

ORIGINAL DOCUMENTS IN SAFE

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Case No. 284

Date of filing: 8.5.89

** AWARD - Type of Award _____
 - Date of Award _____
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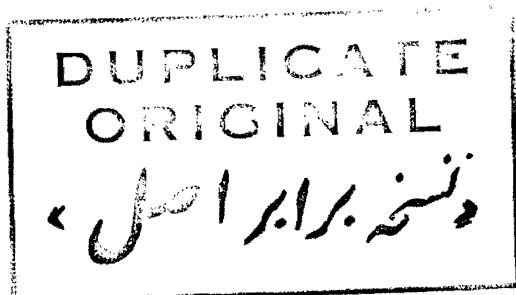
** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
 - Date _____
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** SEPARATE OPINION of _____
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** DISSENTING OPINION of _____
 - Date _____
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** OTHER; Nature of document: Correction To Dissenting opinion
of Mr Aldrich
 - Date 78
1 pages in English 1 pages in Farsi



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CASE NO. 284

CHAMBER TWO

AWARD NO. 304-284-2

OTIS ELEVATOR COMPANY,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN and
BANK MELLAT (FORMERLY FOREIGN
TRADE BANK OF IRAN),
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه داوری و محاکمات ایران - ایالات متحدہ
ثبت شد - FILED		
Date	8 MAY 1987	تاریخ
	۱۳۶۶ / ۲ / ۱۸	
No.	284	شماره

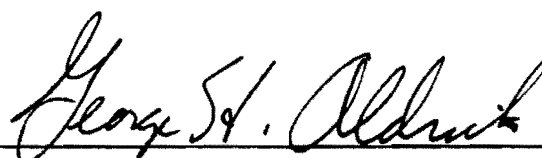
CORRECTION TO DISSENTING OPINION
OF GEORGE H. ALDRICH

The following typographical errors should be corrected in the English version of my Dissenting Opinion filed on 29 April 1987.

1. The last word of the first line on page 3 should read "is".

2. The word "affects" in footnote 1, line 8, on page 7 should read "effects".

Corrected pages are attached.


GEORGE H. ALDRICH

the accounts of Otis Iran (whether of Iran Elevator also is unclear), allegedly on the initiative of the Foundation for the Oppressed, which was concerned that the agreement would not adequately protect all workers of Otis Iran.

4. As part of their efforts to protect the assets of Iran Elevator from the claims of the workers of Otis Iran, a quorum of Otis and Arjomand directors of both companies met in Paris on 29 January 1980 and then or shortly thereafter took two actions, both of which were to prove totally ineffective. First, as the Award notes, the Board of Directors of Iran Elevator decided to replace Mr. Naeeni as General Manager with one of the directors, Mr. Ian Reynolds. The Award notes (paras. 15 and 38) that the effort to have the minutes of that meeting formally recorded and gazetted failed when the Ministry of Justice, contrary to both the law and the Articles of Association, refused to do so on the ground that the term of the Board of Directors had expired five days previously. The Award says that there is no evidence that any effort was made thereafter to hold a general meeting of shareholders to elect a new Board or that the Ministry's decision was intended to thwart the Claimant's rights. I fail to see, however, that the Claimant and the Arjomand shareholders had any need to try to convene such a meeting (even if such a general meeting would have been feasible in Iran in 1980), for they were right and the Ministry was wrong. As to the Ministry's intentions, they are irrelevant. As the Tribunal held in the Tippetts, Abbett, McCarthy, Stratton Case, supra, the "intent of the government is less important than the effects of the measures on the owner." Moreover, the real vice here is not simply the rebuff by the Ministry of Justice; rather, it is the consistent refusal of all parts of the Government, including the Ministry of Commerce and its appointed financial supervisor, to pay any attention to the valid decision by the Board of Directors that dismissed Mr. Naeeni. Mr. Arjomand personally informed Naeeni that the Board had

requirements of Iranian law, effectively prevented the dismissal of any Otis Iran workers until those demands were met, and required the use of funds taken illicitly from Iran Elevator to ensure funding of those payments. For those acts of its ministries, the Islamic Republic of Iran is responsible.

10. The Respondents are also responsible for their refusal to accept the removal of Mr. Naeeni by the Board of Directors of Iran Elevator and his replacement by Mr. Reynolds. In the first instance, this refusal was attributable to the Ministry of Justice and was contrary to law. The Ministry of Commerce and its appointed supervisor evidently also closed their eyes to the law and continued Mr. Naeeni in office, as demonstrated by the affidavit of Mr. Naeeni filed in this Case by the Ministry of Commerce on 6 July 1984. One of the most basic rights of the owners of a company is the right to designate and replace the persons who manage the company and its assets. By 3 March 1980, when the Ministry of Justice refused to accept the removal of Mr. Naeeni and his replacement by Mr. Reynolds, the Claimant was fully justified in concluding that the company and its assets were, from that time onward, under the control of a government-appointed financial supervisor and a fired former employee who was kept in office by decision of the Government of the Islamic Republic of Iran.¹

¹It is possible that Mr. Naeeni's retention resulted from the law pursuant to which the Government appointed a supervisor of Iran Elevator, as that law provides that upon such an appointment, "previous directors and managers will be stripped of their competence in managing" the affairs of the company, and "the shareholders [shall] have no right whatsoever to choose managers in their place." Clearly that law and its effects on the Claimant's shareholder rights are attributable to the Respondents. Law No. 7/2571 of 19 June 1979.