

12118-60

CLAIMS TRIBUNAL

دعوی دعوای ایران - ایالات متحدہ

60

12118-7

ORIGINAL DOCUMENTS IN SAFE

Case No. 12118

Date of filing: 11 NOV 85

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- Date of Award 11 NOV 85
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
- Date _____
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** DISSENTING OPINION of _____
- Date _____
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IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحده
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CASE NO. 12118

CHAMBER THREE

AWARD NO. ITM 56-12118-3



THE GOVERNMENT OF THE UNITED STATES
OF AMERICA, on behalf and for the
benefit of

TADJER-COHEN ASSOCIATES, INCORPORATED,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

INTERIM AWARD

THE PROCEEDINGS

1. On 19 January 1982, the Government of the United States of America filed the present Claim on behalf and for the benefit of the Claimant, TADJER-COHEN ASSOCIATES, INCORPORATED ("TCA"). The Claim names as the Respondent THE ISLAMIC REPUBLIC OF IRAN ("Iran"), including BANK RAHNI IRAN ("Bank Rahni") and seeks damages of US\$ 200,222 plus interest for the alleged breach of two contracts entered into between T.C.S.B. Incorporated ("TCSB") and Bank Rahni. The contracts relate to the provision of engineering consultancy services for a project for the manufacture and erection of five hundred pre-fabricated housing units.

2. On 13 June 1983, TCSB received a summons to appear before the Public Court of Tehran on 20 September 1983 to answer a claim filed by Bank Maskan (as successor to Bank Rahni) against: "Wood Component Co.; Component Builders Co.; and T.C.S.B. Co.". Bank Maskan is seeking damages for alleged defects in construction work on the housing project and claims that TCSB as consulting engineer is jointly liable with Wood Components Co. and Component Builders Inc., the construction contractors. The case has been successively rescheduled in the Public Court of Tehran and remains pending.

3. On 13 September 1983, the Claimant filed a Request for Interim Measures seeking an Order from the Tribunal directing Bank Maskan to dismiss its claim before the Public Court of Tehran, or, in the alternative, directing the Bank to stay its proceedings until the Tribunal has ruled on the merits of Claim No. 12118. The Claimant notified the Tribunal in its Request that the contracts upon which this Case is based were entered into between TCSB and Bank Rahni, that TCSB had performed the consultancy services, and that, on 11 August 1981, TCSB assigned to TCA its right to pursue its claims against Iran and Bank Rahni, under the contracts

at issue, for which TCA paid a nominal sum and promised "to pay to TCSB all sums actually received on said claims...".

4. By Order of 19 September 1983, the Tribunal requested the Respondent to file a reply to the Claimant's Request, to state the exact nature and basis of the claim before the Public Court of Tehran and to submit its comments regarding the procedural standing of TCA with respect to the Request for Interim Measures.

5. By Order filed 30 November 1983, the Tribunal extended the time limit for the Respondent's reply to 5 February 1984. The Order also directed the Respondent to take measures to ensure that the proceedings before the Public Court of Tehran were stayed pending a decision on the Claimant's Request for Interim Measures. This Order has remained in effect.

6. On 6 February 1984, the Respondent filed its Reply to the Claimant's Request. The Respondent argues that the Civil Procedure Code of Iran provides for a stay of proceedings only in limited and specifically described circumstances, none of which applies to this case. It also argues that the dispute resolution provisions of the contracts at issue in this case meet the requirements of Article II, paragraph 1, of the Claims Settlement Declaration and that therefore the Claim is excluded from the jurisdiction of the Tribunal. As well, it raises objections based on the assignment of the Claim from TCSB to TCA.

7. By its letter filed 4 April 1985, the Tribunal requested the Parties to advise it by 10 May 1985 as to the current status of the proceedings before the Public Court of Tehran. The Claimant filed its comments on 8 May 1985 and renewed its Request for Interim Measures. The Respondent filed its comments on 4 June 1985.

8. By Order filed 24 May 1985, the Tribunal advised the Parties that it required further submissions in order to determine the question as to whether the interests at issue before the Public Court of Tehran are the same as those before the Tribunal. Further, the Tribunal ordered the Claimant to file a Supplementary Statement of Claim with specific reference to the requirements for the issuance of interim measures. The Supplementary Statement of Claim was filed on 23 August 1985.

REASONS FOR INTERIM AWARD

9. It is evident from the documents in this Case that the proceedings before the Public Court of Tehran involve the same contract and work that comprise the subject matter of the claim TCSB assigned to TCA and which is currently before the Tribunal. A decision made in the proceedings before the Public Court of Tehran may lead to decisions that are inconsistent with decisions made in the proceedings before the Tribunal. See RCA Globcom Communications and the Islamic Republic of Iran, Interim Award No. ITM 30-160-1 at 5 (31 October 1983).

10. The Tribunal is satisfied that there is at least a prima facie showing that it has jurisdiction over the substantive claim pending before it. Such preliminary determination is, however, without prejudice to the Tribunal's final decision on jurisdiction, including any issues relating to the assignment from TCSB to TCA or the forum selection clauses.

11. The Tribunal ruled in E-Systems, Inc., and The Government of the Islamic Republic of Iran, Interim Award No. ITM 13-388-FT at 10 (4 February 1983) that "[t]his Tribunal has an inherent power to issue such orders as may be necessary to conserve the respective rights of the Parties and to

ensure that this Tribunal's jurisdiction and authority are made fully effective".

12. The Tribunal notes the Respondent's submissions on the requirements of the Civil Procedure Code of Iran. The Government of the Islamic Republic of Iran and the Government of the United States of America, however, having agreed in the Algiers Declarations to confer upon this Tribunal jurisdiction over certain claims, are under an international obligation to comply with any decisions rendered by the Tribunal. See Aeronutronics Overseas Services, Inc. and Government of Islamic Republic of Iran, Interim Award No. ITM 47-158-1 at 5 (14 March 1985).

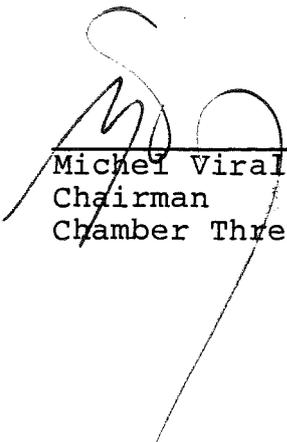
13. The Tribunal therefore concludes that the proceedings in the Public Court of Tehran in so far as they relate to TCSB should be stayed pending termination of the proceedings before the Tribunal.

INTERIM AWARD

For the foregoing reasons, THE TRIBUNAL AWARDS AS FOLLOWS:

The Tribunal requests the Government of the Islamic Republic of Iran to take all appropriate measures to ensure that the proceedings before the Public Court of Tehran in so far as they relate to T.C.S.B. Incorporated be stayed pending the termination of the proceedings before the Tribunal.

Dated, The Hague
11 November 1985


Michel Virally
Chairman
Chamber Three


Charles N. Brower

In the name of God


Parviz Ansari Moin
Dissenting