

965-78

ORIGINAL DOCUMENTS IN SAFE

Case No. 965

Date of filing: 12/10/89

** AWARD - Type of Award Award
- Date of Award 12 Oct 89
4 pages in English 4 pages in Farsi

** DECISION - Date of Decision _____
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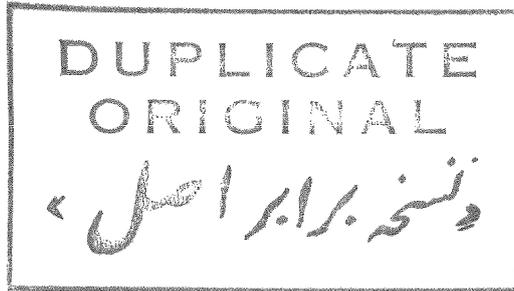
** CONCURRING OPINION of _____
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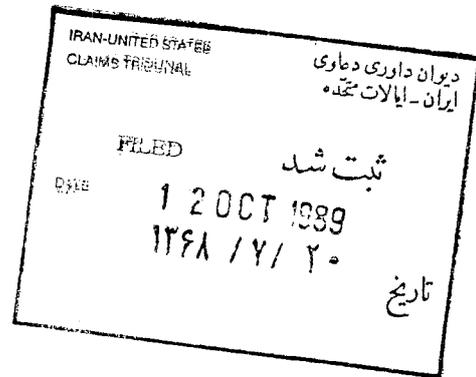
CHAMBER TWO

AWARD NO. 443-965-2

CREDITCORP INTERNATIONAL, INC.,
DORIAN INTERNATIONAL CREDIT CO., INC.,
Claimants,

and

IRAN CARTON COMPANY,
Respondent.

AWARD

I. INTRODUCTION AND PROCEDURAL HISTORY

1. On 15 January 1982, the Claimants CREDITCORP INTERNATIONAL, INC. and DORIAN INTERNATIONAL CREDIT CO., INC. ("Claimants") filed a Statement of Claim in which they sought recovery of funds they allegedly lent to sixteen separate Iranian companies and individuals. Through subsequent actions initiated by the Claimants, all but one of these Claims, viz. the one asserted against Iran Carton Company, were withdrawn from consideration by the Tribunal. Having received a Statement of Defence and Counterclaim from Iran Carton Company, the Tribunal proceeded to establish a schedule for the submission of the Claimants' evidence and brief. However, the Claimants did not file their evidence and brief, nor a request for an extension, by the required date, and, in a further Order, the Tribunal notified the Claimants that, in accordance with Article 28, paragraph 3 of the Tribunal Rules, it would make an award on the evidence before it if the Claimants failed to file the required submission by 27 February 1989. To date, the Claimants have not filed either their evidence and brief or a request for ~~an extension of the filing date.~~

II. REASONS FOR AWARD

2. Pursuant to Article II, paragraph 1, of the Claims Settlement Declaration, the Tribunal has jurisdiction over claims of "nationals" either of Iran or of the United States. In the case of a corporate entity, this means, according to Article VII, paragraph 1, of the Claims Settlement Declaration, "a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia, or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or

entity equivalent to fifty percent or more of its capital stock."

3. In the Statement of Claim, no reference was made as to the nationality of the Claimant corporations. In two filings, dated 8 April 1986 and 30 March 1988 respectively, the Claimants referred to "[o]ur parent company, Banco Urquijo Unión, S.A., at their address: Paseo de la Castellana, 46-28046 Madrid, Spain," without, however, submitting any documentary evidence as to the ownership interest of this parent company in the Claimant companies.

4. With its Order of 28 June 1988, the Tribunal requested the Claimants to "file a summary of all evidence upon which it intends to rely with respect to both claims and counterclaims, together with all documentary evidence and written brief by 11 September 1988." The evidence requested necessarily included any evidence on which the Tribunal could base a finding of jurisdiction.

5. The Claimants have failed to submit any such evidence. ~~The Tribunal therefore holds that there is~~ insufficient evidence that United States citizens hold, directly or indirectly, "an interest in such corporation or entity equivalent to fifty percent or more of its capital stock" as required by Article VII, paragraph 1, of the Claims Settlement Declaration.

6. It is thus beyond dispute that the Claimants have failed to bear the burden of proving that the Claim in this Case is a claim of a national of the United States, as required for the Tribunal to assume jurisdiction. The Claim must, therefore, be dismissed.

7. As a consequence of its conclusion that the Claim must be dismissed for lack of jurisdiction, it follows in

accordance with established Tribunal practice that the Counterclaim of Iran Carton Company must likewise be dismissed. See e.g., Reliance Group, Inc. and National Iranian Oil Company, Award No. 15-90-2 (8 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 384.

III. COSTS

8. Each Party shall bear its own costs of arbitration.

IV. AWARD

9. For the foregoing reasons,

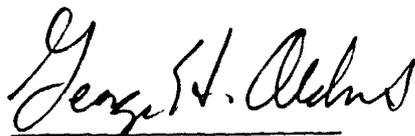
THE TRIBUNAL AWARDS AS FOLLOWS:

- i) The Claims of CREDITCORP INTERNATIONAL, INC. and DORIAN INTERNATIONAL CREDIT CO. INC., are dismissed for lack of jurisdiction;
-
- ii) The Counterclaim of IRAN CARTON COMPANY is dismissed for lack of jurisdiction.

Dated, The Hague
12 October 1989



Robert Briner
Chairman
Chamber Two



George H. Aldrich

In the Name of God


Seyed K. Khalilian
Separate Opinion