

14-32

CASE NO. 14

CHAMBER THREE

WHITE WESTINGHOUSE INTERNATIONAL
COMPANY,

AWARD NO: 7 - 14 - 3

Claimant
(and Counter-respondent),

- and -

BANK SEPAH - IRAN, NEW YORK AGENCY,
Respondent
(and Counter-claimant).

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه داری دعاوی ایران - ایالات متحده	
FILED - ثبت شد			
No.	14	شماره	
Date	JUNE, 25, 82	تاریخ	
	۱۳۶۱/۴/۲	روز	

AWARD

APPEARANCES:

For the Claimant :

Mr. Geoffrey D.C. Best
LeBoeuf, Lamb, Leiby & MacRae
Attorney

For the Respondent :

Mr. Zein-al-abedin Yaghoubi
Mr. Mehdi Habibi Amin
Mr. Ali Shojaei
Representatives of Bank Sepah

I. FACTS

On 31 October 1979 Respondent, BANK SEPAH - IRAN, NEW YORK AGENCY, issued a cheque made payable to the Claimant, WHITE WESTINGHOUSE INTERNATIONAL COMPANY, a division of White Consolidated Industries, Inc., in the amount of \$298,757.45. On 14 November 1979 Claimant deposited the cheque with Equibank, N.A., for collection. By virtue of United States Presidential Order No. 12170 of 14 November 1979 and resulting regulations, the assets of Respondent in the United States were blocked. Accordingly, on 21 November 1979 Equibank returned the cheque to Claimant showing non-payment.

Claimant obtained a Judgment by Consent in a New York court for the principal sum of the cheque on 28 February 1980. The parties stipulated to entry of judgment in the amount of the cashier's cheque. In the stipulation, Claimant agreed as follows:

Plaintiff will not seek to levy upon, nor will defendant be obliged to satisfy, the Judgment except as permitted by Executive Order No. 12170, 44 Fed. Reg. 65729 (1979), and applicable regulations of the United States Office of Foreign Assets Control.

In May 1980, Claimant took legal action before a Court in London in order to seek collection of the sum of the cheque. That court action is now dormant in view of the Algiers Claims Settlement Declaration and the proceedings before this Tribunal.

Claimant seeks the principal amount of the cheque, plus interest thereon from 14 November 1979 as determined by the Tribunal. Claimant also seeks to recover attorneys fees and costs incurred in collection efforts in New York and London.

Having at the hearing acknowledged its liability for the principal sum of the cheque, Respondent has eventually denied this claim. The claim for interest has also been denied.

Respondent claims, by way of counter-claim, compensation for fees and expenses it incurred in connection with the New York and London actions.

- 3 -

Claimant denies the allegations in this counter-claim.

In a "Supplementary Statement of Defence" submitted after the hearing, Respondent has further claimed damages arising from Claimant's "illegitimate access" to certain bank documents.

Only the Respondent has claimed compensation for costs in connection with the proceedings before the Tribunal.

The Tribunal's jurisdiction in this case is not disputed.

This matter came up for hearing before Chamber Three of the Tribunal on 30 March 1982. The parties stipulated that their written submissions would constitute their evidence. The parties were given additional time to make further submissions and did so.

II. REASONS FOR AWARD

The Tribunal has satisfied itself that it has jurisdiction in this case.

Respondent has eventually denied that it is under any obligation to pay the principal sum of the cheque. In this connection, Respondent has referred to Article 11 of the "Uniform Customs and Practice for Documentary Credits", published by the International Chamber of Commerce.

The Tribunal finds that the Article relied upon by the Respondent does not apply in this case and that the Respondent is not exempt from the obligation to pay the principal amount of the cheque.

With regard to the claim for interest on the principal sum, the Tribunal makes the following findings. The consent judgment in question was duly filed and entered in the New York County Clerk's Office on 28 February 1980. Under New York law a judgment bore interest at a rate of 6% per annum from the date of entry up to and including 24 June 1981. On 25 June 1981, an amendment to

the statute took effect providing for interest at the rate of 9% per annum on judgments (N.Y. CPLR §§ 5003-04, R5016 (1982)). Because the debt was payable in New York and the consent judgment was entered in New York, the law of that state is applicable in this case.

Respondent claims non-liability for any interest on the ground that it was not possible to pay the cheque because of the Presidential Order freezing the Bank's funds in the U.S.A. Claimant, on the other hand, has submitted written evidence showing that the Respondent's funds in the U.S.A. did yield interest during the period in question.

In view of this latter evidence and of the fact that Respondent did enter into a consent judgment, the Respondent clearly cannot be exempted from paying the New York statutory interest on the cheque amount owed. However, since Claimant agreed to the entry of a consent judgment in the amount of the principal sum only, it is not entitled to interest for any period of time prior to the date of the consent judgment, 28 February 1980 (*Id.* at §§ 5001-03). The Tribunal therefore holds that Claimant is entitled to interest on the principal amount of the cheque at the rates applicable under the aforementioned New York law from 28 February 1980 up to and including the date of this Award.

The Tribunal sees no ground for awarding Claimant compensation for costs in connection with collection efforts before courts in the United States and England.

With respect to Respondent's counter-claim regarding fees and expenses, there was no legal impediment to Claimant attempting, by litigation, to obtain a judgment and to execute on the judgment in a place where funds were not blocked. Accordingly, Respondent is not entitled to the compensation for fees and expenses claimed in this counter-claim.

As for the Respondent seeking damages arising from Claimant's access to certain documents, this counter-claim has not been

filed in a timely fashion and will not be considered by the Tribunal (see Article 19 of the Tribunal Rules). Moreover, the subject matter of the counter-claim does not fall under the jurisdictional provision of Article II, paragraph 1 of the Claims Settlement Declaration.

In view of the above findings, the Tribunal does not award Respondent costs of arbitration.

III. AWARD

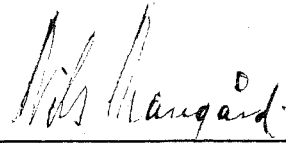
THE TRIBUNAL AWARDS AS FOLLOWS:

Respondent, BANK SEPAH - IRAN, NEW YORK AGENCY, shall pay to Claimant, WHITE WESTINGHOUSE INTERNATIONAL COMPANY, the sum of Two Hundred Ninety-Eight Thousand Seven Hundred Fifty-Seven and 45/100 United States Dollars (\$298,757.45) plus annual interest thereon calculated at the rate of six percent (6%) as from 28 February 1980 up to and including 24 June 1981, and at the rate of nine percent (9%) for the period of 25 June 1981 up to and including the date of this Award. Such payment shall be made 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.

This Award is hereby submitted to the President of the Tribunal

for notification to the Escrow Agent.

Dated, The Hague, 25 June 1982



Nils Mangård
Chairman
Chamber Three



Richard M. Mosk

In the Name of God

Quite apart from my general belief that the issue of interest - or default interest - is so important as to merit an exclusively Full Tribunal decision, I cannot, before such a decision is rendered, agree to the issuing of the present Award, now that the subject is in fact placed on the Agenda of the said Tribunal.



M. Jahangir Sani