

ORIGINAL DOCUMENTS IN SAFE

312-116

312-116

Case No. 312

Date of filing: 29 JUN 84

\*\* AWARD - Type of Award FINAL  
 - Date of Award 22 JUN 84  
7 pages in English 6 pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

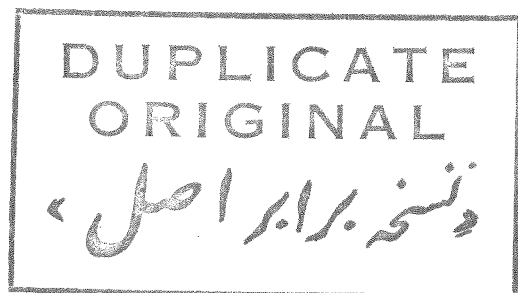
\*\* CONCURRING OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* 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

IRAN-UNITED STATES CLAIMS TRIBUNAL



RONDU HOLDINGS INC.,  
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN and  
THE MINISTRY OF HOUSING AND URBAN  
DEVELOPMENT OF IRAN,  
Respondents.

دیوان داوری دعاوی ایران - ایالات متحدہ

Case No. 312

Chamber Two

Award No. 137 - 312-2

312-116  
۳۱۲-۱۱۶

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحده
ثبت شد - FILED	
Date	۱۳۶۳ / ۴ / ۸ 29 JUN 1984
No.	312

AWARD

Appearances:

For Claimant:

Mr. Joseph Eiger  
Mr. Benson Selzer  
Mr. Daniel Sullivan,  
Representatives of the  
Claimant  
Mr. James Madigan III  
Ms. Colleen Cassidy  
Mr. Mark Geraghty  
Mr. Ariel Gratch,  
Attorneys for the  
Claimant  
Mr. William Laverty

For Respondents:

Mr. Mohammad K. Eshragh,  
Agent of the Islamic  
Republic of Iran  
Mr. Akbar Shirazi,  
Legal Advisor to the Agent  
Mr. Zabiollah Alavi Harati  
Mr. Mohammad H. Saffar Zadeh,  
Attorneys for the  
Respondents  
Mr. Mohammad Isari  
Mr. Said Tavakoli Parsan,  
Assistants to the  
Attorneys

Also Present:

Mr. John Reynolds,  
Advisor to the Agent of  
the United States of  
America

## I. The Claim

The Claimant, Rondu Holdings Inc. ("Rondu"), a New York corporation, has brought this claim against the Islamic Republic of Iran and the Ministry of Housing and Urban Development (the "Ministry") on behalf of its allegedly controlled Iranian subsidiary L.H.C. Housing Company ("LHC"), alleging breach of two agreements between the Ministry and LHC for the development of property outside Tehran. In compensation for this breach, Rondu seeks damages of U.S. \$200 million, representing expenses incurred and lost profits.

The Ministry, contending that the majority shareholder of both Rondu and LHC is an Israeli citizen, maintains that the Tribunal does not have jurisdiction over this claim. On the merits, the Ministry contends that it signed only one agreement with LHC, that this one agreement never received the requisite governmental approval and was thus not binding on the Ministry, that, even if the agreement were binding, the Ministry did not breach it, and that the alleged second agreement never came into existence.

A Hearing was held in this case on 9 April 1984.

## II. Jurisdiction

Serious jurisdictional questions exist as to whether LHC is a controlled subsidiary of Rondu and whether Rondu itself is a national of the United States within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration.

The evidence submitted regarding the ownership -- and thus nationality -- of Rondu establishes that it was incorporated under the laws of the State of New York in 1968. At the time the alleged claim arose, the name of the corporation was TMD Management Co., Inc. ("TMD") and the record ownership of its 300,200 issued and outstanding shares of stock was as follows: 50.7% was owned by Mr. Joseph Eiger ("Eiger"), an Israeli citizen, 48.6% was owned by individuals with United States addresses and 0.7% was owned by individuals with non-United States addresses. In July 1980, TMD debentures owned by Eiger Holdings Ltd. ("Eiger Holdings"), a company wholly owned by Eiger, were converted into 200,000 shares of TMD stock and issued to Eiger Holdings. The record ownership of the other 300,200 shares remained as stated above.

Shortly thereafter, TMD merged with another company and the name of the corporation was changed to Rondu. Following the merger, the 352,400 issued and outstanding shares of stock of the new corporation were owned of record as follows: 43.2% by Eiger, 56.7% by Eiger Holdings and 0.1% by other former shareholders of TMD. According to the Claimant, the record ownership of Rondu on 19 January 1981 was identical to that following the merger.

Neither party disputes that Eiger is an Israeli citizen or that he is the sole shareholder of Eiger Holdings. It is thus clearly established that the record ownership of the Claimant is not that of a United States national. The

Claimant asserts, however, that pursuant to both a verbal agreement and a written assignment, Eiger transferred the beneficial ownership of two thirds of the shares owned of record by him and by Eiger Holdings to two United States citizens, Mr. Daniel Sullivan ("Sullivan") and Mr. Benson Selzer ("Selzer"). Pursuant to this transfer, the Claimant maintains that from the date the claim arose until 19 January 1981 it was beneficially owned and controlled by these two United States citizens and is thus a United States national within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration.

The evidence submitted by the Claimant, however, to establish that at the relevant times it was controlled by Sullivan and Selzer is meager. According to an affidavit submitted by Eiger, in January 1976 Eiger, Sullivan and Selzer agreed at a meeting at the Hyde Park Hotel in London that because Sullivan and Selzer were to assume primary responsibility for obtaining funding for certain business ventures, "[Eiger] agreed to hold two thirds of the TMD shares [he] owned or acquired in the future, directly or indirectly, beneficially for Mr. Selzer and Mr. Sullivan, with one third attributable to each of them." No contemporaneous document, however, has been submitted to establish the existence of this agreement.

The only documentary evidence submitted to establish that Selzer and Sullivan jointly were the beneficial owners of two thirds of the shares of TMD is the following letter from Eiger to Selzer and Sullivan dated 16 February 1978:

This is to confirm our understanding and agreement that two-thirds (2-3rds) of any and all shares or other securities of TMD Management Co., Inc. owned by myself or for my benefit, directly or indirectly, are held by me on your behalf and that you will be entitled to two-thirds of any proceeds collected by me with respect to such shares or any other benefits that I receive as a result of my ownership of such shares.

The Claimant maintains that this letter operated as an assignment to Selzer and Sullivan of the beneficial ownership of two thirds of the shares owned directly by Eiger in his own name and two thirds of the shares owned indirectly by Eiger by virtue of his sole ownership of Eiger Holdings. The Claimant acknowledges, however, that the majority owners of record were Eiger and Eiger Holdings Ltd.

The Tribunal makes no determination as to whether such an assignment would be effective under New York law so as to effect certain shareholder rights in a New York corporation. The Tribunal does hold, however, that this document alone did not operate to transfer to Selzer and Sullivan the degree of ownership and control required by Article VII, paragraph 1, of the Claims Settlement Declaration. The text of the document affirms that it is Eiger who owns the shares, not Selzer and Sullivan, to whom he promises to pay part of any profits.

The only documentary evidence submitted to establish that Selzer and Sullivan jointly were the beneficial owners of two thirds of the shares of TMD is the following letter from Eiger to Selzer and Sullivan dated 16 February 1978:

This is to confirm our understanding and agreement that two-thirds (2-3rds) of any and all shares or other securities of TMD Management Co., Inc. owned by myself or for my benefit, directly or indirectly, are held by me on your behalf and that you will be entitled to two-thirds of any proceeds collected by me with respect to such shares or any other benefits that I receive as a result of my ownership of such shares.

The Claimant maintains that this letter operated as an assignment to Selzer and Sullivan of the beneficial ownership of two thirds of the shares owned directly by Eiger in his own name and two thirds of the shares owned indirectly by Eiger by virtue of his sole ownership of Eiger Holdings. The Claimant acknowledges, however, that the majority owners of record were Eiger and Eiger Holdings Ltd.

The Tribunal makes no determination as to whether such an assignment would be effective under New York law so as to effect certain shareholder rights in a New York corporation. The Tribunal does hold, however, that this document alone did not operate to transfer to Selzer and Sullivan the degree of ownership and control required by Article VII, paragraph 1, of the Claims Settlement Declaration. The text of the document affirms that it is Eiger who owns the shares, not Selzer and Sullivan, to whom he promises to pay part of any profits.

The Tribunal, therefore, holds that on the basis of the evidence presented Rondu is not a national of the United States within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration. The claim of Rondu against the Islamic Republic of Iran and the Ministry must therefore be dismissed for lack of jurisdiction. It should be noted that Selzer and Sullivan did not as individuals bring indirect claims under Article VII, paragraph 2, of the Claims Settlement Declaration, so the question whether their ownership interests were sufficient at the time the claim arose to control Rondu was not before the Tribunal.

### III. Costs

Each party shall be left to bear its own costs of arbitration.

### AWARD

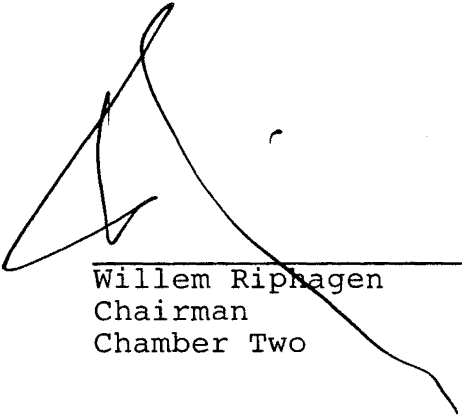
THE TRIBUNAL AWARDS AS FOLLOWS:

The claim of the Claimant, Rondu Holdings Inc., relating to the Islamic Republic of Iran and the Ministry of Housing and Urban Development of Iran is hereby dismissed for lack of jurisdiction.

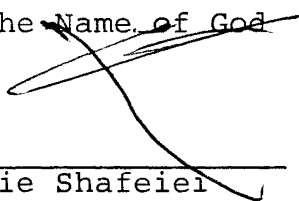


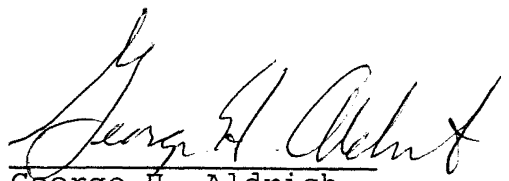
Each of the parties shall bear its own costs of arbitrating this claim.

Dated, The Hague  
22 June 1984



\_\_\_\_\_  
Willem Riphagen  
Chairman  
Chamber Two

In the ~~Name of God~~  
  
\_\_\_\_\_  
Shafie Shafeiei



\_\_\_\_\_  
George H. Aldrich