

ORIGINAL DOCUMENTS IN SAFECase No. 11491Date of filing: 3 April 1990

** AWARD - Type of Award _____
- Date of Award _____
_____ 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: Correction to Award

- Date 3 April 1990
2 pages in English 2 pages in Farsi



CASE NO. 11491

CHAMBER ONE

AWARD NO. 475-11491-1

ALI ASGHAR,
a claim of less than US\$250,000 presented
by the UNITED STATES OF AMERICA

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	3 APR 1990
	تاریخ ۱۳۶۹ / ۱ / ۱۴

CORRECTION TO THE AWARD

The following 'correction is hereby made to the text of the Award in this Case filed on 14 March 1990:

- 1) The last two lines of page 13 of the English text which are repeated on the first two lines of page 14, due to typographical error, should be deleted.
- 2) The date 9 October 1977 in paragraph 11 of both English and Persian texts should read "9 October 1979".

Therefore pages 6 and 13 of the English text and page 7 of the Persian text are replaced by the corrected version as attached.

Dated, The Hague
3 April 1990

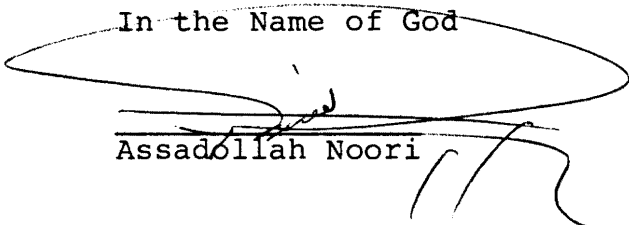


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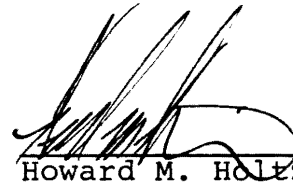
Chairman

Chamber One

In the Name of God



Assadollah Noori



Howard M. Holtzmann

10. Secondly, the Respondents argue that the claims for the transfer of bank funds were not outstanding on 19 January 1981. Bank Melli takes the position that there was no dispute before the said date with respect to the savings account. According to the Bank, Asghar should have used and completed special forms relating to the procedure of withdrawal from a bank account. This he should have done together with his wife since the savings account was a joint one.

11. Regarding the request for withdrawal of funds from the fixed deposit account no.800/068164, Bank Melli argues that Asghar should have returned, together with the request, the original certificate of deposit; the enclosure of a copy of the certificate is not sufficient and does not comply with the banking practice. Bank Melli relies for its Defense on its letter dated 9 October 1979 in response to Asghar's request, in which the Bank advised Asghar to contact the Central Bank for permission to transfer the balance of the account. The Bank adds that Asghar can seek his funds at the Bank in Rials and that the funds are available to him in Rials.

12. Bank Saderat emphasizes the lack of any demand for the withdrawal of Asghar's funds before the jurisdictional deadline of 19 January 1981 and concludes, therefore, that the Tribunal lacks jurisdiction over the claim against it.

13. The Respondents deny that the accounts were taken or confiscated. They argue that the exchange restrictions in Iran did not allow the exchange and transfer of the funds in the absence of permission by the Central Bank of Iran, and, therefore, Bank Melli could only make payment in Rials. The Respondents contend that the exchange regulations are valid under international law and do not violate either the Treaty of Amity or the regulations of the International Monetary Fund.

22. Assuming that pursuant to Mrs. Asghar's power of attorney, Iranian law allows Mr. Asghar to claim all of the funds in the bank account, see generally Housing and Urban Services International, Inc. and Government of the Islamic Republic of Iran, Award No. 201-174-1, p. 22, n. 10, (22 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 313, 329, n.14, the next issue then to be addressed in order to establish jurisdiction over Mrs. Asghar's part of the Claim is Mrs. Asghar's nationality. In her affidavit Mrs. Asghar submits that she is a permanent resident of the United States of America and that a green card was issued to her in November 1962. However, no proof has been presented in evidence regarding her nationality. Therefore, the Tribunal lacks jurisdiction over Mrs. Asghar's part of the Claim.

23. Asghar and his wife had a joint interest in the savings account. Since the Tribunal has concluded that it has no jurisdiction over the portion related to Mrs. Asghar's interest, the question needs to be answered to what extent Asghar is entitled to the funds in the account. In this respect reference is made to Housing and Urban Services International, Inc. and Government of the Islamic Republic of Iran, et al., Award No. 201-174-1, pp. 26-28, (22 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 313, 329-333, where it was held that a partner in a partnership which has no separate legal personality is entitled to bring an individual claim for his pro rata share of the partnership's claim, if independent and readily distinguishable from a claim by the partnership. In that case, however, the respective identifiable shares of the two partners were established by the documents in evidence. In contrast, in the present Case Mrs. Asghar's affidavit refers to the account as "our funds", and there is no evidence to show the proportion of the funds that belonged to her as distinct from the part that was the property of her husband. This is

می‌داشت و فرستادن فتوکپی آن قبض به ضمیمه نامه کافی و منطبق با عرف بانکداری نیست. بانک ملی در مقام دفاع به نامه مورخ ۱۷ مهرماه ۱۳۵۸ [نهم اکتبر ۱۹۷۹] خود در پاسخ درخواست اصغر استناد می‌کند که در آن به اصغر اطلاع داد، برای کسب اجازه انتقال مانده حساب، با بانک مرکزی تماس بگیرد. بانک اضافه می‌کند که اصغر می‌تواند وجوه حسابهای بانکی خود را به ریال مطالبه کند و این وجوه به ریال در اختیار وی می‌باشد.

۱۲ - بانک صادرات تاکید می‌کند که تا قبل از انقضای مهلت صلاحیتی ۲۹ دی‌ماه ۱۳۵۹ [۱۹ ژانویه ۱۹۸۱] مطالبه‌ای برای برداشت وجوه متعلق به اصغر به عمل نیامده بود و بنابراین نتیجه می‌گیرد که دیوان نسبت به ادعای مطروح علیه بانک صلاحیت ندارد.

۱۳ - خواندگان منکر آنند که حسابها ضبط یا مصادره شده و استدلال می‌کنند که محدودیتهای ارزی ایران اجازه تبدیل و انتقال پول را بدون مجوز بانک مرکزی ایران نمی‌داد و از این رو بانک ملی فقط می‌توانست وجوه را به ریال پرداخت کند. خواندگان اظهار می‌دارند که مقررات ارزی موضوعه طبق حقوق بین‌الملل معتبر بوده، تخلف از عهدنامه مودت و مقررات صندوق بین‌المللی پول نیست.

۱۴ - خواندگان همچنین منکر داشتن هرگونه مسئولیتی تحت قرارداد سپرده می‌باشند و استدلال می‌کنند که وظیفه بانک، به عنوان امین، این بود که سپرده را به همان وجهی که سپرده شده (ریال) نگهداری و پرداخت کند. آنها استدلال می‌کنند که بانک تعهد نداشت به انجام معامله‌ای کاملاً متفاوت یعنی فروش ارز به خواهان مبادرت ورزد.