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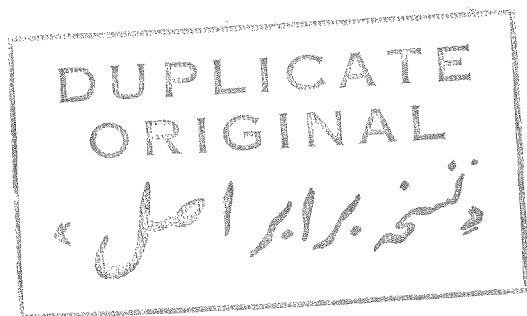
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داری دعاوی ایران - ایالات متحدہ



CASE NO. 252

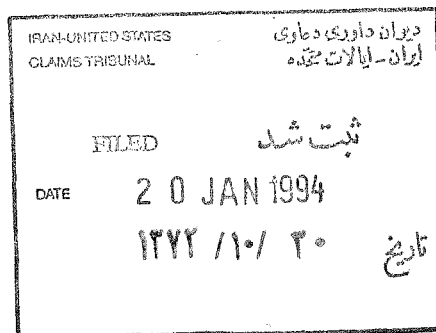
CHAMBER THREE

DECISION NO. DEC 119-252-3

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO and
CONTINENTAL BANK INTERNATIONAL,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
BANK MARKAZI IRAN,
BANK TEJARAT,
BANK MELLAT,
AYDEE MOGHIM DEHKORDI,
PARS FELEZ COMPANY,
SHERKATE MACHINALATE OMRANI,
T.C.C. TRADING COMPANY,
TOLITO CORPORATION,
TECHNO-WAY INDUSTRIAL CORP.,
MULTI-FROST CORPORATION LTD.,
SHERKATE SAHAMI DASHTE MORGHAB,
BANK MELLI IRAN,
INDUSTRIAL MINING AND DEVELOPMENT BANK OF IRAN,
PARSYLON CORPORATION, and
INDUSTRIAL CREDIT BANK,
Respondents.

DECISION

1. On 14 January 1982 CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("CINB") and CONTINENTAL BANK INTERNATIONAL ("CBI") (together the "Claimants") brought a claim against THE ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI IRAN, BANK TEJARAT, BANK MELLAT, AYDEE MOGHIM DEHKORDI, PARS FELEZ COMPANY, SHERKATE MACHINALATE OMRANI, T.C.C. TRADING COMPANY, TOLITO CORPORATION, TECHNO-WAY INDUSTRIAL CORP., MULTI-FROST CORPORATION LTD., SHERKATE SAHAMI DASHTI MORGHAB, BANK MELLI IRAN, INDUSTRIAL MINING AND DEVELOPMENT BANK OF IRAN, PARSYLON CORPORATION and INDUSTRIAL CREDIT BANK (the "Respondents").

2. The Statement of Claim identifies several claims which, according to the Claimants, are based on the expropriation of ownership interests in Iranian banks, unpaid bank deposits in Iranian banks, failure to pay declared dividends, overdrafts, reimbursement obligations, an unpaid letter of credit and bank guarantee, unpaid promissory notes, unpaid interest on syndicated loans and excess interest paid on Iranian deposit accounts at branches of Continental located outside the United States. The Claims are grouped in Claims of CINB (nine Claims, numbered 1 through 9) and Claims of CBI (seven Claims, numbered 1 through 7).

3. All the Claims in this Case either have been settled or withdrawn. Pursuant to their withdrawal by the Claimants, Claim No. 7 of CINB and Claim No. 3 of CBI were terminated by Orders dated 18 February 1983 and 3 May 1984 respectively. Following a settlement between the Parties all other Claims except for Claim No. 9 of CINB were terminated by Order of 14 April 1986. On 3 December 1990 the Respondents informed the Tribunal that "[that] last claim of [the] Claimant ... ha[d] been settled." This was confirmed by the Claimants on 8 May 1991.

4. On 20 April 1992 the Tribunal advised the Parties that it "intend[ed] to terminate the proceedings in this Case in accordance with Article 34 of the Tribunal Rules unless the Respondents raise[d] justifiable objections thereto ... [by] 11 May 1992." On 11 May 1992 the Respondents filed a letter with the Tribunal stating that they "have no objection to the termination of the Case concerning the Claims asserted by the Claimant." The Respondents added that "certain parts of the Claims asserted in Cases Nos. 683 and 645 before Chamber Two have been identified as Counterclaims in the instant Case." In the same letter the Respondents requested the Tribunal to examine these "pending [C]ounterclaims."

5. It is necessary to retrace the history of the Counterclaims in question to have a clearer view on their relationship with the Case at hand.

6. In Cases Nos. 645 and 683 Bank Markazi Iran, acting on its own behalf and on that of various agencies, filed a series of claims on 18 January 1982 against Continental¹ based on the latter's alleged failure to reimburse certain principal sums held by it for the account of the Iranian agencies and to pay interest on deposits and assets that also were held for the account of the Iranian agencies.

7. Subsequent to the Tribunal's decision in Case No. A17, United States of America and Islamic Republic of Iran, Decision No. DEC 37-A17-FT (18 June 1985), reprinted in 8 Iran-U.S. C.T.R. 189, Chamber Two on 24 July 1985 issued Orders in Cases Nos. 645 and 683 stating, inter alia, that

¹ The Statement of Claim in Case No. 645 refers to Continental Bank International as the respondent. The Statement of Claim in Case No. 683 refers to Continental Illinois National Bank And Trust Company of Chicago as the respondent.

1. The Tribunal hereby informs the Parties that it intends to terminate all proceedings in th[ese] Case[s], pursuant to Article 34 of the Tribunal Rules, unless the Claimant[s] inform[] the Tribunal, by 2 September 1985,^[2] that the present Claim[s] involve[] ... amounts owing and payable to [them] from Dollar Account No. 2.

2. The Tribunal reminds the Parties that if the Iranian bank claim[s] involved in the present Case[s] relate[] to ... claim[s] by a United States banking institution or other private entity in another Case, then a party in such other Case may request that the Iranian bank claim[s] be decided as ... counterclaim[s] in that other Case. Such request should be filed in the Case involving the claim brought by the United States banking institution or other private entity, not later than 1 October 1985.

8. On 1 October 1985 Bank Markazi Iran filed a letter in Cases Nos. 645 and 683 in which it stated that "none of the [Claims in the said Cases] ... , is payable from Dollar Account No. 2." At the same time, it requested the adjudication of these Claims "as [C]ounterclaims to those by the American Claimants [in Case No. 252], in accordance with paragraph 2 of the Order dated July 24, 1985."

9. On 18 November 1985 a submission signed by both Parties in the course of the month of June 1985 was filed in Cases Nos. 645 and 683 requesting "the dismissal ... of those portions of the cases listed on Schedule 2 that pertain to the settled claims specified under each such listed case." Schedule 2 listed, inter alia, all Claims in Cases Nos. 645 and 683 except, on the one hand, "claims for 'Outstanding Amount' of Bank of Tehran set out in Table A1 of the Statement of Claim" in Case No. 645 and, on the other, "claims of

² By Order of 16 September 1985 Chamber Two extended this deadline until 1 October 1985.

'Creditor Institutions' set out in Tables A and A1 of the Statement of Claim" in Case No. 683.³

10. On 21 November 1985 Chamber Two issued Orders in Cases Nos. 645 and 683 whereby it terminated "the arbitral proceedings in [these Cases], insofar as they relate to the portion indicated by the Parties in Schedule 2." Consequently, as of the date of that Order, the only Claims in Cases Nos. 645 and 683 that remain pending are those for U.S.\$103,334.67 outstanding to Bank of Tehran and U.S.\$602,962.59 outstanding to Bank Melli. See footnote 3, supra.

11. In its Orders of 27 November 1985 Chamber Two reminded the Parties that the Tribunal, in its Decision in Case No. A-17, has held, inter alia:

Claims by Iranian banks against United States banking institutions are within the jurisdiction of the Tribunal only to the extent, if any, that they are disputes as to amounts owing from Dollar Account No. 2 for the types of debts payable out of that account which have been referred to the Tribunal in accordance with Paragraph 2(B) of the undertakings.

12. Having noted Bank Markazi Iran's statement of 1 October 1985 that the Claims in Cases Nos. 645 and 683 do not involve an amount or amounts owing or payable to it from Dollar Account No. 2, Chamber Two decided in the same Orders that the Tribunal "lack[ed] jurisdiction over [those] Claim[s]." In view thereof, Chamber Two terminated the arbitral proceedings in both Cases pursuant to Article 34 of the Tribunal Rules.

³ Table A1 to the Statement of Claim in Case No. 645 mentions, inter alia, an amount of U.S.\$103,334.67 outstanding to Bank of Tehran. Table A1 to the Statement of Claim in Case No. 683 contains an amount of U.S.\$602,962.59 outstanding to Bank Melli.

13. With regard to Bank Markazi Iran's request that the remaining Claims in these Cases be adjudicated as Counterclaims in Case No. 252, Chamber Two remarked in the same Orders that its Order of 24 July 1985 required such "Counterclaim ... [to] be filed by a Party to the Case in which the Counterclaim is sought to be filed, and in that Case." (Emphasis added) Chamber Two therefore concluded that the request filed on 1 October 1985 in Cases Nos. 645 and 683 was "made in the wrong case."

14. In considering Bank Markazi Iran's request to examine the Claims it had filed in Cases Nos. 645 and 683 that were not terminated by Chamber Two's Order of 21 November 1985 as Counterclaims in the present Case, the initial question is whether those Claims are admissible as Counterclaims in this Case. The Tribunal notes in this respect Chamber Two's Orders of 24 July 1985 requiring that the request to decide the Iranian bank claims as Counterclaims in the other Cases be filed in such other Cases not later than 1 October 1985. However, Bank Markazi Iran's requests to decide the remaining Claims in Cases Nos. 645 and 683 as Counterclaims in Case No. 252 were filed before Chamber Three in Case No. 252 several months after the October deadline set by that Order, namely on 14 January 1986.

15. Furthermore, subsequent to Bank Markazi Iran's request, Chamber Three, by Order of 3 February 1986, informed the Parties in Case No. 252 that "it intend[ed] to terminate the arbitral proceedings in this Case except for Claim No. 9 [of CINB] ... unless the Parties by 28 February 1986 raise[d] justifiable grounds for objection in accordance with Article 34 of the Tribunal Rules." (Emphasis added) Clearly, if the Respondents wanted Chamber Three to take up the remaining Claims in Cases Nos. 645 and 683 as Counterclaims in Case No. 252, they should have raised objections to such termination.

Noting that no such objections were submitted by the Respondents, Chamber Three, in its Order of 11 April 1986, "terminate[d] the arbitral proceedings in this Case except for Claim No. 9 [of CINB]." The plain language of this Order indicates that the remaining Claims in Cases Nos. 645 and 683 cannot be considered in the context of Case No. 252.

16. The Tribunal also notes that for more than four and a half years the Respondents never again mentioned the existence of Counterclaims in Case No. 252. On the contrary, in several of their letters addressed to the Tribunal the Respondents themselves confirmed that the only issues that remained outstanding in this Case concerned Claim No. 9 of CINB. In their letter filed 1 September 1989, the Respondents wrote that

Bank Markazi of Islamic Republic of Iran, who [sic] is carrying out settlement negotiations with the Claimant's agents in this Case, has informed us that the only unsettled portion of the case is that related to the interest of 18 days of January 1981 on a syndicated loan made to the former Industrial and Mining Development Bank of Iran.^[4]

(Emphasis added)

The same language appears in the Respondents' communication filed 3 September 1990. Only in their submission of 3 December 1990, when the remaining Claim No. 9 of CINB also had been settled in its entirety, did the Respondents again mention the issue of the Counterclaims.

17. In view of the above considerations, and in particular that on 11 April 1986 the Tribunal terminated all proceedings in this Case except for Claim No. 9, the Tribunal holds that the Counterclaims brought by the Respondents in Case No. 252 are inadmissible.

⁴ This relates to Claim No. 9 of CINB.

18. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

- a) The Counterclaims are not admissible.
- b) The arbitral proceedings in Case No. 252 are terminated in accordance with Article 34, paragraph 2, of the Tribunal Rules.

Dated, The Hague

20 January 1994



Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Mohsen Aghahosseini
Dissenting