

ORIGINAL DOCUMENTS IN SAFE

Case No. 950 Date of filing: 25, 5, 1994

950-114

** AWARD - Type of Award Award
- Date of Award _____
8 pages in English 10 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

DUPLICATE
ORIGINAL

JALAL MOIN
Claimant,
and

THE GOVERNMENT OF
THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

دستخبره برابر اصل

CASE NO. 950
CHAMBER TWO
AWARD NO.557-950-2

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	25 MAY 1994
	تاریخ ۱۳۷۳ / ۳ / ۴

AWARD

Appearances :

For the Claimant :

Mr. Marvin M. David,
Attorney for Claimant,
Mr. Samad Parvin,
Co-Counsel for Claimant,
Mr. Bruce H. David,
Co-Counsel for Claimant,
Mr. Jalal Moin,
Claimant,
Mr. Amanollah Riggi,
Witness,
Mr. Massood H. Banayan,
Witness.

For the Respondent :

Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran,
Mr. Jafar Niaki,
Legal Adviser to the Agent,
Mr. Khosrow Tabasi,
Legal Adviser to the Agent,
Mr. Homayoun Rouhafzay,
Legal Adviser to the Agent.

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.

I. THE PROCEEDINGS

1. The Claimant, JALAL MOIN, filed a Statement of Claim against the Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, on 19 January 1982, seeking compensation in the amount of approximately US\$22,000,000, plus interest and costs for the alleged expropriation by the Respondent of certain real estate, water rights, and financial instruments and investments in which he allegedly held a one-third interest as the result of inheritance from his father, Abolghasem Moin, who died in 1973. 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 the property in question had not been expropriated. The Respondent also contested the Claimant's valuation of the property.

2. By Order of 30 March 1990 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 and 9 February 1994.

II. FACTS AND CONTENTIONS

4. The Tribunal shall limit itself to those facts and contentions which are necessary for the disposition of the Case.

5. The Claimant was born of Iranian parents in Iran in 1925 and thus is an Iranian national by birth. He lived the first forty years in Iran and in 1965 he entered the United States with, as he stated, "the express declaration of remaining and becoming a citizen." The Claimant became a naturalized U.S. citizen on 21 November 1972, as evidenced by a copy of his Certificate of Naturalization. He asserts that his Iranian born wife then, too, became a U.S. citizen. Two daughters were born to the marriage. The Claimant asserts that both daughters are citizens of the United States and have always resided there. The Claimant

contends that he has lived continually in the United States since 1965 and that the center of both his social and business activities has been in the United States since he entered it in that year. The Claimant and his wife have owned several different houses in the New York City area since 1972. Moin also presented evidence of his involvement in the New York City Taxi business since 1974, and he provided evidence of his activity in other business enterprises in New York City from 1970. The Claimant has further presented copies of U.S. tax returns filed jointly by him and his wife for the years 1976 through 1981.

6. The Respondent asserts that the Claimant has no standing to present a claim before this Tribunal as he has failed to prove that his U.S. nationality is dominant and effective. In particular, it argued that the Claimant never renounced his Iranian nationality, with effect in Iranian law.

7. As to his Claim, the Claimant asserts that "[his] interest was expropriated by virtue of the fact that he was a United States citizen." Both the alleged expropriation and its motivation have been denied by the Respondent. The Claimant also states that he is "unable to exercise unrestricted authority over the property." In the Statement of Claim the Claimant asserted that he was a one-third owner of the allegedly expropriated properties and rights by virtue of his and his family's inheritance of them. At the Hearing, Claimant's counsel stated that in fact the Claimant was the owner of a two-ninths part of the inheritance; the amount claimed, though, remained the same.

8. At the Hearing the Claimant presented two witnesses, Mr. Riggi and Mr. Banayan.

9. Mr. Riggi, a long-time friend of Claimant's family, testified as to the nature of the properties, most of which he had been familiar with for over sixty years. Mr. Riggi stated that in earlier years he had visited both the residential house of the Moin family in the city of Yazd and their farm and summerhouse. Mr. Riggi was also familiar with the shops the family had owned in the Bazargan area. In November 1980, Mr.

Riggi left Iran. He stated that shortly before departure he passed the family house in Yazd but did not enter it. According to Mr. Riggi several men were coming out and going in. He did not recognize these men as members of the Moin family. Before leaving the country Mr. Riggi allegedly also visited the Bazargan-area shops, which were also part of the inheritance. On that occasion, Mr. Moin's cousin, a friend of Mr. Riggi, allegedly told him that the rent for the shops was being collected by the Government of Iran.

10. The other witness, Mr. Banayan, travelled to Iran in 1986 for the purpose of valuing the properties at issue in this Case. Mr. Banayan, who said that he was a real estate appraiser and broker, first visited the house in Yazd. He testified that he talked to the people then living in the house, who allegedly told him that since the Islamic Revolution the house belonged to the Foundation for the Oppressed. Mr. Banayan valued Mr. Moin's two-ninths interest in the Yazd house at US\$3,150,000.

11. After visiting Yazd, Mr. Banayan went to the summerhouse and the Bazargan shopping center. At both places he asked the people occupying the properties to identify their owner. Mr. Banayan testified that both times he was told that the Foundation for the Oppressed had owned them since the Islamic Revolution. Mr. Moin's two-ninths interests in the summerhouse and the stores were each valued at approximately US\$2,000,000. Mr. Banayan concluded that the total value of Claimant's claim is approximately US\$22,000,000.

12. The Tribunal has not been presented with any documentary evidence concerning the alleged taking of the properties in question, originating either from the Claimant or from his siblings, some of whom are living in Iran and some in the United States.

13. The Respondent has first raised a jurisdictional defence to Claimant's claim. Iran notes that the Claimant has failed to give the date on which his claim arose and has not indicated the Governmental acts allegedly impairing Claimant's rights. For

these reasons Iran argues that the Claimant has not actually presented a claim, and points out that the Tribunal therefore has no jurisdiction to deal with the Case.

14. On the merits, the Respondent denies that any of Claimant's property interests have been expropriated. It asserts that while some of the properties have been sold by the Claimant himself, others remain Claimant's property. To that effect the Respondent has submitted certain copies of documents that seem to establish that the Claimant, through powers of attorney, sold his share in some parcels of the relevant property before the Islamic Revolution and that he sold some as late as March 1983.

III. JURISDICTION

15. As to Claimant's nationality it is undisputed that Mr. Moin 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. Moin has shown that he has been a United States national since 1972.

16. 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, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251 (Case No. A18), 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. Taking all the relevant factors and their evidence into consideration the Tribunal is satisfied that at all relevant times from the Iranian Revolution to 19 January 1981 Claimant's dominant and effective nationality was that of the United States. Claimant's residence and business activities were

at all relevant times centered in New York, and his only financial interest in Iran evidently was his shared ownership in the properties at issue in this claim.

17. The Tribunal must also consider whether the Claimant has actually presented a claim. Indeed, certain defects or gaps in his written submissions might lead to doubts concerning the very existence of the claim. If no claim in the sense of Article II, paragraph 1, of the Claims Settlement Declaration was outstanding in the relevant period, the Tribunal would have no jurisdiction. However, in view of the statements made at the Hearing, the Tribunal is ready to admit that it was presented with a claim allegedly arising out of measures affecting the Claimant's property rights at some time during the Islamic Revolution and prior to the entry into force of the said Declaration.

IV. MERITS

18. The Claimant contends that the Government of the Islamic Republic of Iran expropriated his two-ninths interest in certain real estate and other proprietary interests. The issue here is whether certain actions for which the Respondent is responsible deprived the Claimant of his ownership.

19. In the written pleadings the Claimant has not alluded to any action by the Respondent which might constitute an expropriation or another measure affecting his property rights. In this context the Tribunal notes that Claimant's statement that he is "unable to exercise unrestricted authority over the property" might be understood as being less definite than a clear affirmation that expropriation took place. At the Hearing, the two witnesses presented by the Claimant testified that with respect to certain properties they were told that the Foundation for the Oppressed either owned the property or was collecting the rent for it. In this regard the Tribunal notes that Mr. Riggi's testimony was vague and inconclusive. He testified that when he last saw the house in Yazd in 1980, men whom he did not recognize as members of the Moin family were coming and going from it.

This, in the Tribunal's view, hardly proves the alleged taking of the house. Mr. Banayan testified both on the issue of expropriation and on the value of the properties. The Tribunal notes that on the issue of the alleged expropriation Mr. Banayan only testified that in 1986 he had been told that certain properties at issue in this Case, since the beginning of the Islamic Revolution, belonged to the Foundation for the Oppressed. The Tribunal considers this to be hearsay evidence, on which it cannot rely, unless the evidence is substantiated. Such substantiation is missing. The Tribunal is mindful of the difficulties faced by the Claimant in collecting evidence, although the Tribunal would expect that any taking of the properties in question would be indicated in some documentary evidence, for example, in contemporary correspondence. In any event, the Tribunal must base its awards on probative evidence. The question may be asked why neither the Claimant's siblings nor Mr. Banayan, when he went to Iran in 1986, were able to gather any such evidence.

20. From what has been submitted in the record and testified at the Hearing, the Tribunal must conclude that the Claimant has not shown when and by what acts the alleged expropriation of the various properties took place. As to the time, he asserted during the Hearing, that it occurred sometime during the period from November 1979 to the date of the Claims Settlement Declaration. As to the expropriation acts, neither any deprivation of the Claimant's right nor the attributability of any acts to the Respondent has been proved. Accordingly, the Claim is dismissed for lack of proof.

V. COSTS

21. Each Party shall bear its own costs.

VI. AWARD

22. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The Claim is hereby dismissed for lack of proof.
- b. Each of the Parties shall bear its own costs of arbitrating this Claim.

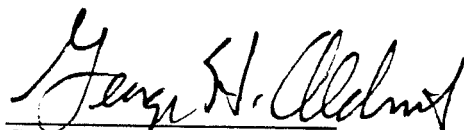
Dated, The Hague

24 May 1994

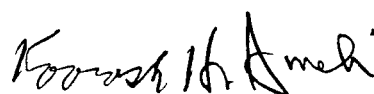


Krzysztof Skubiszewski
Chairman
Chamber Two

In the Name of God



George H. Aldrich



Koorosh H. Ameli
Concurring