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CASE NO. 11429
 CHAMBER THREE
 AWARD NO. 455-11429-3

OCEAN-AIR CARGO CLAIMS, INC.,
 a claim of less than U.S.\$250,000
 presented by THE UNITED STATES OF AMERICA,
 Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN
 Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دادگستری ایران - ایالات متحده
FILED	ثبت شد
DATE	15 DEC 1988
	۱۳۶۸ / ۹ / ۲۴ تاریخ

AWARD

I. INTRODUCTION AND PROCEDURAL HISTORY

1. The Claimant, OCEAN-AIR CARGO CLAIMS, INCORPORATED (the "Claimant") is stated to be a United States corporation incorporated under the laws of the State of New York. On 19 January 1982 the United States filed a claim on behalf of the Claimant against THE ISLAMIC REPUBLIC OF IRAN (the "Respondent") to recover amounts paid to three insured parties who suffered damages when coffee shipped by Iran Express Lines was lost or damaged in transit. The Claimant brings the claim in its capacity as agent for a group of insurance companies.

2. The Claimant seeks recovery of a total of U.S.\$216,000 plus interest and costs.

3. On 3 June 1986 the Tribunal ordered the Claimant to file a Supplementary Statement of Claim together with any documentary evidence on which it wished to rely. On 19 March 1987, after several extensions, the Claimant filed a "Request for Preliminary Determination as to Tribunal Jurisdiction."

4. In response to the Tribunal's Order of 27 March 1987, Iran Express Lines filed its Rejoinder in which it argued that "under Article 21 of the Tribunal Rules . . . it is Respondent alone that is entitled to take exception to the jurisdiction of the Tribunal rather than Claimant."

5. By its Order of 4 February 1988 the Tribunal held that "nothing in Article 21 of the Tribunal Rules prevents the Claimant from submitting such a plea." The Tribunal informed the Parties that it would decide the issue of jurisdiction as a preliminary matter on the basis of the submissions before it and authorized the Parties to submit any further briefs and evidence on this issue.

6. The Claimant submitted its "Supplemental Filing of Information" on 14 March 1988. The Respondent submitted its "Brief as to Tribunal's Jurisdiction" on 26 September 1988.

II. FACTS AND CONTENTIONS

7. The claim relates to the alleged shortage, non-delivery and damage incurred in 1978 in respect of a number of shipments of coffee aboard vessels of Iran Express Lines to consignees in New York. Iran Express Lines is said to be an entity controlled by the Government of Iran. The three consignees, ACLI International, Incorporated ("Acli"), Gill & Duffus, Inc. ("Gill & Duffus") and Volkart Brothers, Incorporated ("Volkart Brothers") (collectively, the "insured parties") initially were alleged by the Claimant to be United States nationals. The Claimant subsequently has acknowledged that Volkart Brothers is not a United States national within the meaning of the Claims Settlement Declaration.

8. The insured parties each had insured the consignments with various insurance companies in France and lodged claims with those companies for the losses suffered. Once satisfied as to the loss, each insurance company made payment to its insured, either by direct payment to the consignee or, as in the case of both Gill & Duffus and Volkart Brothers, through the Claimant acting as agent of the insurer. The payments allegedly were made pursuant to an oral agreement between the Claimant and the insurers. Evidence of the payment by the Claimant of the sum of U.S.\$39,063.52 to Gill & Duffus and the sum of U.S.\$48,965.25 to Volkart Brothers in the years 1979 and 1980 has been submitted to the Tribunal. The Claimant asserts that demands for payment made to Jan C. Uiterwijk, Incorporated, Iran Express Lines' United States agent, have

met with no response. No evidence of any such demand has been presented to the Tribunal.

9. The Claimant contends that through its payment to the insured parties it became the subrogee of each consignee and as such is entitled to pursue the claims of the insured parties in the appropriate fora. To this end, the Claimant stated that it filed suits in United States courts in the name of the insured parties, which suits were suspended on implementation of the Algiers Accords of 1981.

10. In particular, the Claimant asserts that, by virtue of the payments made and the subrogation agreements in the original contracts of insurance with the consignees, the insurers succeeded to all rights the original insured parties had against Iran Express Lines, including the right to proceed against it before the Tribunal. Thus, the Claimant contends that upon its payment to the insured parties and in accordance with its alleged oral agreement with the insurers, it received the right and obligation to pursue these claims and to receive a percentage of the recovery. The Claimant contends that the right to bring the claims thus was transferred from the original United States owners, i.e., the insured parties, to the Claimant "without a break in the continuous nationality of the claims."

11. Finally, the Claimant asserts that it has had a real and viable interest in the claims from the time the payments were made by virtue of its alleged contractual right to participate in the recovery. The Claimant concedes that part of any such recovery would inure to the benefit of the insurers, which are not United States nationals within the meaning of the Claims Settlement Declaration.

12. The Claimant acknowledges that in light of the Tribunal's pronouncements on the issue of continuous ownership of a claim, questions arise as to the Tribunal's

jurisdiction over these claims. Although the Claimant has preserved the right to maintain suit in United States courts, it states that it can proceed there only after establishing that the claims are not within the jurisdiction of the Tribunal. Therefore, the Claimant requests a preliminary determination of jurisdiction.

13. In its submission of 18 September 1987 Iran Express Lines asserts that it is a private corporation incorporated under the Commercial Code of Iran and denies that it is owned or controlled by the Government of Iran. Iran Express Lines also contends that the Claimant has not evidenced its United States nationality and asserts that the claim belongs, in fact, to a non-United States corporation.

14. The Respondent's main jurisdictional argument in relation to the claims is that as in some cases payments were made directly by the French insurers, ownership of the claims was transferred to the insurers. Thus the claims have not been continuously owned by United States nationals and fall outside the jurisdiction of this Tribunal.

15. Furthermore, the Respondent contends that the Claimant's own evidence and affidavits make clear that the Claimant "is neither the owner of the claim nor the owner's subrogee but acts as an agent on the basis of an orgal [sic] agreement and is entitled to a percentage of the recovery." Thus, the claims are still owned by the French insurers and as the Claimant does not allege that it controls the French insurers, so as to be entitled to bring an indirect claim on their behalf, the Claimant has no locus standi before the Tribunal.

16. The Respondent asks the Tribunal to dismiss the claims for lack of jurisdiction and requests an Award of costs.

17. The Tribunal will address the issue of jurisdiction over the claims as a preliminary matter.

III. JURISDICTION

18. The Claimant has submitted evidence of its incorporation and good standing in the State of New York, together with prima facie evidence as to the percentage of ownership of its shares by United States nationals. The Tribunal already has determined that Iran Express Lines is a government controlled entity for the purposes of the Claims Settlement Declaration. See SeaCo, Inc. and Islamic Republic of Iran et al., Award No. ITL 61-260-2, at pp. 8-9 (20 June 1986), reprinted in 11 Iran-U.S. C.T.R. 210, 215.

19. The Claimant also has submitted certificates of incorporation and good standing for Gill & Duffus and for AML Holdings, the name by which Accli is now known. However, the Claimant acknowledges that Volkart Brothers is not a United States corporation. It is a fundamental requirement of the Claims Settlement Declaration that any claim before the Tribunal be "owned continuously from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that State." Article VII, paragraph 2, Claims Settlement Declaration. The Claimant has argued consistently that it "[succeeded] to all rights the original insureds had against the respondent." It therefore follows that for the Tribunal to have jurisdiction over such claims, the original insured parties also must be shown to have been United States nationals. This clearly is not the case with respect to Volkart Brothers. The claim therefore is dismissed for lack of jurisdiction insofar as it relates to the sum of U.S.\$48,870.43 allegedly due to Volkart Brothers.

20. In addition to the need to establish that each insured party was a United States national throughout the relevant period, the Claimant also must establish that it received from the insured parties not only a right to pursue these claims but actual ownership of the claims and, further, that ownership at no time passed to the foreign insurers.

21. The Claimant brings these claims as recovery agent of the foreign insurers. It acknowledges that the original insurers are not United States nationals for the purposes of the Claims Settlement Declaration. It contends that the insurers "by virtue of the subrogation agreements with their insureds, stepped into the place of the [insured parties]." The Claimant contends, however, that upon its payment to the insured parties, made on behalf of the foreign insurers, the right to pursue the claims was "transferred from the original U.S. owners to Ocean-Air without a break in the continuous nationality of the claims."

22. None of the original subrogation agreements are in evidence, nor does the the Tribunal have any knowledge of the provisions of the alleged agency relationship between the Claimant and the insurers. The Tribunal thus is unable to determine whether the alleged subrogation operated to transfer legal ownership of the claims directly to the Claimant or to the French insurers or, alternatively, whether the insured parties retained any legal or beneficial interest in the claims after such subrogation to which the Claimant may have succeeded, so as to become the owner of the insured parties' claims.

23. Subrogation can occur either by express agreement between the parties or by operation of law. If it is assumed, arguendo, that ownership of the claim passed from the insured parties by operation of law on payment by the Claimant, it still remains to determine whether such ownership passed directly to the Claimant, as alleged, or whether it passed to the foreign insurers. The Tribunal

previously has held that subject to any evidence of an agreement to the contrary, the principal in an agency relationship is entitled to the benefits and obligations of an agreement entered into by its agent with a third party and thus the principal is the owner of the claim. See, e.g., Rexnord Inc. and Islamic Republic of Iran, et al., Award No. 21-132-3 (10 Jan. 1983), reprinted in 2 Iran-U.S. C.T.R. 6; Sea-Land Service, Inc. and Islamic Republic of Iran et al., Award No. 135-33-1, at pp. 14-16 (22 June 1984), reprinted in 6 Iran-U.S. C.T.R. 149, 159; Futura Trading Incorporated and National Iranian Oil Company, Award No. 263-324-3 (30 Oct. 1986), reprinted in 13 Iran-U.S. C.T.R. 99; Minnesota Mining and Manufacturing Company and Islamic Republic of Iran, et al., Award No. 343-423-3, at pp. 40-41 (18 Dec. 1987), reprinted in 17 Iran-U.S. C.T.R. 294, 321-22.

24. The Claimant has not submitted any evidence or argument to establish that, by virtue either of the specific terms of its oral agreement with the insurer or of the act of subrogation itself or of practice or custom in the insurance sector, legal title to the claims passed from the insured parties to the Claimant in its capacity as agent and not to the principal. The Claimant acknowledges that the principals in the agreements here at issue are not United States nationals. The Tribunal thus finds that the Claimant has failed to establish that the claims have been owned continuously by United States nationals.

25. It remains to be considered whether the Claimant, by its payment to the insured parties, acquired an interest in any monies recovered such that it should be considered the owner of a pro rata portion of the claims to the extent of its agency interest.

26. The Tribunal has examined the extent and nature of such an interest under common law in Alfred Haber, P.A. and Islamic Republic of Iran, Award No. 437-10159-3 (4 Sept.

1989). The Claimant has not produced any evidence or argument under any relevant system of law to establish that its alleged interest in any sum recovered is such as to constitute ownership of a pro rata portion of each claim. The Tribunal finds that the Claimant has not proven that it is the owner of a part of the claims within the meaning of the Claims Settlement Declaration.

27. The only other contractual basis on which the Claimant could have become owner of part of the claims would be as a third party beneficiary. In Sea-Land Service, Inc. and The Government of the Islamic Republic of Iran, Award No. 135-33-1, at pp. 16-17, reprinted in 6 Iran-U.S. C.T.R. at 160-61, the Tribunal acknowledged a claimant's right to enforce a contract as a third party beneficiary. One of the reasons why a third party beneficiary can enforce a contract is that the parties thereto so intended. The Tribunal perceives no such intent in this Case. Any commission due to or retention to be made by the Claimant was by separate agreement between the Claimant and the insurer. For these reasons, the Tribunal finds that the Claimant is not entitled to bring a contract claim as a third party beneficiary.

28. The Tribunal therefore finds that the Claimant has failed to establish that the claims have been owned continuously by United States nationals or that, in the alternative, it acquired legal title to a pro rata interest in the claims by direct succession from the insured parties. Accordingly the remaining claims also are dismissed for lack of jurisdiction.

IV. AWARD

29. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The claim of OCEAN-AIR CARGO CLAIMS, INCORPORATED against the ISLAMIC REPUBLIC OF IRAN is dismissed for lack of jurisdiction.
- b. Each Party shall bear its own costs of arbitration.

Dated, The Hague
15 December 1989



Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Parviz Ansari Moin