

10159-37

CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

37

Case No. 10159

Date of filing: 4-Sep-89

** AWARD - Type of Award Final
- Date of Award 9-Sep-89
24 pages in English _____ 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

37

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
شیت شد - FILED	
Date	4 SEP 1989
	۱۳۶۸ / ۶ / ۱۴
1	تاریخ

CASE NO. 10159

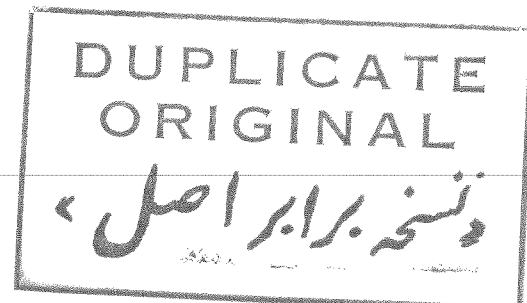
CHAMBER THREE

AWARD NO. 437-10159-3

ALFRED HABER, P.A.,
a claim of less than US\$250,000 presented
by THE UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.



AWARD

Appearances:

For the Claimant:

Mr. Michael F. Raboin
Deputy Agent of the Government of
the United States of America;
Ms. Mary W. Ennis,
Attorney-Adviser of the Department
of State.

For the Respondent:

Mr. Ali H. Nobari,
Deputy Agent of the Government of
the Islamic Republic of Iran;
Mr. Nozar Dabiran,
Legal Advisor to the Agent of the
Government of the Islamic Republic
of Iran;
Mr. Mohammad Asbaghi,
Legal Assistant to the Agent of the
Government of the Islamic Republic
of Iran;
Dr. Jaffar Niaki,
Representative of the Islamic
Republic of Iran Broadcasting.

I. INTRODUCTION

1. The Claimant, ALFRED HABER, P.A. ("Haber"), is a corporation organized under the laws of the State of New Jersey, United States. Haber is engaged in the distribution of American television programs in international markets. Haber locates foreign television stations interested in the broadcast rights and arranges for the conclusion of license agreements between the American producers and the foreign buyers.

2. Although the named Respondent is THE ISLAMIC REPUBLIC OF IRAN ("IRAN"), the claim is actually directed against the Islamic Republic of Iran Broadcasting ("IRIB"). Most of the Respondent's pleadings have been submitted by IRIB.

3. Haber claims an amount of U.S.\$5,460 plus interest and costs, based on the alleged breach of three licensing agreements allegedly concluded in 1978 between National Iranian Radio and Television ("NIRT"), the legal predecessor of IRIB, and American producers whose television programs were marketed by Haber. Haber claims for unpaid license fees, costs of program tapes and cassettes which it lent to NIRT and which were not returned, and lost income due to NIRT's failure to forward one of the tapes to the next licensee. Alternatively, Haber bases a claim for a reduced amount on the theories of account stated and unjust enrichment.

4. The Respondent contests the claim. It has not presented a counterclaim.

II. PROCEDURAL HISTORY

5. The Government of the United States of America filed a Statement of Claim on Haber's behalf on 19 January 1982 and

a Supplemental Statement of Claim on 31 October 1986. IRAN submitted its Statement of Defense on 18 August 1987. The Claimant filed a Reply to that Statement of Defense on 21 December 1987, to which IRIB responded by filing its "Brief" on 11 August 1988.

6. A Hearing was held on 27 February 1989.

III. JURISDICTION

A. The Claimant's Nationality

7. Haber states that it has been a national of the United States as defined by Article VII, paragraph 1, of the Claims Settlement Declaration from the date the claim arose until 19 January 1981. Haber was organized as a corporation under the laws of the State of New Jersey on 24 May 1973, as evidenced by a copy of a Certificate of Good Standing issued under seal of the New Jersey Department of State on 4 October 1982. Haber has also submitted a notarized affidavit by its Assistant Secretary stating that Mr. Alfred Haber has been Haber's sole shareholder since its incorporation and that he is a citizen of the United States, as evidenced by a copy of the relevant pages of his passport. The Claimant has also submitted a notarized affidavit supporting these contentions by Mr. Alfred Haber as Haber's President and sole owner.

8. The Respondent terms the photocopies of the Certificate of Good Standing and of Mr. Haber's passport "unconfirmed" and contends that Haber cannot substantiate its nationality merely through testimony of its Assistant Secretary. According to IRIB, this constitutes insufficient evidence even to meet the standards of proof established by the Tribunal in respect of public companies quoted on a stock exchange. IRIB argues that the ownership of Haber's shares

can only be substantiated by production of the original share certificate. At the Hearing, IRIB questioned the evidentiary value of Mr. Haber's passport because it was issued in 1985.

9. As to Mr. Haber's passport, the Tribunal notes that the passport states that Alfred Haber was born in New York on 19 June 1939. Irrespective of the passport's date of issue, this constitutes at least prima facie evidence of his United States' citizenship by birth. The Respondent has not rebutted this evidence. See also R.N. Pomeroy and Government of the Islamic Republic of Iran, Award No. 50-40-3, p. 11 (8 June 1983), reprinted in 2 Iran-U.S. C.T.R. 372, 377.

10. Applying the standards developed in its practice, the Tribunal finds that, in the absence of proof to the contrary, the evidence submitted by Haber is sufficient to establish that it is a United States national as required by the Claims Settlement Declaration. See, e.g., Cal-Maine Foods Inc. and The Government of the Islamic Republic of Iran, Award No. 133-340-3, p. 8 (11 June 1984), reprinted in 6 Iran-U.S. C.T.R. 52, 57-58.

B. Status of NIRT

11. The Claimant contends that NIRT is a controlled entity of the Government of Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. Haber bases this contention on Iran's Constitution, the Act relating to the Management of the Voice and Vision of the Islamic Republic of Iran ("the Act"), the Charter of that organization, the past behavior of the Government of Iran and NIRT, and prior exercise by the Tribunal of its jurisdiction over NIRT.

12. Referring to the Constitution, the Act and the Charter, IRIB argues that it is operated under the supervision of all

three state organs and consequently the executive branch does not exercise dominant control over it. On this ground, IRIB denies that it is a controlled entity. As to the Tribunal's prior exercise of its jurisdiction over NIRT, IRIB asserts that the Tribunal has repeatedly held that when rendering Awards on Agreed Terms it will "merely go ahead upto [sic] the limits of its apparent jurisdiction (without careful consideration of the evidence . . .)."

13. To decide whether NIRT is a controlled entity, the Tribunal must first determine its organizational structure. As it appears from evidence primarily submitted by IRIB, the framework within which it operates may be described as follows.

14. Article 175 of the Constitution jointly charges the judiciary, the legislative and the executive branches of the Government with the supervision of the management of the media. Article 44 of the Constitution provides that the public sector of the economy of the Islamic Republic includes radio and television. These constitutional provisions are implemented by the Act, which regulates the management and supervision of IRIB. This structure is further detailed in the organization's Charter. The Supervisory Council, made up of representatives of the three state powers, appoints the Managing Director. The views of the executive branch are transmitted to this Council through the President of the Republic; those of the legislative branch through the Majlis Speaker; and those of the judiciary through the Chief Justice of the Supreme Court.

15. Article II, paragraph 1, of the Claims Settlement Declaration states, in relevant part, that the Tribunal is established for the purpose of deciding claims of nationals of the United States against Iran. Article VII, paragraph 3, of the Claims Settlement Declaration defines "Iran" as "the Government of Iran, any political subdivision of Iran,

and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof." IRIB's defense hinges on its interpretation of the term "the Government of Iran" to specifically denote the executive branch, as distinct from the legislative branch and the judiciary.

16. There is no indication that the Parties to the Claims Settlement Declaration intended to confer any meaning on this term other than that which it has in the common practice of international law. International legal documents, such as the Claims Settlement Declaration, are entered into between States and regulate their relationships as such. This explains why the term "government" in such documents is generally used as a synonym for "State." A division of governmental powers does of course exist in a great number of legal systems for internal purposes. Externally, however, in interstate relations, the government impersonates the State as a whole, thus identifying itself with the corresponding international person. It follows that for the test of government control as defined in Article VII, paragraph 3, of the Claims Settlement Declaration, it is immaterial how the State distributes its authority among the organs of government. Government control can be exercised (i) by the executive, the legislative or the judicial branch or (ii), as here, by two or more of them jointly or (iii) by some other element of the State's structure within the definition of Article VII, paragraph 3, of the Claims Settlement Declaration.

17. Thus, the Tribunal does not accept IRIB's interpretation of government control under the Claims Settlement Declaration. The Tribunal finds that NIRT's organizational structure and position as outlined above forms clear evidence of government control as required by Article VII, paragraph 3, of the Claims Settlement Declaration.

C. Subject Matter Jurisdiction

18. The primary subject matter of the claim, i.e., breach of contract, is within the Tribunal's jurisdiction pursuant to the terms of Article II, paragraph 1, of the Claims Settlement Declaration. The Claimant's alternative causes of action, i.e., account stated and unjust enrichment, also meet this jurisdictional requirement. See, Dames & Moore and The Islamic Republic of Iran, Award No. 97-54-3, pp. 17, 18 (20 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 212, 221 (account stated); Shannon and Wilson, Inc. and Atomic Energy Organization of Iran, Award No. 207-217-2, para. 14 (5 Dec. 1985), reprinted in 9 Iran-U.S. C.T.R. 397, 401 (unjust enrichment).

D. The Claimant's Standing to Bring the Claim

19. The Tribunal will deal with this issue following its description of the facts and contentions.

IV. FACTS AND CONTENTIONS

(i) The Claimant's Position¹

20. Haber's description of its activities may be summarized as follows. Haber is engaged in the distribution of American television programs in international markets. It locates foreign television stations interested in acquiring the broadcast rights and concludes licensing agreements between the American producers and the foreign buyers.

¹The sequence of events described herein is reflected in Mr. Haber's two affidavits and, where indicated, also by exhibits submitted. When exhibits have been presented, it will be indicated in the text by the term "(Exhibit.*)" or "(Exhibits.*)" at the end of the sentence.

Haber has master tapes in its possession and owns copies thereof which it sends to the foreign licensee. In return for arranging the entire licensing transaction and providing the desired tapes, Haber is designated as the payee under these agreements. By independent contract with the producers, Haber remits part of the fee which it receives from the foreign licensee to the producer.

21. In 1977 and 1978 Haber provided NIRT at its request with four "screening cassettes" of various programs. Screening cassettes enable a party to preview a program to determine whether it wishes to acquire license rights to broadcast it.

22. In April 1978 Mr. Haber met with representatives of NIRT at a conference in Cannes, France. NIRT entered into oral agreements to license "Frank Sinatra and Friends" (a one-hour tape; "Sinatra"), "Disco Magic" (twenty-seven episodes of one-half hour each; "Disco"), and "Circus of the Stars" (parts I and II, totaling four hours; "Circus") at a fee of U.S.\$800 per program hour. Under the terms of these agreements, NIRT was entitled to receive the tapes on a "loan basis" for twenty days to copy them and then had to return them to Haber or to forward them to a third party designated by Haber. While concluding this transaction, NIRT asked Haber to start shipping the tapes as soon as possible.

23. To set out in writing the terms thus agreed, Haber sent written contracts to NIRT for signature in May 1978. These contracts are in a standard form, with the particulars of each transaction added. The contract states the licensee and the producer as parties. The producers in question were Pretty Good Programs, Incorporated; Disco Magic Joint Venture; and Paul Keyes Productions, Incorporated. The contract submitted by Haber states the producer's address as c/o Haber and does not provide further particulars about the

producer. (Exhibit.) It states that the license fees are "payable to Alfred Haber, P.A. on behalf of Pretty Good Programs, Inc., 321 Commercial Avenue, Palisades Park, New Jersey 07650 [Haber's address]. License fee is payable in full within 30 days from date of receipt of video tape." The contract also provides for the receipt of the tapes and their return after twenty days.

24. On 30 June 1978 Haber sent a letter to NIRT requesting the return of the screening cassettes in NIRT's possession. (Exhibit.)

25. On 22 June 1978 Haber sent the Sinatra tape to NIRT, providing Mr. M. Naficy of NIRT with the particulars of this shipment by letter of that date. (Exhibit.) In June or July 1978 Haber received the Circus agreement back, signed for NIRT by Mr. T. Farazmand. (Exhibit.)

26. On 5 July 1978 Haber wrote to Mr. Naficy stating in relevant part:

Please refer to our letter to yourof [sic] May 25, 1978 regarding the shipment of the 625 PAL video tape of FRANK SINATRA AND FRIENDS to:

Ministry of Information
Bahrain TV
Post Box 1075
State of Bahrain
Attn: Hammad Mutlak

According to our records you received the 625 PAL video tape of FRANK SINATRA AND FRIENDS on June 22, 1978 from Israel. We would appreciate your immediately shipping this video tape, freight collect, to the above address, as they are in immediate need of it.

(Exhibit.) On 17 July 1978 Mr. Haber received a letter from Mr. Naficy informing him that he would be taking a leave of absence from NIRT and requesting Mr. Haber to "send all your future correspondence" to Mr. T. Farazmand of NIRT. The letter, which is dated 24 June 1978, concludes: "It was a

pleasure to work with you and I hope we will be in touch again in near future." (Exhibit.)

27. In late July 1978 Mr. Haber realized that the prices mentioned in the three contracts sent to NIRT were not as originally agreed between the Parties. Using the telephone number indicated in Mr. Naficy's most recent letter, he called NIRT and was connected with a person who identified himself as Mr. Tabatabai, Director of External Affairs. Confirming the original terms, they agreed that it would be pointless for NIRT to return the other two contracts and that three revised contracts reflecting the correct prices would be sent to NIRT. (Exhibits.) Mr. Haber sent these to Mr. Tabatabai on 28 July 1978, together with a letter confirming their telephone conversation. (Exhibit.) He also sent invoices relating to Sinatra and Disco. (Exhibits.) NIRT never returned the contracts.

28. On 7 August 1978 Haber wrote to NIRT at its Washington, D.C. address requesting the return of the four screening cassettes forwarded to it. (Exhibit.)

29. During their conversation of 28 July, Mr. Tabatabai requested Mr. Haber to send additional tapes as soon as possible. In August 1978 Haber had five one-half hour Disco episodes sent to NIRT.

30. On 14 August 1978 Haber telexed Mr. Tabatabai requesting him "as soon as you receive the Disco 77 episodes which have been shipped to you from Greece" to check these tapes because their boxes might have been mismarked. (Exhibit.)

31. Payment was not forthcoming, and Haber suspended delivery of additional tapes.

32. On 14 November 1978 Haber, referring to "your telex of November 11th," sent a telex to Mr. Naderi of NIRT.

(Exhibit.) In this telex, Haber identified the tapes "that you now have in your possession" (that is, Sinatra and five Disco episodes), and again requested NIRT to check the Disco tapes. The telex also lists the contracts concluded and notes that payment had not yet been received. It concludes: "We anxiously await further word from you."

33. On 15 March 1979 Haber received a telex from NIRT, the text of which reads as follows:

As from this date please stop and avoid future shipments of film programmes relating to all your contracts[.] We will settle the payment for the number of programmes which we have received so far[.] Kindly note that we will not accept any shipment made after this date under any circumstances[.] Regards[.] REF FA/2397/3132 Director of Financial Affairs M. Alagheband M. Fatemi.

(Exhibit.)

34. On 20 March 1979 Haber responded to Mr. Alagheband, with a copy sent to him in care of the Iranian Embassy in Washington, D.C. stating, in pertinent part:

Thank you for your telex of March 15, 1979.

According to our records, you should have in your possession the following two-inch 625 PAL video tapes:

FRANK SINATRA AND FRIENDS
DISCO 77--Episodes 1001, 1002, 1004, 1006 and 1012.

Some of these tapes have been in Iran for almost a year and are desperately needed elsewhere, since our contracts provided for a maximum period of 30 days for these tapes to be copied and forwarded on to other destinations. Please advise if you have located the tapes and we will then forward to you shipping instructions.

Also, please note that the following contracted amounts remain outstanding:

FRANK SINATRA AND FRIENDS--US\$800
DISCO 77--US\$2,000

Please advise us when we might expect payment on these contracts.

(Exhibit.)

35. Haber did not receive payment or the tapes, however, and sought the assistance of the Iranian Embassy in Washington, D.C. by letter of 19 July 1979. The Embassy acknowledged the receipt thereof by letter of 30 July 1979, informing Haber that the matter was being referred to the appropriate authorities in Tehran and that Haber would be notified upon receipt of a response. (Exhibit.) Haber never received further news from either the Embassy or NIRT.

(ii) The Respondent's Position

36. The Respondent challenges the affidavit of Mr. Haber, asserting that, in view of his position as director and sole shareholder of the Claimant, it has no more evidentiary value than a pleading.

37. Specifically, IRIB denies that an oral agreement was concluded in Cannes. It states that, although Haber claims that conclusion of such agreements is a common practice in the television business, IRIB's financial regulations and practice do not authorize the conclusion of oral arguments.

38. IRIB further contends that it has not been established that the tapes were sent to it. IRIB asserts that the tapes were never put at its disposal and submits a statement dated 15 April 1987 by Mr. Moradi, Audio Visual and Script Director, declaring that they are not in IRIB's archives.

39. Concerning the letter dated 24 June 1978 from Mr. Naficy IRIB states, "on the assumption that its issuance was true," it was written for Mr. Naficy's colleagues at NIRT and is devoid of any authenticity for substantiating the claim. It is not clear, the Respondent argues, how a letter

sent by Mr. Naficy to his colleagues has reached the hands of Haber.

40. Pointing out that Haber's correspondence with Mr. Tabatabai does not contain any reply from the latter, the Respondent states that it did not employ a person by that name at that time. In support of this contention, the Respondent submits a statement dated 13 April 1987 by the Personnel Director, declaring that IRIB has had no employee by that name since 21 March 1977, when the employment of a person named Kazem Tabatabai discontinued. The Respondent also introduces a copy of a telex message sent to Haber in response to a message "from your office with the attention of K. Tabatabai on Sept. 23. [sic] 1978," requesting further particulars about this individual as he allegedly could not be traced in the organization.

41. Finally, the Respondent submits a letter dated 4 October 1978 through which Haber seeks the assistance of Mrs. F. Fouladvand, secretary of NIRT's Managing Director. According to the Respondent, this letter demonstrates a certain amount of confusion and the lack of a proper contractual relationship. It states, in relevant part:

Might you please, please reply to the enclosed telex.

I have had enormous difficulty dealing with National Iranian Radio & Television--in fact your organization is far and away the most difficult to deal with among the over 100 broadcast entities throughout the world with whom we deal.

I have tried by telex, by letter and by telephone to straighten out several serious pending matters regarding programs we have contracted with National Iranian Radio & Television (in fact, we have even corresponded with the Iranian Ambassador to the United States to try to straighten this matter out) but we have received absolutely no results to date.

I am enclosing herewith copies of several recent letters from our files which might direct you to the appropriate party to contact us.

V. THE CLAIMANT'S STANDING TO BRING THE CLAIM

42. Haber contends that, while it may technically be considered an agent of the American producers in the transactions with NIRT, NIRT is directly liable to Haber. Citing W.E. Sell, Agency (1975) and W. Seavey, Handbook of the Law of Agency (1964), the Claimant argues that a "third party" is liable to the agent who negotiated the contract on behalf of his principal if the agent is a party promisee to the contract or owns an interest in it.

43. Haber maintains that an agent is deemed a party promisee if the terms of the contract make him one or if the contract calls for the third party to render performance primarily to the agent. The Claimant contends that it meets both of these criteria because NIRT's performance was due entirely to Haber and NIRT specifically promised Haber to render payment due under the agreements to Haber. Citing Morse, IV The Law of Agency (1925), Haber argues that an agent is considered to have a sufficient interest in the contract and may thus maintain an action on the contract when the purchase price is to be paid to the agent. Thus, Haber acquired an interest in the agreements concluded with NIRT. Such interest is also found in Haber's ownership of the tapes sent to NIRT.

44. Haber further argues that, even if it were merely a third party beneficiary, it would have a strong case for recovery. Haber asserts that the contractual rights of third-party beneficiaries are recognized under both Iranian and American law. The Claimant further contends that the Tribunal has acknowledged the principle that a third party beneficiary has a right to enforce the contract under which it is expressly designated as beneficiary.

45. IRIB contends that the Claimant may not rely on provisions of United States agency law, since the oral

agreement was allegedly concluded in France and was to be performed in Iran. On the merits of the standing issue, IRIB points out that it is the licensee of the American companies which produced Sinatra and Disco; not of Haber. Moreover, IRIB argues that even if a claim is outstanding it relates only to that part of the price which constitutes Haber's interest.

46. In reply, Haber points out that: it was Haber that invoiced NIRT; NIRT never contested Haber's entitlement to the payment; NIRT addressed its telexed promise of payment directly to Haber; and all communications were between NIRT and Haber. Thus, Haber contends that it is entitled to payment by NIRT of the entirety of the claim; not merely of a portion thereof.

47. To determine whether Haber is entitled to bring a claim pursuant to the contracts in its capacity as agent, it is necessary to consider Haber's position in the transaction. IRIB does not take issue with the description of Haber's role summarized above. See supra para. 20. Haber was an intermediary bringing the two parties together in return for a commission from the licensor. Haber's duties did not stop there: it also acted as the licensor's representative for practical purposes, procuring and shipping the cassettes and tapes and receiving and transferring the royalties due. This description fits a position clearly defined in most legal systems, that is, that of an agent or its equivalent. One of the features of Haber's position as an agent is that it is not a party to the transaction which it has instigated. The contracts submitted reflect this, mentioning NIRT and the respective producers as the parties thereto. Although payment under the contracts was to be remitted to Haber, the contracts state that Haber thereby acts "on behalf of" the producer in question.

48. The issue raised is whether Haber should be entitled to bring a claim pursuant to the licensing agreement in its capacity as an agent because either it is a third party beneficiary, or a party promisee, or it owns an interest in the agreement.

49. In Sea-land Service, Inc. and The Government of the Islamic Republic of Iran, Award No. 135-33-1, pp. 16-17 (22 June 1984), reprinted in 6 Iran-U.S. C.T.R. 149, 160-61, the Tribunal acknowledged a claimant's right to enforce a contract as a third party beneficiary. Assuming that Haber was entitled to withhold as its commission part of the fees received on behalf of the licensor, it would benefit from NIRT's performance of the contract.

50. 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 purpose in the terms of NIRT's agreement with the producers. Although it may be assumed that NIRT was aware of Haber's role in the transaction, the contract does not contain any express or implicit reference to an independent entitlement on Haber's part. It gives Haber's address as the producer's address for the receipt of the license fee, without mentioning a right to commission included in, or in addition to, that fee. Thus, any commission arrangement was by separate agreement between Haber and the producer. For these reasons, the Tribunal finds that Haber cannot bring a contract claim as a third party beneficiary.

51. Turning now to Haber's further argument that it can claim as a party promisee, the Tribunal notes that it is an established principle of common law that an agent who is a promisee can, in its own name, maintain an action on a

contract concluded between its principal and a third party.² Before deciding whether this principle applies, the Tribunal must determine whether Haber qualifies as such a promisee.

52. Two categories that are often mentioned as such are factors and auctioneers.³ Their entitlement to sue appears to be based on their lien upon, or property interest in, the subject matter of the contract, balanced by the specific duties which they undertake in direct relation to the "third party."⁴ This relationship may be described as a collateral contract. As noted in Bowstead on Agency, the existence of such contracts in other circumstances is of course not foreclosed. See F.M.B. Reynolds, Bowstead on Agency 430 (15th ed. 1985). Haber, however, does not claim to have any special interest in the licensing rights, and the terms of the licensing contracts do not evidence a collateral agreement between Haber and NIRT. Haber's agency agreements with the producers might have provided relevant information in this respect, but the Claimant has not submitted these agreements to the Tribunal. The Tribunal finds insufficient evidence in these circumstances to consider Haber a promisee.

53. To support its standing, the Claimant further refers to the interest which it has in the licensing agreements through its position as payee thereunder and as owner of the tapes. It is, indeed, a rule of common law that an agent

²W. Seavey, Handbook of the Law of Agency § 136 (1964); Restatement (Second) of Agency § 363 (1958).

³F.M.B. Reynolds, Bowstead on Agency 430 (15th ed. 1985); G.H.L. Fridman, The Law of Agency 218 (5th ed. 1983); W. Seavey, Handbook of the Law of Agency § 136 (1964); Restatement (Second) of Agency § 364 (1958).

⁴An auctioneer, for example, warrants to the purchaser that he has authority to sell on his principal's behalf, and that he knows of no defect in the title of his principal.

who has an interest in its principal's contract can maintain an action thereon.⁵ It is another accepted rule of common law, however, that an agent is not entitled to bring an action for breach of a contract to which it is not a party, merely because it was entitled to a commission and was deprived of it by the breach.⁶ Assuming that Haber had the right to withhold its commission from payments received, this alone would not entitle it to bring the claim. This applies a fortiori to Haber's designation as the payee under the contracts, because its receipt of payment is expressly stated to be "on behalf of" the producers. Therefore, Haber's right to receive payment also would not give it a sufficient interest in the contracts to permit it to sue thereunder.

~~54. Haber also asserts that it owns the tapes and screening cassettes received by NIRT and that such ownership interest should be sufficient to permit it to sue under the contracts. According to Mr. Haber's affidavit, Haber arranges for the copying of program tapes on the basis of a master copy in its possession. It has submitted a copy of an invoice addressed to Haber for two-inch tape corresponding to the type mentioned in NIRT's contracts and in various communications. The system described by Haber appears to be consistent with its role as an agent, who frequently not only initiates but also facilitates the transaction. Based on the foregoing, Haber must be regarded as the owner of the physical materials sent. Such ownership would appear to satisfy the interest requirement existing under common law. In the Tribunal's opinion, however, Haber could only bring a~~

⁵Restatement (Second) of Agency § 372 (1958).

⁶F.M.B. Reynolds, Bowstead on Agency 430 (15th ed. 1985); W. Seavey, Handbook of the Law of Agency § 136 (1964); Restatement (Second) of Agency § 372 (1958).

claim to the extent of this interest.⁷ In view of this limitation and of the Tribunal's findings set out in paragraph 56, infra, the Tribunal does not further address the applicability of the interest rule.

55. Haber alternatively contends that an account stated was created when NIRT, through its telex of 15 March 1979, agreed to pay for the number of programs received up to that date. An account stated arises where there has been a transaction between a debtor and a creditor resulting in the creation of a matured debt and the parties by agreement compute a balance which the debtor promises to pay and the creditor promises to accept in full payment for the items of account.⁸ The 15 March 1979 telex indeed constitutes a promise to pay, but one which is based on a transaction between NIRT as the debtor and the producers as the creditors. Therefore, it is a promise through, rather than to, the agent. Just as the receipt of the license fee would not make Haber the creditor, being the addressee of the statement does not make it a party to the account. Accordingly, the Tribunal finds that Haber is not the proper party to bring a claim on this basis.

56. This leaves to be decided the question whether the Claimant is entitled to sue on the basis of unjust enrichment. As the Tribunal stated in Sea-land, to have recourse to this principle, "[t]here must have been an enrichment of one party to the detriment of the other, and both must arise as a consequence of the same act or event. There must be no justification for the enrichment, and no contractual or other remedy available to the injured party whereby he might

⁷The Restatement (Second) of Agency § 372 (1958) declares that an agent can maintain such action "as might a transferee having a similar interest."

⁸H.C. Black, Black's Law Dictionary 8 (5th ed. 1983).

seek compensation from the party enriched." See Sea-land, Award No. 135-33-1 at p. 28, reprinted in 6 Iran-U.S. C.T.R. at 169. In light of the foregoing, the Tribunal holds that the Claimant is entitled to claim on the basis of unjust enrichment.

VI. THE MERITS

57. The Tribunal must now establish whether IRIB was enriched to the detriment of Haber. The question is, therefore, whether IRIB received and retained the tapes and cassettes owned by Haber. Initially, the Tribunal observes that nearly all of the correspondence which took place from June 1978 through July 1979 - even if one would discount the letters to Mr. Tabatabai and the letter by Mr. Naficy - assumes and indeed refers to the fact that certain screening cassettes and tapes had been sent to NIRT. The Tribunal finds it difficult to believe that the numerous and detailed communications on record would have been sent if the programs had not been forwarded; without such shipments, the entire correspondence would appear to lose its raison d'être.

58. Having made this general observation, the Tribunal finds NIRT's telex of 15 March 1979 to be of special significance. It states, among other things, that NIRT wishes, "as from this date," to "stop" and to avoid "future shipments of film programmes" and that it will pay for "the number of programmes which we have received so far." IRIB's defense against the plain meaning of this text is that this message was one of a series of standard messages hastily sent out. The Tribunal notes that, even if the text was of a standard nature, NIRT evidently did perceive a reason to send it to Haber and chose to use this and not wording of a more general character, for example, programs received, "if any." It is reasonable, therefore, to read NIRT's telex as

The same inference follows from IRIB's own explanation that the messages were "only aimed at stopping further shipments." In view of the foregoing, IRIB must be deemed to have received and retained the tapes and cassettes sent by Haber. Based on the record in this Case, the Tribunal concludes that such receipt and retention constitute unjust enrichment.

59. The Claimant has submitted a May 1986 invoice specifying the value of a one hour video tape. In his affidavit Mr. Haber has testified to the value of a one hour tape, a one-half hour tape and a screening cassette. It is the Tribunal's task to determine, on an equitable basis, the value of the Disco and Sinatra tapes and the screening cassettes, taking into account Mr. Haber's affidavit testimony and the invoice presented, as well as the depreciation which the materials must be deemed to have undergone by the date that IRIB first failed to return the tapes. See Economy Forms Corporation and The Government of the Islamic Republic of Iran, Award No. 55-165-1, p. 21 (14 June 1983), reprinted in 3 Iran-U.S. C.T.R. 42, 52. The Tribunal concludes that, as of 30 June 1978,⁹ the total value of the four screening cassettes was U.S.\$100; as of 12 July 1978,¹⁰ the value of the Sinatra tape was U.S.\$100; and as of 20 September 1978,¹⁰ the total value of the five Disco tapes was U.S.\$500.

60. In view of the foregoing, the Tribunal holds that IRIB is obligated to pay to Haber the amounts stated in the preceding paragraph, together with simple interest on those amounts at a rate of 10% per annum from the respective dates

⁹Being the date of the first return request on record.

¹⁰Being twenty days (the contractual loan period) following the latest date on which the tape(s) may be deemed to have been received.

stated to the date of payment pursuant to this Award. See McCollough & Company, Inc. and The Ministry of Post, Telegraph and Telephone, Award No. 225-89-3 (22 Apr. 1986), reprinted in 11 Iran-U.S. C.T.R. 3.

VII. AWARD

61. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. The Respondent ISLAMIC REPUBLIC OF IRAN BROADCASTING is obligated to pay to the Claimant, ALFRED HABER, P.A.:

1. the sum of One hundred United States Dollars (U.S.\$100), plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 30 June 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
2. the sum of One hundred United States Dollars (U.S.\$100), plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 12 July 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
3. the sum of Five hundred United States Dollars (U.S.\$500), plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 20 September 1978 up to and including the date on which the Escrow Agent instructs the

Depository Bank to effect payment out of the Security Account.

All other claims of ALFRED HABER, P.A. against ISLAMIC REPUBLIC OF IRAN BROADCASTING and THE ISLAMIC REPUBLIC OF IRAN are dismissed.

- b. The above-stated obligations of ISLAMIC REPUBLIC OF IRAN BROADCASTING shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.
- c. Each party shall bear its own costs of arbitration.

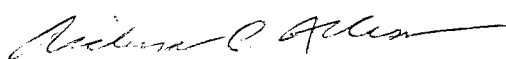
This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague,
4 September 1989



Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the name of God



Richard C. Allison



Parviz Ansari Moin
Concurring in Part
Dissenting in Part