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74

Case No. 363

Date of filing: 23-4-1993

** AWARD - Type of Award _____
 - Date of Award _____
 _____ pages in English _____ pages in Farsi

** DECISION - Date of Decision 23/4/1993
7 pages in English 8 pages in Farsi

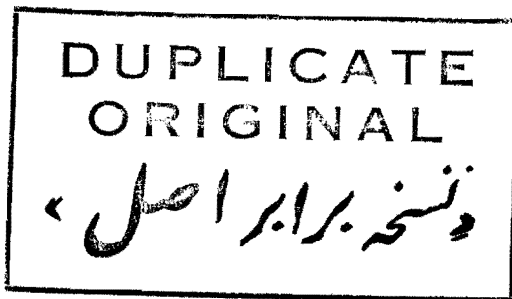
** CONCURRING OPINION of _____
 - Date _____
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** SEPARATE OPINION of _____
 - Date _____
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** DISSENTING OPINION of _____
 - Date _____
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** OTHER; Nature of document: _____

 - Date _____
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CASE NO. 363

CHAMBER TWO

DECISION NO. DEC 115-363-2

AMERICAN EXPRESS INTERNATIONAL
BANKING CORPORATION,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
POLYACRYL IRAN CORPORATION,
DISTRIBUTORS CO-OPERATIVE BANK (BANK MELLAT),
BANK SHAHRYAR (BANK TEJARAT),
IRAN CARTON INC.,
ERY PLAST INC.,
TEHERAN SHAMER LTD.,
RAKSHAN LEATHER CO.,
AZARIN INVESTMENT GROUP OF IRAN,
FIROOZ CORPORATION,
BANK MELLI IRAN,
INTERNATIONAL BANK OF IRAN AND JAPAN (BANK TEJARAT),
BANK SADERAT IRAN,
BANK OF TEHERAN (BANK MELLAT), and
INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN (BANK SANAT),
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	23 APR 1993
	تاریخ ۱۳۷۲ / ۲ / ۳

DECISION

1. On 18 January 1982, AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION ("the Claimant") filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, including its agencies, instrumentalities, political subdivisions or controlled entities POLYACRYL IRAN CORPORATION, DISTRIBUTORS CO-OPERATIVE BANK (BANK MELLAT), BANK SHAHRYAR (BANK TEJARAT), IRAN CARTON INC., ERY PLAST INC., TEHERAN SHAMER LTD., RAKSHAN LEATHER CO., AZARIN INVESTMENT GROUP OF IRAN, FIROOZ CORPORATION, BANK MELLI IRAN, INTERNATIONAL BANK OF IRAN AND JAPAN (BANK TEJARAT), BANK SADERAT IRAN, BANK OF TEHERAN (BANK MELLAT), and INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN (BANK SANAT) ("the Respondents") to recover debts arising from loans and other banking transactions between the Claimant and the Respondents.

2. Pursuant to a Joint Request of the Parties, the Tribunal by its Order of 22 February 1984 terminated the proceedings in this Case insofar as they were related to claims I through IV and VI through XV of the Statement of Claim. As a result, only claims V and XVI remained in dispute. Subsequently, on 28 June 1984, the Tribunal suspended the proceedings in this Case until further notice.

3. On 24 July 1984, the Parties filed a Joint Request providing for the termination of claim V in this Case. By its Order of 13 August 1984, the Tribunal terminated claim V in accordance with the Parties' request.

4. A separate case, Case No. 681, which involved a claim brought by Bank Markazi against the Claimant relating to deposits held by the Claimant for the account of Bank Markazi, was terminated by the Tribunal on 27 November 1985 as a result of the Tribunal's decision in Case No. A17, Decision No. DEC 37-A17-FT (18 June 1985), reprinted in 8 Iran-U.S. C.T.R. 189. In terminating Case No. 681, the Tribunal drew Bank Markazi's attention to paragraph 2 of its Order of 24 July 1985, reminding the parties that, if the Iranian bank claim involved in Case No. 681 "relates to a claim by a United States banking institution

... then a party in such other Case may request that the Iranian bank claim be decided as a counterclaim in that other Case."

5. On 20 December 1985, Bank Markazi, acting on behalf of the Respondents, requested the Tribunal to decide those portions of its claim in Case No. 681 which had not yet been settled as counterclaims in the present Case. By its filing of 7 March 1986, the Claimant objected to Bank Markazi's request, arguing that the Tribunal has no jurisdiction over the counterclaim.

6. The Tribunal in its Order of 13 March 1986 noted the Claimant's submission and invited the Respondents to file any reply they wished by 10 May 1986. The Tribunal indicated that after that date it would take a decision regarding the admissibility of the counterclaim on the basis of the documents before it. On 9 May 1986, Bank Markazi filed its Counterclaim.

7. On 27 June 1990, the Tribunal issued an Order in which it noted that the arbitral proceedings in this Case had been suspended since the summer of 1984, and requested the Parties to inform the Tribunal by 15 August 1990 of the present status of the Case. The Tribunal also requested the Parties to identify the extent to which there remained any disputes between the Parties with respect to the claims and counterclaims, if any, in the Case. The Parties were further requested to indicate whether the suspension should be continued and, if so, the reasons therefor.

8. On 15 August 1990, the Agent of the Islamic Republic of Iran informed the Tribunal that final settlement agreements had been signed by the Parties' representatives and that, upon payment of the agreed amount through Federal Reserve Bank, the remaining claim in this Case would be settled. The Iranian Agent also indicated that the Counterclaim had not yet been resolved. The Claimant in its response filed 21 August 1990 stated that there had been no change in the status of the Case "since the Parties entered into their Memorandum of Settlement dated May 20, 1983."

9. In its Order of 5 November 1990, the Tribunal noted the Parties' submissions and requested the Parties to inform the Tribunal by 2 January 1991 whether the payment by the Federal Reserve Bank had been made and whether the Counterclaim had been settled. The Tribunal also indicated that it intended to decide "as to the termination of the proceedings with respect to the Claim pursuant to Article 34 of the Tribunal Rules and as to the admissibility and jurisdictional aspects of the Counterclaim on the basis of the documents before it."

10. The Claimant responded on 1 March 1991 stating that it was unable to verify that payment with respect to the claim for the interest for the period 1 January 1981 through 18 January 1981 on the Claimant's participation in the syndicated loan to, or guaranteed by, Iran, and interest thereon had been received (claim XVI of the Statement of Claim).¹ The Claimant also noted that certain counterclaims in this Case were settled as part of a Joint Request for an Arbitral Award on Agreed Terms and Memorandum of Settlement in Case No. 364, American Express Company and Bank Mellat, et al., Award No. 344-364-1 (21 Dec. 1987).

11. The Respondents filed their response on 23 September 1991, stating that Bank Markazi and Chemical Bank of New York for itself and on behalf of certain other banks had signed an agreement on 13 August 1990 settling the claim for the interest for the period 1 January 1981 through 18 January 1981 on the Claimant's participation in the syndicated loan (claim XVI of the Statement of Claim).

12. The Claimant in its submission of 14 October 1991 withdrew its remaining claims. The Claimant also renewed its argument

¹ The Claimant also stated that it was "unable to verify that [its] Claim against Iran Carton Corporation, and interest thereon, listed in Schedule B-2 to the Memorandum, has been satisfied." The Tribunal notes that this claim V of the Statement of Claim was terminated by the Tribunal's Order of 13 August 1984, supra.

that Bank Markazi's Counterclaim be dismissed for lack of jurisdiction. In view thereof, and in accordance with its Order of 5 November 1990, the Tribunal must now decide whether the Counterclaim is within its jurisdiction.

13. Bank Markazi presents three alternative arguments for the Tribunal's jurisdiction over the Counterclaim. First, it asserts that the Tribunal has jurisdiction over the Counterclaim on the basis of principles of set-off. The Tribunal notes that, quite apart from the merits of that assertion, set-off could not in any event be applicable in this Case as the Claim has been settled or withdrawn in its entirety.

14. Bank Markazi further argues that its Counterclaim in this Case is based on Article 2 (B) of the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, dated 19 January 1981 ("Undertakings") and that Article 2 (B) does not restrict counterclaims to those arising out of the same contract, transaction, or occurrence as the claim. However, in Case No. A17 the Tribunal held that:

"To the extent that such claims purport to be based on Paragraph 2 (B) of the Undertakings, the Tribunal determines that it has jurisdiction over such claims 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. It is evident from the text of Paragraph 2 (B) that its payment provisions deal solely with the disposition of the funds deposited in that account. Paragraph 2 (B) gives no jurisdiction over 'claims' by one bank seeking payment from another but establishes a limited jurisdiction over 'disputes', which may have been referred to the Tribunal by either Bank Markazi or the United States banking institution involved, as to 'amounts owing' from Dollar Account No. 2."

Case No. A17, supra, at 11-12, 8 Iran-U.S. C.T.R. at 197 (footnote omitted). Bank Markazi in its letter of 1 October 1985 in Case 681 acknowledged that "none of the claims brought before

the Tribunal, is payable from Dollar Account No. 2." Consequently, the Tribunal has no jurisdiction pursuant to the Undertakings over such claim whether styled as a claim or a counterclaim. If jurisdiction exists, it must be found under the Claims Settlement Declaration.

15. Bank Markazi's third argument is that its Counterclaim fulfills the requirement of Article II, paragraph 1 of the Claims Settlement Declaration, according to which a counterclaim must arise "out of the same contract, transaction or occurrence that constitutes the subject matter" of the claimant's claim. Bank Markazi does not identify the "same contract, transaction or occurrence" of both the Claim and the Counterclaim, but merely bases its assertion on "taking into consideration the nature and type of banking transactions the banks have with each other." The Tribunal does not find a basis for jurisdiction in this statement and must therefore itself determine whether the Counterclaim arises "out of the same contract, transaction, or occurrence" as the Claimant's Claim.

16. The Tribunal notes that the Claimant's claims in this Case all arise from loans and other banking transactions between the Claimant and the Respondents whereas Bank Markazi's Counterclaim arises out of funds which the Claimant held in different accounts for various Iranian agencies. Bank Markazi has not identified any specific link between the transactions which form the basis of the Claimant's claims and the account arrangements on which Bank Markazi bases its Counterclaim.

17. Consequently, the Tribunal holds that Bank Markazi's Counterclaim does not arise out of the "same contract, transaction or occurrence" as the Claimant's Claim and, therefore, that it has no jurisdiction over Bank Markazi's Counterclaim under Article II, paragraph 1 of the Claims

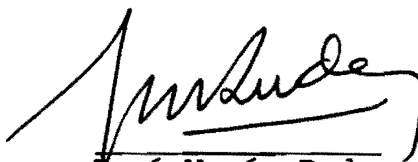
Settlement Declaration.²

18. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

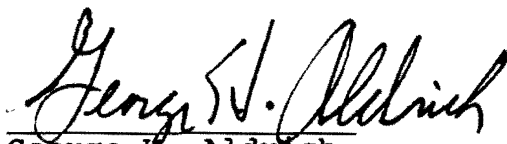
- a) The Bank Markazi Counterclaim is dismissed for lack of jurisdiction;
- b) The remaining arbitral proceedings in this Case are terminated pursuant to Article 34, paragraph 2 of the Tribunal Rules.

Dated, The Hague
23 April 1993

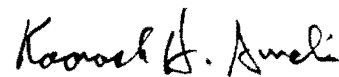


José María Ruda
Chairman
Chamber Two

In The Name of God



George H. Aldrich



Koorosh H. Ameli
Concurring

² See also The First National Bank of Boston and Islamic Republic of Iran, et al., Decision No. DEC 83-202-2 (19 Sept. 1988), reprinted in 19 Iran-U.S. C.T.R. 307.