

827-101

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Case No. 827

Date of filing: 4, 5, 1995

\*\* AWARD - Type of Award Award  
- Date of Award 4 May 1995  
12 pages in English 15 pages in Farsi

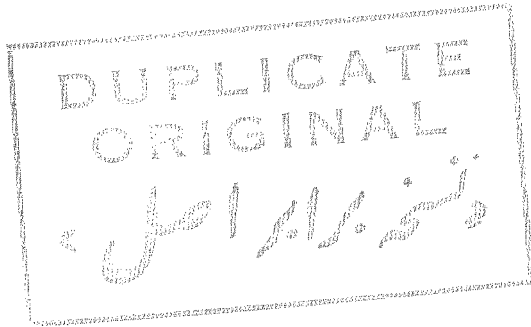
\*\* DECISION - Date of Decision \_\_\_\_\_  
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\*\* CONCURRING OPINION of \_\_\_\_\_  
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CASE NO. 827  
CHAMBER TWO  
AWARD NO. 563-827-2

MOHABATULLAH SOBHANI,  
Claimant,  
and

THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN,  
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	4 MAY 1995
	تاریخ ۱۳۷۴ / ۲ / ۱۴

AWARD

Appearances

- For the Claimant : Mr. Gene Weisberg,  
Attorney for Claimant,  
Ms. Christina Kosha,  
Assistant to the Attorney,  
Mr. Mohabatullah Sobhani,  
Claimant.
- For the Respondent : Mr. Ali H. Nobari,  
Agent of the Islamic Republic of  
Iran,  
Mr. Khosrow Tabassi,  
Legal Adviser to the Agent,  
Mr. Jafar Niaki,  
Legal Adviser to the Agent.
- Also present : Ms. Mary Catherine Malin,  
Deputy Agent of the United States  
of America.
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## I. THE PROCEEDINGS

1. The Claimant, MOHABATULLAH SOBHANI, filed a Statement of Claim, consisting of nine separate claims, against the Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, on 19 January 1982, seeking compensation in the amount of approximately US\$5,100,000.00 plus interest and costs. The Claim is for the alleged expropriation by the Respondent of a business, personal properties and real estate. During the course of the written proceedings that part of Claim 8 which concerned alleged improper payroll and business termination expenses was withdrawn. At the Hearing the Claimant withdrew Claim 2 which concerned the alleged expropriation of his Tehran residence. The Respondent objected, inter alia, to the jurisdiction of the Tribunal on the ground that the Claimant is exclusively a national of Iran and denied liability on the ground that it never expropriated any of the Claimant's assets.

2. By Order of 3 March 1989, the Tribunal joined "all jurisdictional issues, including the issue of the Claimant's nationality, . . . to the consideration of the merits of this Case."

3. A Hearing in this Case was held on 8 November 1994.

## II. FACTS AND CONTENTIONS

### Nationality of the Claimant

4. It is undisputed that the Claimant was born of Iranian parents in Iran in 1935 and is thus an Iranian national by birth. He lived in Iran until 1956 when he went to the United States to study engineering. He later graduated from the University of California at Los Angeles (UCLA) in 1960. The Claimant became a naturalized U.S. citizen on 10 November 1966, as evidenced by a copy of his Certificate of Naturalization No. 8912871. He

contends that at that time he took the oath of allegiance to the United States knowingly and with the full purpose of living and residing in the United States of America for the rest of his life. It was in the U.S. that he married an Iranian-born woman, and one son was born to that marriage in California in 1962. Claimant's marriage with his first wife later ended in divorce.

5. Between 1955 and 1967, Claimant's parents and siblings all moved to the United States and, except for his parents, by 1973 they had all become naturalized United States citizens. In 1964, the Claimant allegedly bought a home in California for himself and some of his family.

6. From the time of Claimant's graduation in 1960 until 1975, Claimant's business career was exclusively in the United States, working for companies like Northrup, Garrett, McDonnell-Douglas, Litton Industries and Rockwell International. The Claimant alleged that some of the work included classified projects of the United States Government. He further asserted that for this work United States citizenship was required and that he had to be cleared by the Federal Bureau of Investigation.

7. In 1975 Mr. Sobhani was sent to Iran as an employee of Rockwell International. There he met and married his second wife, Farnaz Ilchi Kabir, in Tehran, Iran. They allegedly had both a Moslem and a Ba'hai wedding ceremony due to Mr. Sobhani's Ba'hai faith. Mr. Sobhani's employment with Rockwell International ended in 1976. At the Hearing, Mr. Sobhani stated that he and his wife then travelled to the United States for forty-five days, during which time they made preparations to return to Iran. Upon their return to Iran, Mr. Sobhani started his own businesses (see infra, para. 29).

8. The Claimant alleges that at all times it was his intention to return eventually to the United States and operate his businesses from there. Claimant's second wife in her affidavit stated that when living in the United States after her marriage,

she felt very homesick and urged her husband "to return to Iran for an extended period." During their residence in Iran, (i.e. after their return in 1976, see para. 7 supra) a daughter was born who received an Iranian national identity card and was also allegedly registered with the United States Consulate in Tehran.

9. In September 1980 the Claimant was arrested at Tehran airport prior to boarding a plane for an international flight. In a written submission, the Claimant explained that at the time of his arrest, he was about to embark on a routine business trip. At the Hearing, the Claimant alleged that he was detained when he, his wife, daughter and aunt prepared to board a plane to Spain, the final destination being, according to him, the United States. The Claimant stated that at that moment, they were planning to leave Iran permanently. The Claimant was released from prison on 4 February 1981 and thereafter he left the country. He alleges that he, with his wife and daughter, fled from Iran on or about 20 December 1981 via Afghanistan.<sup>1</sup>

10. The Claimant contends that, apart from the considerable real estate he owned in Iran and the house in the United States, he also owned two pieces of real property in California purchased in 1965 and 1969. In evidence are documents showing that the Claimant held active brokerage accounts in the United States from 1977-1980 and that he also paid California and U.S. annual income taxes from 1965 - 1975.

11. The Respondent asserts that Claimant's United States nationality was not dominant and effective during the relevant period. Whatever ties existed between the Claimant and the United States prior to 1976, Respondent argues, were severed when Claimant chose to live and work in Iran.

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<sup>1</sup>On a number of issues the evidence presented by the Claimant is not fully consistent.

The Claims

12. In view of its holding, infra, with respect to the Claimant's dominant and effective nationality, the Tribunal shall limit itself to a brief description of the facts and contentions about the Claims that remain in the Case.

Claim 1

13. This Claim is for the alleged expropriation in September 1980 of Datamatics International Inc. (hereinafter DII), a corporation organized under the laws of Iran of which the Claimant alleged to be the principal shareholder. The Claimant asserts that in September 1980, all of the offices and warehouse of DII were seized by the Revolutionary Guards and other agents acting on behalf of the Government of Iran. Mr. Sobhani claims that the reasonable value of DII and its stock was US\$1,165,000.

14. The Respondent notes that the company in which Mr. Sobhani held shares was not called Datamatics International Inc. but Datamatic International Company Ltd., organized in 1979. The Respondent denies that this company was expropriated.

Claims 3, 4, 5

15. These Claims are for the expropriation of three parcels of land which were allegedly seized by agents of the Government of Iran in September and November 1980. Claimant lists those lands as (1) a 40,000 square meter orchard in Esfand Abad, Karaj; (2) a 3,100 square meter parcel of vacant land in Tehran; and (3) a 1,000 square meter parcel of land in a resort community. The Claimant claims a total amount of US\$1,470,000.

16. The Respondent denies having expropriated any of the lands at issue in this Case. It contends that the Claimant has neither

proved his ownership of the lands, nor the expropriation thereof. Furthermore, it argues that these claims should be barred by the caveat to the Decision in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1982), reprinted in 5 Iran-U.S. C.T.R. 251 (Case No. A18), as the Claimant must have used his Iranian nationality in acquiring and holding these property rights which were reserved exclusively for Iranian nationals.

#### Claim 6

17. This Claim is for the confiscation of gold and silver coins, watches, jewelry and other possessions, allegedly worth US\$850,000. Mr. Sobhani asserts that he carried 580,000 Dollars' worth of those valuables with him when, in September 1980, he was detained at the airport (see para. 9, supra), and that the rest were either in his office or residence.

18. The Respondent argues first that the Claimant has failed to prove his ownership of the valuables and, second, that in accordance with a decree law passed by the Revolutionary Council, it was at the time prohibited to export from Iran any antiques and artifacts as well as any gold and silver and goods made from them except for customarily acceptable personal jewelry. The Respondent emphasizes that in accordance with the Act for Punishment of Perpetrators of Smuggling dated 29 Esfand 1312 (20 March 1934), as amended by the law of 29 Esfand 1353 (20 March 1975) the penalty for exporting prohibited goods is, in addition to forfeiture of the goods, up to two years imprisonment and payment of a fine equivalent to twice the value of the goods.

#### Claim 7

19. This Claim is for the alleged expropriation in September 1980 of bank accounts allegedly held by Mr. Sobhani at three banks. This Claim amounts to US\$108,500.

20. The Respondent submits that Claimant had an account at only one bank, consisting of only Rials 12,0000. Respondent argues that because Claimant made no demand for the money prior to the date of the Claims Settlement Declaration, this Claim was not outstanding on 19 January 1981 and accordingly is beyond the Tribunal's jurisdiction.

Claim 8

21. The Claimant claims that when DII was expropriated in September 1980 (see para. 13 supra) he was required to pay additional payroll and termination expenses to the employees of DII, totalling US\$57,500. Further, agents of the Government and others had allegedly required some US\$329,000 additional payments from Mr. Sobhani personally.

22. The Respondent denies this Claim as a whole because in its opinion it has not been explained or substantiated by any evidence. In particular the Respondent denies that it or its agents have required the Claimant to make any payments.

Claim 9

23. This Claim is for the alleged expropriation in September 1980 of two automobiles by the agents of the Government of Iran. The Claimant asserts that the reasonable value of the two cars amounts to US\$112,000.

24. The Respondent denies that it expropriated any automobile of the Claimant.



### III. JURISDICTION

25. As to Claimant's nationality, it is undisputed that Mr. Sobhani is an Iranian national by birth. There is no proof that he ever relinquished his Iranian nationality or that he otherwise lost that nationality. At the same time, Mr. Sobhani has shown to the Tribunal's satisfaction that he has been a United States national since 1966.

26. Based on the conclusion that the Claimant was a national of Iran as well as the United States during the relevant period under consideration, the Tribunal, in accordance with the Full Tribunal's decision issued in Case No. A18, (see, para. 16 supra), must proceed to determine his dominant and effective nationality for the purpose of its jurisdiction over his Claim. In the A18 Decision the Tribunal held that it has "jurisdiction over claims against Iran by dual Iran-United States nationals where 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." Id., 5 Iran-U.S. C.T.R. at 265.

27. The date of the alleged takings is September 1980. The jurisdictional period is thus from September 1980 to 19 January 1981, during which time Mr. Sobhani was imprisoned in Iran. Mr. Sobhani argued that because of that deprivation of liberty he should not be considered to have enjoyed the benefits and obligations of an Iranian. While the Tribunal would not be ready to draw such a conclusion from the Claimant's imprisonment, it must, irrespective of that particular argument, also consider events and facts preceding the relevant period in order to determine the Claimant's dominant and effective nationality. See, Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

28. The record shows that between 1956 and 1974 Mr. Sobhani

became fully integrated into American society. He lived continuously in the United States during this period, both as a student and as a professional. All of his business activities up to this point occurred in the United States. Further, most of his family, including his son, siblings, and parents, were living in the United States, many as United States citizens. In short, by 1974, it could be assumed that Mr. Sobhani's dominant and effective nationality was that of the United States.

29. However, the period 1975-1976 marks a major change in Claimant's life. Mr. Sobhani returned to Iran, first to work with a United States company, but then to set up his own businesses. He married his second wife in Iran. He asserts that he purchased an apartment and several pieces of land. Although the Claimant contends that at all times he intended to return eventually to the United States, the evidence shows that, at least during the years 1976-1980, this alleged intention did not prevent him, according to his claim, from having very significant investments and interests in Iran.

30. As for continued attachments with the United States during this time, the Claimant stated at the Hearing that he made several trips back to the United States, including one trip to the United States in 1980 prior to his September 1980 arrest at the Tehran airport. Not only did Claimant fail to allege the occurrence of these trips in his written pleadings, but also he has not submitted any evidence, e.g., copy of passport entries, to corroborate the alleged visits. Moreover, he has presented no evidence as to the purpose of the visits. In general, the Tribunal notes that Mr. Sobhani has failed to document the extent of his continued contacts and interests he claims to have maintained in the United States during those years.

31. Contrary to some written submissions, at the Hearing the Claimant stated that in September 1980, but for the detention, he and his family would have left Iran. In this connection the Tribunal notes that there is no evidence or even indication that

the Claimant had attempted to dispose of any of his properties before leaving; nor is there any evidence even of plans to that effect. It was not until the Hearing that the Claimant represented that he was trying to leave Iran with his family. In earlier submissions there was no mention of his family in connection with the September 1980 trip.

32. Given Mr. Sobhani's prior integration into American life, this case presents a close jurisdictional question for the Tribunal. In arguing that the case should be dismissed for lack of jurisdiction, Respondent cites Benny Diba, et al. and The Islamic Republic of Iran, et al., Award No. 444-940-2 (31 Oct. 1989), reprinted in 23 Iran-U.S. C.T.R. 268. While both Diba and the instant case share the element of a claimant returning to Iran, marrying an Iranian woman, and setting up business there, Mr. Sobhani's claim to dominant U.S. nationality is stronger than Mr. Diba's. For example, Mr. Sobhani's residence in Iran was at the most 7 years (1974-1981) compared to Diba's 12 years (1967-1979). And from September 1980 forward Mr. Sobhani was imprisoned. Much of Mr. Sobhani's family -- son, mother, father, and siblings -- lived in the United States. There was no such evidence of deep familial connections to the United States in the Diba case. Further, Mr. Sobhani allegedly owned property in the United States, maintained an active brokerage account there, and paid United States income taxes. The allegations of economic ties to the United States were not as strong in Diba.

33. While Mr. Sobhani's case is stronger in certain respects than Diba, there is one particularly relevant fact in this case regarding dominant nationality that was absent in Diba: Mr. Sobhani's voluntary residence in Iran after the Revolution. Whether planning to leave Iran permanently or not in September 1980, the Tribunal notes that the Claimant voluntarily stayed in Iran when the Revolution began; in particular, he stayed after the seizure of the United States Embassy in November 1979 and the break in relations between Iran and the United States. It is well known that at that time conditions for United States citizens became difficult. While remaining in Iran during the

Revolution and until September 1980, the Claimant - who might have been known to have also the American nationality - clearly took various risks including financial ones. A dual Iran-United States national whose ties to the United States were significantly stronger than his ties to Iran would probably have gone back to the United States. The fact that the Claimant apparently decided to stay in Iran during the Revolution, continue his businesses, and retain his investments in Iran during that period is significant. Such behavior suggests strongly that the Claimant's business and personal interests were firmly centered in Iran at that time.

34. The Tribunal believes that the Claimant's residence in Iran after 1976 was of a different nature from his previous trips to his country of origin. He himself admits that the period which began after the 1976 return was different, in business terms, from the previous times when his ties had been in and with the United States. The Claimant contends that he always had the intention of going back ultimately to the United States. This may be true. The Tribunal acknowledges that the intention of a dual national may have its importance. However, the Tribunal places more weight in determining a claimant's dominant and effective nationality on what was done rather than what was said or intended, especially when there is a certain discrepancy between actions and stated intention.

35. After weighing all the evidence before it, the Tribunal finds that Mr. Sobhani has failed to establish that his once dominant links to the United States remained dominant after 1976 and during the relevant period between the time when his Claims allegedly arose in 1980 and 19 January 1981. The Tribunal therefore concludes that Mr. Sobhani's Claims are not Claims of a national of the United States as defined in Article VII, paragraph 1, of the Claims Settlement Declaration, and, consequently, that it does not have jurisdiction over such claims under Article II, paragraph 1, of that Declaration.

IV. COSTS

36. Each Party shall bear its own costs.

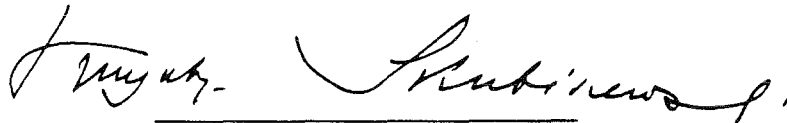
V. AWARD

37. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

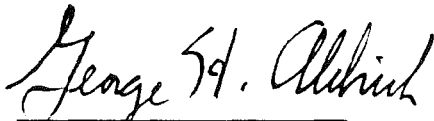
- (i) The Claims asserted by Mr. Sobhani are dismissed for lack of jurisdiction.
- (ii) Each Party shall bear its own costs of arbitration.

Dated, The Hague  
04 May 1995

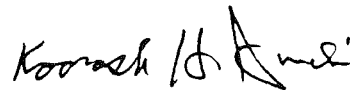


Krzysztof Skubiszewski  
Chairman  
Chamber Two

In the Name of God



George H. Aldrich



Koorosh H. Ameli  
Concurring