

ORIGINAL DOCUMENTS IN SAFE

Case No. 30

Date of filing 15 Dec 1982

☒ AWARD. Date of Award 15 Dec 1982

11 pages in English. 10 pages in Farsi.

☐ DECISION. Date of Decision _____

_____ pages in English. _____ pages in Farsi.

☐ ORDER. Date of Order _____

_____ pages in English. _____ pages in Farsi.

☐ CONCURRING 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.

CASE NO. 30

CHAMBER THREE

GRANITE STATE MACHINE CO., INC.,
Claimant,

AWARD NO. 18-30-3

- and -

THE ISLAMIC REPUBLIC OF IRAN, BANK
MARKAZI IRAN, and BANK SADERAT IRAN,
Respondents.



IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داورى دعاوى ايران - ايالات متحده
ثبت شد - FILED	
1261 / 9 / 24	
15 DEC. 1982	
30	30

FINAL AWARD

DUPLICATE ORIGINAL نسخه برابر اصل

APPEARANCES

For the Claimant : Mr. Burton V. McCullough
Zobrist & Vienna
Attorney

For the Respondents: Mr. M.K. Eshragh, Agent of the Islamic
Republic of Iran
Mr. Khosrow Tabasi, Adviser to the Agent
Mrs. Shirin Ershadi, Bank Markazi
Mr. Mohamood Saljoughi, Bank Saderat

I. THE CLAIM

GRANITE STATE MACHINE CO., INC. ("Claimant" or "Granite State"), filed a claim with the Tribunal on 10 November 1981, seeking an award of \$369,439.66 plus interest and costs against THE ISLAMIC REPUBLIC OF IRAN ("Iran"), BANK MARKAZI IRAN ("Bank Markazi") and BANK SADERAT IRAN ("Bank Saderat"), for failure to remit to it the proceeds of various bills of exchange drawn on Techno-Is Industrial Co. ("Techno-Is"), an Iranian Company.

By a partial award (Award No. 9-30-3), the Tribunal has awarded the Claimant \$368,969.86 representing the total draft amounts due, while retaining jurisdiction to resolve the issues of interest and costs.

II. THE FACTS

The facts surrounding the dispute have been set out in the above-mentioned partial award as follows:

On 2 May 1978 Techno-Is, a company organized under the laws of Iran, placed four separate orders with Granite State for the purchase of goods from Granite State, the total purchase price being \$362,260.00. The goods were shipped in four equal shipments to Techno-Is in late 1978 and early 1979 along with copies of the title documents. In accordance with normal commercial practice, the original title documents to the goods were to be forwarded by Bank of America-New York on Granite State's behalf to Bank Saderat, along with bills of exchange, or drafts, drawn on Techno-Is. The drafts were payable 90 days from the date of issuance, along with interest over those 90 days at the rate of 8½%. The original documents were then to be delivered to Techno-Is by Bank Saderat against payment of the drafts. Techno-Is was to present the original documents

to the shipper to secure release of the goods. The collection process was made subject to the Uniform Rules for the Collection of Commercial Paper adopted by the International Chamber of Commerce.

The amounts of the drafts, and the dates of issuance and payment were as follows:

<u>DRAFT NO.</u>	<u>DRAFT DATE</u>	<u>DRAFT AMOUNT</u>	<u>DRAFT PAYABLE</u>
1	Aug. 30, 1978	\$90,565.00	Nov. 10, 1978
2*	Aug. 30, 1978	1,539.36	Nov. 10, 1978
3	Sept. 29, 1978	90,565.00	Dec. 29, 1978
4*	Sept. 29, 1978	1,898.10	Dec. 29, 1978
5	Jan. 19, 1979	90,565.00	Apr. 19, 1979
6*	Jan. 19, 1979	1,898.10	Apr. 19, 1979
7	Apr. 10, 1979	90,565.00	July 10, 1979
8*	Apr. 10, 1979	1,374.30	July 10, 1979
		\$368,969.86	

As of 3 March 1979 Bank Saderat had not received the title documents forwarded to it by Bank of America regarding the first shipment of 30 August 1978. On 19 March 1979 Bank Saderat sought instructions from Bank of America, and on 21 March 1979 received the reply that a certified duplicate bill of lading would be obtained from Granite State. According to Bank Saderat, it never received the original or the certified copy of that bill of lading. Nevertheless, on 25 April 1979 Bank Saderat endorsed Techno-Is' copy of the bill of lading, in exchange for eight promissory notes from Techno-Is in the aggregate sum of \$121,276.41. Bank Saderat asserts it made such endorsement to facilitate the delivery of goods to Techno-Is and thereby assist the seller as well. Thus Techno-Is obtained possession of those goods. Bank Saderat,

* Drafts 2, 4, 6 and 8 represent the amount of interest on the purchase price of the goods over the 90 day period.

however, states that Techno-Is has never paid it the amounts due on the promissory notes.

With respect to the second and third shipments, Bank Saderat received the original title documents on 8 May 1979. The documents for the fourth shipment were received sometime prior to 10 July 1979. However, it was not until 25 February 1980 that Techno-Is authorized and directed Bank Saderat to debit provisionally the account of Techno-Is maintained with Bank Saderat for the amount of drafts 3 through 8, pending receipt from Granite State of certificates of origin on the shipments. Also on 25 February 1980, Techno-Is notified Granite State by telex that their bankers could not then make payment in United States dollars. In the telex, Techno-Is asked in what other currency Granite State would be willing to be paid. By telex dated 29 February 1980 to Techno-Is, Granite State agreed to be paid in Deutsche Marks, and at the same time Granite State dispatched the requested certificates of origin. By 8 April 1980 Techno-Is received those certificates, and on that date it requested that Bank Saderat secure authorization from Bank Markazi for the transfer of the proceeds of the bills to Granite State in Deutsche Marks. No such authorization was given, despite Bank Saderat's request on 16 April 1980 for such transfer.

On 4 August 1981 at the request of Bank Markazi, Bank Saderat transferred to Bank Markazi the Iranian Rials equivalent of \$276,865.50, representing the payment by Techno-Is for the second, third and fourth shipments. According to Bank Markazi, these funds have since been held in an account at Bank Markazi.

III. THE PARTIES' CONTENTIONS

Granite State, in its Statement of Claim, sought interest at the rate of 14% per annum from the date of maturity of each

draft until paid in full. By amendment, Granite State later sought interest at 16½% per annum.

The Respondents deny that any interest is owed at all. Bank Saderat maintains that it acted in good faith and in accordance with sound banking practice in handing over the shipping documents relating to the first shipment against obtaining eight promissory notes from Techno-Is. Bank Saderat further claims that any delay in payment was not attributable to it, but was caused by events beyond the Bank's control. On the assumption that the Bank is somehow held liable, ~~it~~ argues that the computation of damages can only be made as of the date of the submission of the Statement of Claim.

Bank Markazi argues that since non-payment of the proceeds of the bills relating to the last three shipments was due to United States blocking orders it has no responsibility for interest. Granite State contends that Bank Saderat, through Bank Markazi, could have paid in Deutsche Marks, as Techno-Is suggested, or in dollars in unblocked accounts, but failed to do so. Bank Markazi, however, argues that since the largest part of its foreign exchange reserves were located outside Iran and were needed for more urgent national concerns, payment from such foreign exchange reserves was not a viable option.

Granite State also seeks its costs incurred in connection with this claim.

IV. REASONS FOR AWARD

Liability for Damages or Interest

Claimant first seeks from Iran interest from the dates of maturity of drafts 1-8 to the dates of release or endorsement

of documents.

The Tribunal need not reach the issue of Iran's liability by virtue of its alleged control of Techno-Is, since it is clear in all events that Techno-Is did not become obligated on the drafts until the drafts were accepted. The documents concerning the first shipment did not arrive by the time the drafts matured, which date was 10 November 1978. Granite State apparently took no action to investigate the delay, waiting, instead, until it received notice of a request by Bank Saderat for new documents in March 1979. During this period, Granite State made the next three shipments of goods to Techno-Is. The documents related to shipments two and three did not reach the Bank until after maturity date of the relevant drafts. The documents concerning shipment four did arrive prior to maturity. Although notified by Bank Saderat of the presence in Iran of the goods and the documents on these last three shipments, Techno-Is did not pay the Bank for the goods until 25 February 1980, and then only on a "provisional" basis pending receipt of certificates of origin of the goods. Granite State then undertook to supply duplicate originals of the certificates of origin.

This course of conduct on Granite State's side confirms the view that, by relying on Techno-Is' ability to obtain funds to pay the drafts, Granite State assumed the consequences of any delay that might be occasioned by the late delivery of the goods to Iran, or late payment of the bills by Techno-Is. No damages for delay on payment are therefore due and owing Granite State by Respondents from the date of maturity of the drafts to the dates of endorsement of documents by Bank Saderat.

With regard to the first shipment, Granite State further seeks interest from Bank Saderat as from 25 April 1979, the date of endorsement of copies of the shipping documents against receipt of promissory notes, to the present. With respect to

the second, third and fourth shipments, Granite State seeks interest from Bank Saderat from 25 February 1980, the date of release of the documents against payment, to 4 August 1981, the date of transfer of those proceeds to Bank Markazi. While advancing various theories to justify its request for interest, in essence Claimant seeks to be compensated for its inability to make use of the sums owed it when due.

With respect to the first shipment, the Tribunal has found Bank Saderat liable on the amounts due under the first two drafts on the basis of conceded liability. The Tribunal holds that Bank Saderat is equally obligated to compensate Granite State for losses suffered due to the failure timely to remit these draft amounts.

With respect to the second, third and fourth shipments, the proceeds of the bills were held by Bank Saderat from 25 February 1980 to 4 August 1981. The proceeds, however, were not available to the Bank either for its own use or for remittance to Granite State for a relatively brief period after 25 February 1980, since they were credited to a "provisional account" pending receipt of certificates of origin. Those certificates were sent by Granite State to Iran on 29 February 1980. It is reasonable to assume that, due to the crisis between the two countries, there was a delay of about one month in the certificates reaching Techno-Is. Thus in a letter dated 8 April 1980 to Bank Saderat Techno-Is requested the Bank "subject to obtaining authorization from Bank Markazi", to transfer the proceeds of the bills to Granite State in Deutsche Marks. Techno-Is included in the letter a copy of Granite State's 29 February 1980 communication regarding the certificates of origin. Allowing three days for internal mail in Iran, Bank Saderat knew the bills were due and owing at the latest as of 11 April 1980.

Bank Saderat, in defence of the failure to remit the funds to Granite State thereafter, states that Bank Markazi

never gave it the authorization needed in order to effect that transfer, whether in U.S. dollars, Deutsche Marks, or any other foreign currency. The Tribunal accepts the Respondents' statement that any agreement between Granite State and Techno-Is to remit the funds in currency other than U.S. dollars could not be binding, since authority for regulating foreign exchange is vested in Bank Markazi. However, Bank Saderat released the documents against payment in Rials even though the drafts were payable in U.S. dollars. Without prior approval from Bank Markazi for the transfer of the dollar equivalent of those Rials, Bank Saderat should not have allowed Techno-Is to take possession of the goods. In this connection, the Tribunal refers to Articles 4 and 6 of the "Uniform Rules for the Collection of Commercial Paper" adopted by the International Chamber of Commerce (1967 Revision)*. Bank Saderat, in fact, had every reason to believe that such authorization was not available, given the blocking of its own accounts in the United States. The proper course of action was for Bank Saderat to have sent advice of non-payment to Bank of America as the remitting bank, and await instructions as to acceptance of payment in Rials, or possible return of the goods (see Article 12 of the "Uniform Rules for the Collection of Commercial Paper"). Bank Saderat's liability for delay, therefore, runs from the day it received notice from Techno-Is that the funds were due and owing to Granite State, a date the Tribunal ascertains to be 11 April 1981 up to and including 4 August 1981 when the funds were transferred to Bank Markazi.

At the time when Bank Markazi received the funds for the second, third and fourth shipments the blocking orders were no longer in effect. Bank Markazi could then have authorized

* Replaced by "Uniform Rules for Collections" (1979 Revision), which contains corresponding rules in Articles 10 and 12.

immediate foreign exchange transfer of those funds. Regardless of any possible earlier effects of the blocking orders, Bank Markazi had no justification for not doing so in August 1981. Bank Markazi is therefore liable for the delay in payment as from 5 August 1981.

On 29 October 1982 payment of the Partial Award was made to Granite State out of the Security Account, and this date is therefore the terminal date for calculation of interest.

Rate of interest

On the basis of the evidence and arguments presented, the Tribunal holds that the damages incurred by the Claimant as a result of the delay in payment can be calculated as interest on the amounts owed, at the fair rate of 12 per cent per annum. The interest shall be computed as from the time the liability for damages arose as set out above.

Costs

Granite State has claimed its costs for legal representation and assistance in the amount of \$58,780.93. This amount includes costs which were incurred during the Claimant's efforts to collect on its claim prior to the time of preparation of the Statement of Claim and are not therefore recoverable as "costs of arbitration" (Tribunal Rule 38).

Applying Articles 38(1)(c) and 40(2) of the Tribunal Rules, the Tribunal determines that the costs of legal representation shall be apportioned in such a way that the Respondents shall bear the Claimant's costs in the amount of \$25,000.00.

V. FINAL AWARD

The Tribunal makes the following FINAL AWARD in favour of Claimant GRANITE STATE MACHINE CO., INC.:

1. Interest on the amount of Ninety-Two Thousand One Hundred Four and 36/100 United States Dollars (\$92,104.36) at the rate of twelve (12) per cent per annum, from 25 April 1979 up to and including 29 October 1982, for which interest BANK SADERAT is liable.

2. Interest on the amount of Two Hundred Seventy-Six Thousand Eight Hundred Sixty Five and 50/100 United States Dollars (\$276,865.50) at the rate of twelve (12) per cent per annum from 11 April 1980 up to and including 4 August 1981, for which interest BANK SADERAT is liable.

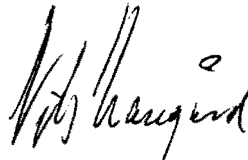
3. Interest on the amount of Two Hundred Seventy-Six Thousand Eight Hundred Sixty-Five and 50/100 United States Dollars (\$276,865.50) at the rate of twelve (12) per cent per annum from 5 August 1981 up to and including 29 October 1982, for which interest BANK MARKAZI is liable.

4. Arbitration costs in the amount of Twenty-Five Thousand and 00/100 United States Dollars (\$25,000.00) for which amount BANK SADERAT and BANK MARKAZI are jointly and severally liable.

Such payment shall upon notification by the President of this Tribunal 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,
15 December 1982



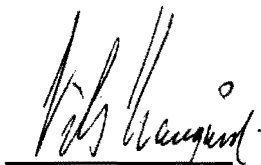
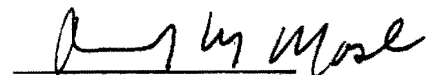
Nils Mangård
Chairman
Chamber Three

In the name of God,


Richard M. Mosk

M. Jahangir Sani

Having been informed of the time when the award would be signed at the Tribunal, Judge Jahangir Sani failed to be present and was not available.


Nils Mangård
Richard M. Mosk