also named Kan Consulting Engineers as a Respondent. In his reply memorial, however, the Claimant stated that he "seeks no payment from Kan Consulting Engineers." The Tribunal therefore regards this claim against Kan Consulting Engineers as having been withdrawn.

3. Prof. Dadras contends that Kan Residential Corporation is an entity controlled by the IRI, in that the IRI expropriated Kan or its assets and thus prevented Kan from performing fully under the Contract. He claims that the IRI is liable because of its "tortious interference" with the Contract, or in the alternative that its confiscation of Kan's assets constitutes an expropriation of his contract rights. The Claimant claims U.S.\$234,324.82: U.S.\$226,628.88 for services allegedly rendered, and U.S.\$7,695.94 for construction supervision fees that Dadras International allegedly would have earned had the IRI not expropriated Kan Residential Corporation, thereby preventing it from proceeding with construction. He also claims interest and costs.

4. The IRI denies liability. It raises several jurisdictional objections, including the following: that Dadras International is not a legal entity; that Prof. Dadras's dominant and effective nationality during the relevant period was not that of the United States; that Kan Consulting Engineers is an indispensable party to these proceedings; and that the Tribunal does not have jurisdiction over the Respondent Kan Residential Corporation. The IRI denies that it expropriated the assets of Kan Residential Corporation or otherwise interfered with the Claimant's contractual rights. It further contends that Prof. Dadras did not fulfill his obligations under the Contract. The IRI asks that the Case be dismissed and that it be awarded costs of arbitration.

II. PROCEDURAL HISTORY

5. The Claimant filed a Statement of Claim on 11 January 1982, and the Respondent IRI filed a Statement of Defence on 9 August 1982. On 13 August 1986 the Claimant filed his Reply brief; the IRI filed its Rejoinder on 15 June 1987.

6. The Claimant filed his Memorial on the merits and an additional affidavit on the issue of nationality on 10 July 1987.

7. By Order of 16 July 1987, the Tribunal noted that the Full Tribunal in Case No. A18 had held "that it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." On 17 October 1989 the Claimant filed additional evidence on nationality.

8. By Order of 3 December 1990, the Tribunal joined the issue of the dominant and effective nationality of the Claimant to the consideration of other jurisdictional issues and the merits, and it set a schedule for further submissions.

9. On 29 November 1991 the IRI filed a Memorial on the nationality of the Claimant; it filed a Memorial on nationality and other jurisdictional and substantive issues on 6 December 1991.

10. On 29 January 1992 the Claimant filed his rebuttal memorial and a reply to the Respondent's evidence on nationality. On 1 October 1992 the Respondent filed its rebuttal memorial, together with a brief and evidence on the nationality of the Claimant.

11. A Hearing was held in this Case on 28 and 29 January 1993.

III. JURISDICTIONAL ISSUES

12. The Respondents have raised a number of jurisdictional issues in this Case -- several of which were resolved in the Tribunal's Award in Dadras International, Award No. 567-213/215-3 (7 November 1995). The Tribunal will address these objections seriatim before turning to the merits of the claim.

A. Use of the name "Dadras International"

13. The claim in this case has been brought by Dadras International, described as being under the "sole proprietorship of Prof. Aly S. Dadras." The IRI contends that Dadras International is not a legal entity and that, consequently, no claims can be legally introduced by it before the Tribunal. It contends that the claim should have been submitted in the name of Prof. Dadras himself, and that it is now too late to amend the claim.

14. The Claimant contends that, from the outset, the Claim was filed on behalf of Prof. Dadras as an individual. According to the Claimant, Dadras International was named as the Claimant in the Statement of Claim because Prof. Dadras has the right to do business under that name pursuant to the law of the State of New York in the United States, and because it was under that name that he signed the Contract with Kan Residential Corporation.

15. The same issue was raised in Dadras International, Award No. 567-213/215-3, where the Tribunal held at para. 69:

The Tribunal finds that no legitimate question exists as to the identity of the Claimant in Case No. 213. On the contrary, it emerges clearly from the registration form filed by the Claimant with the United States Department of State and from the Statement of Claim that the Claim was brought by the Claimant as an individual. It is uncontested that Prof. Dadras had the right under New York law to use the trade name "Dadras International." The Tribunal therefore concludes that Dadras International has standing to bring this Claim before this Tribunal. The question of the nationality of Dadras International thus depends upon the nationality of Prof. Dadras himself.

The Respondent has not presented any evidence in this Case capable of undermining this conclusion, and the Tribunal is satisfied that Dadras International has standing to bring a claim.

B. Dominant and Effective Nationality of Prof. Dadras

16. As noted above, the nationality of Dadras International depends on the nationality of Prof. Dadras himself. The Respondents assert that the Tribunal does not have jurisdiction over Prof. Dadras's claim because he was not a dominant and effective United States national during the relevant period from the date his claim is alleged to have arisen until the Tribunal's jurisdictional cut-off date, 19 January 1981.

17. Prof. Dadras was born in Iran to Iranian parents on 21 March 1927. He was naturalized as a United States citizen on 14 November 1963. There is no evidence in the record that he relinquished or otherwise lost either his Iranian citizenship in accordance with Iranian law or his United States citizenship in accordance with United States law. He is consequently a dual Iran-United States national.

18. The issue of Prof. Dadras's dominant and effective nationality also was dealt with in the Award in Cases Nos. 213 and 215, where the Tribunal held:

The Tribunal finds that although the factors raised by the Respondents demonstrate that Prof. Dadras did not sever all his links with Iran, these factors do not outweigh his much closer and very lengthy ties to the United States. His professional, economic and personal activities have been centered in the United States of America since at least 1970. The Tribunal therefore finds that the dominant and effective nationality of Prof. Dadras from the date his claim is alleged to have arisen . . . until 19 January 1981 was that of the United States.³

³ Dadras International, Award No. 567-213/215-3 at para. 77 (emphasis added).

The claim in this Case is alleged to have arisen in March 1978 -- at least eight years after the Claimant became a dominant and effective United States national. The Tribunal therefore finds that the dominant and effective nationality of Prof. Dadras from the date his claim is alleged to have arisen until 19 January 1981 was that of the United States.

C. Kan Consulting Engineers as an Indispensable Party

19. Aside from Dadras International and Kan Residential Corporation, Kan Consulting Engineers, an Iranian engineering firm, [hereinafter "Kan Consulting"] was also a party to the Contract dated 18 January 1978. According to the Contract, Kan Consulting was to submit the architectural drawings for the Project to the Tehran City Hall and secure the building permit, assisted by Prof. Dadras. Kan Consulting, together with Prof. Dadras, was further to provide on-site supervisory services in Iran in the course of construction of the Kan Residential Project.

20. In its initial pleadings, the IRI suggested that Kan Consulting was an indispensable party to the present proceedings, so that in its absence the Tribunal would be unable to decide the Case. The Claimant denies that Kan Consulting is an indispensable party, because no formal partnership or joint venture was created between Dadras International and Kan Consulting. Furthermore, the Claimant stresses that the undertakings assumed by Kan Consulting under the Contract are different from those of Dadras International, and that the Contract provides for separate payments to be made to Dadras International and Kan Consulting.

21. The Tribunal notes that the tasks of Kan Consulting and the Claimant were separately defined in the Contract and that separate and differing payments for Kan Consulting and the Claimant were specified in the Contract. The Tribunal therefore finds that the Claimant's rights to the payments he alleges were due from Kan

Residential Corporation were readily identifiable and separable from those of Kan Consulting. See Dadras International, Award No. 567-213/215-3, at para. 95; Housing and Urban Services International, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 201-174-1 (22 November 1985), reprinted in 9 Iran-U.S. C.T.R. 313, 332 [hereinafter "HAUS"].

D. Jurisdiction of the Tribunal over Kan Residential Corporation

22. For the Tribunal to have jurisdiction over the Claim against Kan Residential Corporation it must be established that Kan is an "agency, instrumentality or entity controlled by the Government of Iran or any political subdivision thereof," in accordance with Article VII, paragraph 3 of the Claims Settlement Declaration ("CSD"). The Claimant maintains that this is so because Kan Residential Corporation, which formerly was owned by members of the Rezaie family, was expropriated by the Government of Iran.

23. The Claimant contends that the capital stock of the Kan Residential Corporation was entirely owned by members of the Rezaie family, and states that "[b]ased upon Prof. Dadras' Affidavit . . . Claimant has shown that Iran confiscated the assets of Kan Residential." In his affidavit, the Claimant writes:

. . . On August 8, 1979, at 2:00 p.m. (58-5-17), Dr. Darehshury and I went to Rezaie's Building to meet with Mr. Rezaie, present the building permit we had received and collect our professional fees, which had become due. The Building was occupied and taken over by the representatives of the Government of the Islamic Republic of Iran . . .

. . . On August 9, 1979 . . . Dr. Darehshury and I met with Mr. Reza Rezaie at his home, presented to him the building permit and asked him for the fees owing for professional services rendered on the Project. He asked us to return the next day . . . when he would have checks ready for us.

. . . On August 10, 1979 . . . Dr. Darehshury and I went back to Mr. Rezaie's residence. One of his associates advised us that Mr. Rezaie had left the previous night for the United States. We told him that Mr. Rezaie had asked us to come, to which Mr. Rezaie's associate replied that he was aware of this request; however, the time of Mr. Rezaie's departure had been kept a secret. I asked Mr. Rezaie's associate what had happened to the money that Mr. Rezaie owed me for my professional services, since I worked hard, the cost of preparing these construction documents over the last two years had drained all my capital and I owed a large amount of money to my associates and the bank for financing our work on this Project. Mr. Rezaie's associate said that the new government had confiscated all property, offices, corporations, factories and Rezaie's bank, including the land which was to be the site of the Project. He suggested going to the Government of the Islamic Republic of Iran to collect our fees.

24. The Claimant argues further that his contention that Kan Residential Corporation's assets were expropriated is supported by the fact that two members of the Rezaie family -- Ali and Mahmoud Rezaie -- are on a list of 51 individuals or family groups whose assets were expropriated that is attached to the 31 July 1979 Law on the Protection and Development of Iranian Industries (the "List of 51").⁴

25. In its Statement of Defence, the IRI made the following contentions regarding the status of Kan Residential Corporation:

All efforts to locate and determine the position of Sherkate Maskan Kan (Kan Housing Co.), which is named as a respondent in the case, proved fruitless . . . [T]he abovenamed firm was not located at the address provided by the Claimant, nor is there any record of such company with the Corporate Registration [Bureau]. In any event,

⁴ The Law on the Protection and Development of Iranian Industries was approved on 1 July 1979 by the Islamic Revolutionary Council and published in Official Gazette No. 10031-9/5/1358 (31 July 1979).

the Iranian Government strongly denies any allegation of expropriation of the said firm.

Similar statements are contained in other earlier pleadings.

26. In a submission filed on 6 December 1991, the IRI reported that it had finally discovered on 22 April 1991 that Kan Residential Corporation was originally named Nour Development and Construction Company. According to the IRI, the company was established on 2 June 1976 and changed its name to Kan Residential Corporation on 7 May 1977. The vast majority of the shares are asserted to have been held by Reza Rezaie (some 7110 of a total 7116).

27. The IRI contends that "[a]fter the Revolution [it] did not interfere with the management and control of the company, nor did it take the company's shares and property" and that it "has no knowledge of the alleged contract or how it was enforced." In the same submission, the IRI further states:

[T]he company was shut down in the course of the Revolution due to economic standstill and stoppage of construction operations throughout Iran. The company's directors and shareholders abandoned it after the Revolution. The GOI has no knowledge of the company's status and fate save what it has been informed by the Corporate Registration Bureau. The GOI has not been able to gain access to the documents and evidence related to the contract alleged by the Claimant.

28. The Respondent contends further that Reza Rezaie (the majority shareholder of Kan) was the minor son of Abas Rezaie, the member of the Rezaie family with whom the Claimant had been dealing before Abas's death in a car accident on 14 March 1978. The Respondent points out that in 1979, Reza Rezaie would have been eight years old. It contends that Reza Rezaie's uncle, Mahmoud Rezaie (brother of Abas Rezaie), was appointed as guardian of Reza on 20 April 1978 and that Mahmoud was appointed Chairman of the

Board of Kan in his brother's place on 6 May 1978. The Respondent denies that it interfered with the assets of Reza Rezaie.

29. In order to determine whether Kan is an entity controlled by the IRI within the meaning of Article VII, paragraph 3 of the Claims Settlement Declaration, such that the Tribunal would have jurisdiction over a claim against Kan, the Tribunal turns to the extensive Tribunal jurisprudence on the question. The Tribunal notes first that a claimant bears the burden of proving that an expropriation has occurred or that a company against which a claim is asserted is a controlled entity. See Houston Contracting Company and National Iranian Oil Company, et al., Award No. 378-173-3 (22 July 1988), reprinted in 20 Iran-U.S. C.T.R. 3, 125.

30. It is well-established in Tribunal practice that whether an entity was controlled by the Government of Iran on the date of the Algiers Declarations so as to be included within the definition of "Iran" in Article VII, paragraph 3 of the CSD is a question of fact, to be decided within the circumstances of each case. See, e.g., DIC of Delaware, Inc., et al. and Tehran Redevelopment Corporation, et al., Award No. 176-255-3 (26 April 1985), reprinted in 8 Iran-U.S. C.T.R. 144, 154-55 [hereinafter "DIC of Delaware"]. The Tribunal has tended to require more than mere government interest in, or involvement with, a company or project to infer that the entity in question is a controlled entity. See, e.g., Middle East Management and Construction Corporation and The Government of the Islamic Republic of Iran, Award No. 202-292-2 (25 November 1985), reprinted in 9 Iran-U.S. C.T.R. 340, 341-44; American Housing International, Inc. and Housing Cooperative Society of State General Gendarmerie, et al., Award No. 117-199-3 (17 March 1984), reprinted in 5 Iran-U.S. C.T.R. 235, 237-39. Rather, the Tribunal has looked for factors (singly or in combination) such as: expropriation of the company, its stock or its assets by the Government of Iran; administration or management of the company by persons appointed by some public authority (such

as managers, supervisors or inspectors); ownership by the government of stock in the company, either entirely or in controlling part; or supervision or control of the operations of the company by the government. See, e.g., CBS, Inc. and The Government of the Islamic Republic of Iran, et al, Award No. 486-197-2 (28 June 1990), reprinted in 25 Iran-U.S. C.T.R. 131, 138-42; Sedco, Inc., et al. and Iranian Marine Industrial Company, et al., Award No. 419-128/129-2 (30 March 1989), reprinted in 21 Iran-U.S. C.T.R. 31, 42-43; Sedco, Inc., et al. and National Iranian Oil Company, Award No. ITL 55-129-3 (24 October 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 276-79 [hereinafter "Sedco"]; DIC of Delaware, Award No. 276-255-3 at 154-155; Economy Forms Corporation and The Islamic Republic of Iran, et al., Award No. 55-165-1 (13 June 1983), reprinted in 3 Iran-U.S. C.T.R. 42, 47; Raygo Wagner Equipment Company and Star Line Iran Company, Award No. 20-17-3 (15 December 1982), reprinted in 1 Iran-U.S. C.T.R. 411, 413.

31. In the present Case, the Claimant alleges that Kan became a controlled entity because it was expropriated by the Government of Iran. The Tribunal therefore turns to the question whether Kan was in fact expropriated by the Government of Iran. In examining whether an expropriation has taken place, the Tribunal, in conformity with well-accepted practice, has been cautious in attributing to the IRI acts or omissions related to the general revolutionary turmoil. See, e.g., Sea-Land Service, Inc. and The Islamic Republic of Iran, et al., Award No. 135-33-1 (20 June 1984), reprinted in 6 Iran-U.S. C.T.R. 149, 164-66 [hereinafter "Sealand"]; Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, Award No. ITL 32-24-1, reprinted in 4 Iran-U.S. C.T.R. 122, 144-157. Instead, the Tribunal has looked for a specific act or acts by the Government of Iran interfering with property rights, generally requiring that such acts be specifically directed at the entity in question or at the sector of the economy of which it forms a part (e.g. banks and insurance companies). Such acts would include: nationalization of

the entity or industry; expropriation of the entity itself or of a decisive interest therein through a decision taken by a legislative body or court; appointment by the Government of supervisors, managers or inspectors; and interference with the conduct of the operation or other government actions such as to deprive the investor or owner of the use and benefit of the investment. See, e.g., Shahin Shaine Ebrahimi, et al. and The Government of the Islamic Republic of Iran, Award No. 560-44/46/47-3 (12 Oct. 1994), reprinted in __ Iran-U.S. C.T.R. __; United Painting Company, Inc. and The Islamic Republic of Iran, Award No. 458-11286-3 (20 December 1989), reprinted in 23 Iran-U.S. C.T.R. 351, 368-69; Sedco, 9 Iran-U.S. C.T.R. at 277-78; Otis Elevator Company and The Islamic Republic of Iran, et al., Award No. 304-284-2 (29 April 1987), reprinted in 14 Iran-U.S. C.T.R. 283, 299; Flexi-Van Leasing, Inc. and The Government of the Islamic Republic of Iran, Award No. 259-36-1 (11 October 1986), reprinted in 12 Iran-U.S. C.T.R. 335, 346-349; Sea-Land, 6 Iran-U.S. C.T.R. at 166.

32. As noted above, see para. 23, supra, the Claimant argues that Kan was expropriated by the IRI by virtue of physical interference with its assets and by virtue of the fact that two members of the Rezaie family appeared on the July 1979 List of 51. In support of the contention that there was physical interference with the company's assets, the Claimant has submitted an affidavit in which he recounts an 8 August 1979 visit to the Rezaie Building, which he says "was occupied and taken over by the representatives of the Government of the Islamic Republic of Iran." One day later (on 9 August 1979) he allegedly visited Mr. Reza Rezaie's house, where he was asked to return on the following day to collect his payment. He further contends that two days after his visit to the Rezaie Building (on 10 August 1979) he again visited Mr. [Reza] Rezaie's residence, where "Mr. Rezaie's associate said that the new government had confiscated all property, offices, corporations, factories and Rezaie's bank, including the land which was to be the site of the Project. He suggested going to the Government of the

Islamic Republic of Iran to collect our fees." The Claimant repeated these contentions at the Hearing.

33. The Tribunal notes first that no direct corroboration of this sequence of events has been provided by the Claimant. In addition, some of the allegations in the Claimant's affidavit are inconsistent with contentions made by the Claimant in previous pleadings. For instance, in a pleading submitted on 13 August 1986, the Claimant contended that his visit to the Rezaie Building took place on 9 September 1979 rather than on 8 August 1979. Moreover, the earlier version presented by the Claimant also differs from the version in his affidavit in that the earlier version does not mention two visits to Mr. Rezaie's house (on the first of which Professor Dadras is asked by Mr. Rezaie to return on the following day to collect outstanding payments, and on the second of which he is informed by an associate of Mr. Rezaie that Mr. Rezaie has fled to the United States). Rather, the earlier version states that "[t]he building and all offices had been taken over by agents of the Government of the Islamic Republic of Iran, who informed Prof. Dadras that Mr. Rezaie had fled to the United States."

34. Furthermore, in his initial pleadings, the Claimant repeatedly referred to the member of the Rezaie family who represented Kan after the death of Abas Rezaie as "Reza Rezaie." After the Respondent pointed out that Reza Rezaie would have been a child of eight years old in 1979, the Claimant contended in later pleadings that there were two Reza Rezaies -- a brother and a son of Abas. At the Hearing, however, the Claimant acknowledged that he had been mistaken, and contended that in his August or September 1979 visits to the Rezaie Building and Rezaie residence he had met or intended to meet with Mahmoud Rezaie.

35. The Claimant contends further that his assertion that Kan Residential Corporation's assets were expropriated is supported by

the fact that the names "Ali Rezaie" and "Mahmoud Rezaie" appear on the List of 51 attached to the July 1979 Law on Protection and Development of Iranian Industries. In addition, the name Ali Rezaie also appears on a list of 209 names of persons whose properties "as well as the properties of their next of kin have been expropriated," issued by the Public Prosecutor's Office on 12 April 1979.⁵

36. The Tribunal notes that neither of these expropriation decrees includes the name of the majority shareholder of Kan -- Reza Rezaie (see para. 28, supra). Regarding the list of 209 names, there is no indication in the record of this Case of who "Ali Rezaie" might be. The Tribunal therefore is unable to determine whether Reza Rezaie would be considered to be his "next of kin."⁶ While Mahmoud Rezaie is the name of the person who, according to the Respondents (and as acknowledged by the Claimant at the Hearing), was appointed as the guardian of Reza Rezaie, Mahmoud's name appears only on the List of 51, which did not include within its expropriatory effect the next of kin of those named.

37. However, an amendment to the Law on Protection and Development of Iranian Industries dated 15 July 1979 reads as follows:

Since the purpose of enacting this Act is to secure public rights, whereas industrialists [named in the List of 51] have registered most of their shareholdings in corporations and factories in the names of their relatives, the shares held by their spouses and children and, at the discretion of the committee provided [for in the

⁵ This list was submitted by the Government of Iran in Reza Nemazee and The Islamic Republic of Iran, Award No. 575-4-3 (10 December 1996), reprinted in __ Iran-U.S. C.T.R. __.

⁶ The Claimant does not, in any event, rely on this document.

Act], brothers and sisters, too, shall be covered by this paragraph.⁷

This amendment seems to suggest that the assets of spouses and children of those named in the List of 51 would automatically also be taken. As ward and nephew of a person named on the List of 51, Reza Rezaie would not fall into this category. However, the Amendment further provides that expropriation of the assets of "brothers and sisters, too" lay within the discretion of the committee provided for in the Act. It is plausible that this phrase might conceivably be read to include Reza Rezaie, as the presumed heir of Mahmoud Rezaie's brother's shares in Kan. However, no evidence has been provided suggesting that this committee ever made a determination concerning, for instance, Reza's father, which might have had an impact on Reza. Furthermore, the Claimant himself has not raised this possibility in his pleadings or oral presentation.

38. To be sure, it is possible that in a revolutionary context the IRI might have failed to distinguish between the assets of a guardian and his ward. However, the List of 51 relied on by the Claimant explicitly names individual members of the Rezaie family, and does not purport to expropriate the assets of the entire family. No corroborating evidence has been produced to support a broader interpretation. Consequently, the Tribunal concludes that the Law on Protection and Development of Iranian Industries, its attached "List of 51," and its 15 July 1979 Amendment, do not purport to expropriate the assets of Reza Rezaie.

39. In sum, the Tribunal notes that the evidence in support of the alleged expropriation of Kan is limited to the uncorroborated affidavit and testimony of the Claimant himself -- which is inconsistent in some respects with earlier statements made by the

⁷ This amendment was published in Official Gazette No. 10048 of 22 August 1979.

Claimant -- and the appearance of two members of the Rezaie family on two 1979 expropriation decrees. The Tribunal concludes that the evidence before it is insufficient to support a finding that Kan Residential Corporation, its assets or its shares were expropriated by the IRI. Accordingly, the Tribunal concludes that the Claimant has failed to prove that the IRI expropriated Kan Residential Corporation.

40. The question remains whether any of the other indications of control by the Government as outlined in para. 30, supra, are present in this Case. In this regard, it has not been argued by the Claimant, and no evidence has been submitted that suggests, that Kan Residential Corporation was administered or managed by the IRI; that a controlling interest in stock of Kan was held by the IRI; or that operations of the company were supervised or controlled by the IRI. As a result, the Tribunal is not satisfied that Kan Residential Corporation is an entity controlled by the IRI within the meaning of Article VII, paragraph 3 of the CSD. The Tribunal therefore concludes that it has no jurisdiction over a claim against Kan Residential Corporation.

IV. THE MERITS

41. The Claimant argues in the alternative that even if Kan Residential Corporation is not an entity owned or otherwise controlled by the IRI, the Government of Iran is responsible to the Claimant by reason of its "tortious interference" with the Contract. The Tribunal now turns to this argument.

42. The Tribunal understands the essence of the Claimant's argument to be that the IRI has interfered with the contractual rights of the Claimant such as to constitute a "measure affecting property rights" within the meaning of Article II, paragraph 1 of the CSD. The Tribunal has held previously that interference with

a contractual right may constitute a valid cause of action before the Tribunal. In the HAUS Award the Tribunal held:

In addition, the Claimant states that "[e]ven if it is determined that Iran has not taken control of the management of TRC", the Claimant has a claim directly against the Government of Iran on grounds of tortious interference with contract. In the Tribunal's view, this claim must be read as an alternative to the primary claim against TRC. The Tribunal finds that the Government is properly named as a Respondent on the basis of this alternative theory of liability.⁸

Although on the facts of that case the Tribunal considered it to be unnecessary to decide the claim based on tortious interference with contract, the Tribunal noted that such a claim was possible in principle.

43. In this Case, the interference cited by the Claimant consists of measures allegedly taken by the IRI that prevented Kan from performing its obligations to the Claimant under the 18 January 1978 Contract, see paras. 23, 24 and 32, supra. The Claimant cites physical interference with the property of Kan, Mr. Rezaie's secret departure from Iran in August 1979 and the appearance of the names of two Rezaie family members in the July 1979 expropriation decrees.

44. As noted in paras. 32-33, supra, the Claimant has not provided any evidence to corroborate his assertions that the Rezaie building was occupied by the IRI in August 1979 and that Mahmoud Rezaie fled Iran in August 1979. Furthermore, the Claimant has also failed to establish that any expropriatory measures were taken with regard to the majority shareholder of Kan, Reza Rezaie. The fact that the name of Reza's guardian, Mahmoud Rezaie, appears on the List of 51 indicates that Mahmoud Rezaie's assets were

⁸ HAUS, 9 Iran-U.S. C.T.R. at 326 (emphasis added).

expropriated by the IRI. Under appropriate circumstances, that fact might also suggest that the assets of the minor ward of such a person had been interfered with. The List of 51 alone, however, does not establish this. In the present Case, the Claimant has failed to provide any additional information that might establish a connection between measures taken against Mahmoud Rezaie and the fate of Kan Residential Corporation. Consequently, while leaving open the question whether any of the acts or the combined effect of the acts of interference with Kan relied on by the Claimant, if established, would warrant a conclusion of tortious interference with his contract rights, the Tribunal finds that the Claimant has not provided sufficient evidence that any measures were taken by the IRI against Kan Residential Corporation.

45. For the foregoing reasons, the Tribunal finds that the Claimant has failed to establish that there has been an expropriation or other measure affecting his property rights attributable to the Islamic Republic of Iran. Consequently, the Claimant's claim against the Islamic Republic of Iran is hereby dismissed.

V. AWARD

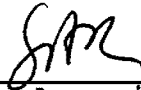
46. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- i. The claim against the Respondent Kan Residential Corporation is hereby dismissed for failure to prove that Kan Residential Corporation is an "agency, instrumentality, or entity controlled by the Government of Iran," within the meaning of Article VII, paragraph 3 of the Claims Settlement Declaration;

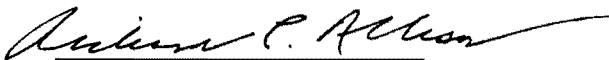
- ii. The claim against the Respondent Government of the Islamic Republic of Iran is hereby dismissed for failure to prove expropriation or any other measure affecting the Claimant's property rights, within the meaning of Article II, paragraph 1 of the Claims Settlement Declaration;
- iii. Each Party shall bear its own costs of arbitration.

Dated, The Hague
25 February 1997



Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Mohsen Aghahosseini

Concurring in the
dismissal of the claims