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- Date 19 July 1993
4 pages in English 4 pages in Farsi

DUPLICATE
ORIGINAL

نسخه برابر اصل

CASE NO. 967
CHAMBER TWO
AWARD NO. 549-967-2

HAROLD BIRNBAUM,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعاوی ایران - ایالات متحده
FILED	ثبت شد
DATE	19 JUL 1993
	تاریخ ۱۳۷۲ / ۴ / ۲۸

CORRECTION TO AWARD

The Tribunal has come across a mathematical error in paragraph 97 of the Award in this Case filed on 6 July 1993. The error in question is the following.

The amount stated in paragraph 97 of the Award as the value of those AFFA assets discussed in paragraphs 53 through 96 of the Award was 1,084,175,345 rials. It should have read 1,100,253,669 rials.¹

The correction of this error affects a number of figures used in the computation of the amount awarded. Consequently, in accordance with Article 36, paragraph 1, of the Tribunal Rules, the Tribunal makes the following corrections to its Award No. 549-967-2. Copies of the corrected pages of the Award are attached.

1. Paragraph 97

In the second line of paragraph 97, the figure "1,084,175,345 rials" is replaced by "1,100,253,669 rials."

In the sixth line of paragraph 97, the figure "1,241,675,122 rials" is replaced by "1,257,753,446 rials."

2. Paragraph 143

In the third line of paragraph 143, the figure "960,782,720 rials" is replaced by "976,861,044 rials."

¹This error was caused by the inaccurate addition of the following numbers:

133,986,036 rials (see Award paragraph 64);
447,000,000 rials (see Award paragraph 72);
506,323,256 rials (see Award paragraph 91);
12,944,377 rials (see Award paragraph 95).

In the fourth line of paragraph 143, the figure "82,627,314 rials" is replaced by "84,010,050 rials."

3. Paragraph 144

In the seventh line of paragraph 144, the figure "69,682,937 rials" is replaced by "71,065,673 rials."

4. Paragraph 149

In the second line of paragraph 149, the figure "69,682,937 rials" is replaced by "71,065,673 rials."

In the fourth line of paragraph 149, the figure "U.S. \$988,761" is replaced by "U.S.\$1,008,381."

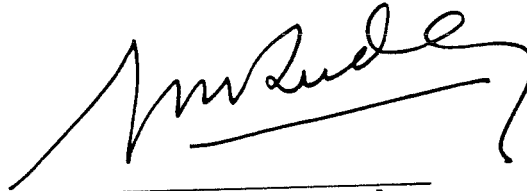
In the ninth line of paragraph 149, the figure "\$988,761" is replaced by "\$1,008,381."

5. Paragraph 152

In subparagraph 152(a), the phrase "Nine Hundred Eighty Eight Thousand Seven Hundred Sixty One United States Dollars and No Cents (U.S.\$988,761.00)" is replaced by the phrase "One Million Eight Thousand Three Hundred Eighty One United States

Dollars and No Cents (U.S.\$1,008,381.00)."

Dated, The Hague
19 July 1993

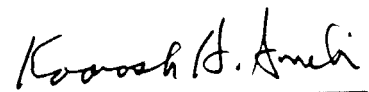


José María Ruda
Chairman
Chamber Two

In The Name of God



George H. Aldrich



Koorosh H. Ameli

(assets) to the partners['] current account (owners['] equity, reducing the net worth of the firm)." Ernst & Young goes on to say that the 1979 Financial Report was correct in recording partners' loans among AFFA's assets because such treatment shows the "inter-relation between partners' debts and the promissory notes submitted by the partners on behalf of the firm to secure bank guarant[e]es for the firm." It concludes: "It is therefore reasonable and logical to report the partners' debts as accounts receivable, rather than including them in owners['] equity to reduce the net worth."

95. The Tribunal finds that the debts owed by AFFA partners to AFFA cannot properly be included as valid AFFA assets. As noted earlier in this Award, most AFFA partners had left Iran by the date of the taking. Hence, on that date AFFA had no reasonable prospect of collecting these debts, which therefore should be written off as uncollectible with the exception, of course, of the Claimant's acknowledged debt to AFFA, 12,944,377 rials. Because this debt must be deducted from amounts due him under this Award, see infra, para. 144, it would be unfair not to include it as part of AFFA's assets.

96. Debts owed by AFFA partners to AFFA cannot be considered as partners' equity, either, as argued by Noavaran. The 1979 Financial Report established that these loans to partners were debts, not distributed equity, and there is no evidence to the contrary. See CBS, Inc. and Islamic Republic of Iran, et al., Award No. 486-197-2, para. 37 (28 June 1990), reprinted in 25 Iran-U.S. C.T.R. 131, 143.

(6) Conclusion

97. The value of the assets discussed in the foregoing paras. 53-96 amounts to 1,100,253,669 rials. After reviewing the evidence as a whole, the Tribunal determines that the remaining assets of AFFA were worth 157,499,777 rials at the date of the

deprivation. The total value of AFFA's assets on 28 July 1979 is the sum of these two figures, 1,257,753,446 rials. This value must be considered in determining AFFA's net worth on that date.

c. AFFA'S LIABILITIES

98. The primary dispute between the Parties concerning AFFA's liabilities outstanding on 28 July 1979 involves the calculation of the firm's tax liability. The Tribunal will therefore discuss in detail only this liability.

AFFA'S TAX LIABILITY

99. The Claimant calculates AFFA's tax liability to be 148,163,754 rials. Noavaran, the Respondent's consultant, concludes that that liability totalled 765,165,488 rials. Mr. Vaghti, the Respondent's tax expert, goes even further and states that AFFA owed 919,831,218 rials in taxes at the date of the deprivation.

100. The 1979 Financial Report included 105,220,819 rials in AFFA's tax reserve.

101. It is a well-settled Tribunal principle that in the context of a dissolution or liquidation valuation, supra, paras. 40-42, the Tribunal considers in the valuation only those liabilities of the expropriated company that were "outstanding at the date of taking," Sedco, Inc. (Award No. 309-129-3), supra, para. 267, 15 Iran-U.S. C.T.R. at 101-102, "including those to the tax ... authorities," Tippetts, at 12, 6 Iran-U.S. C.T.R. at 226. See also Sedco, Inc., et al. (Award No. 419-128/129-2), para. 58, 21 Iran-U.S. C.T.R. at 57. In determining AFFA's tax liability, the Tribunal will apply this general principle.

TOTAL VALUE OF AFFA'S LIABILITIES

142. There were a number of remaining liabilities outstanding on the date of the taking. Based on the evidence presented and in application of the general valuation principles outlined supra, at paras. 40-42, the Tribunal concludes that the value of those liabilities was 184,378,616 rials. The Tribunal adds this figure to the value of AFFA's tax liability, see supra, para. 141. This calculation yields 280,892,402 rials, the total value of AFFA's liabilities on 28 July 1979.

d. THE VALUE OF THE CLAIMANT'S OWNERSHIP INTEREST

143. AFFA's dissolution value as of 28 July 1979 is the difference between the value of its assets and the value of its liabilities, 976,861,044 rials. The gross value of the Claimant's 8.6 percent ownership interest is thus 84,010,050 rials. See supra, paras. 39-40.

144. In his pleadings, the Claimant conceded that his liabilities to AFFA, consisting of loans extended to him by the firm, "must be considered in the valuation of his share." The 1979 Financial Report concludes that such loans amounted to 12,944,377 rials. The record contains no evidence contradicting this conclusion. Consequently, the Tribunal deducts this amount from the Claimant's gross interest. The result, 71,065,673 rials, is the net value of the Claimant's interest in AFFA.

145. The Respondent argues that for purposes of valuation, the value of the Claimant's 8.6 percent interest should be discounted by a factor of at least 25 percent to account for the Claimant's minority interest in AFFA, the alleged lack of marketability of the Claimant's share, and the share transfer restrictions contained in AFFA's Articles of Association. According to the Respondent, the discount is also justified because in the process

of AFFA's liquidation, the firm's assets cannot be expected to be fully realized; in addition, the proceeds of the sale might not cover AFFA's liabilities. The Claimant denies that any discount is applicable to the value of his share.

146. In the Tribunal's view, the arguments raised by the Respondent to justify the discount of the Claimant's share might be relevant in the context of a valuation in view of an actual sale of shares on the open market, but are not applicable in the context of a deprivation valuation, especially in a case like this one, where the expropriating entity not only expropriated the minority share, but the whole company. Significantly, on the date of the taking, the Claimant did not have any intention to sell his share in AFFA on the open market, and AFFA was not in liquidation. In these circumstances, it would not be appropriate to discount the value of the Claimant's ownership interest therein.

147. In addition, Tribunal precedent does not support the Respondent's position. Just as the Tribunal has never awarded surplus value for a controlling interest, it has never discounted the value of a minority interest.

148. In light of the foregoing considerations, the Tribunal rejects the Respondent's discount argument.

149. Based on the foregoing, the Tribunal determines that the Claimant is entitled to 71,065,673 rials as compensation for the deprivation by the Respondent of his 8.6 percent ownership interest in AFFA. This amount is equivalent to U.S.\$1,008,381 when converted at the rate of exchange of 70.475 rials/U.S. \$1. This was the rate of exchange prevailing during all of 1979. See Petrolane, Inc., et al., supra, para. 147, 27 Iran-U.S. C.T.R. at 115. The Tribunal therefore awards the Claimant U.S. \$1,008,381.

VI. INTEREST

150. In order to compensate the Claimant for the damages he has suffered due to delayed payment, the Tribunal considers it fair to award interest at the rate of 9.75 percent from the date of the deprivation, 28 July 1979.

VII. COSTS

151. Each Party shall bear its own costs of arbitrating this claim.

VIII. AWARD

152. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The Respondent, THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, HAROLD BIRNBAUM, One Million Eight Thousand Three Hundred Eighty One United States Dollars and No Cents (U.S.\$1,008,381.00), plus simple interest at the rate of 9.75 percent per annum (365-day basis) from 28 July 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.
- (b) This obligation shall be satisfied by payment out of the Security Account established by paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.
- (c) Each Party shall bear its own costs of arbitrating this claim.