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IRAN-UNITED STATES CLAIMS TRIBUNAL

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CASES NOS. 839 AND 840

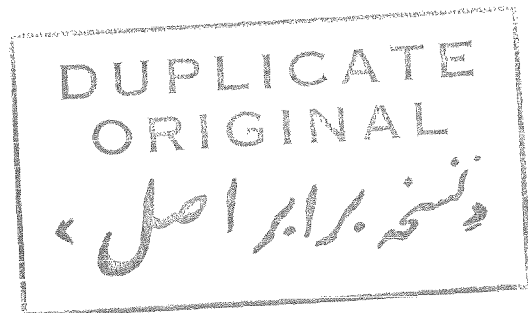
CHAMBER THREE

AWARD NO. 584-839/840-3

OUZIEL ARYEH,
ELIYAHOU ARYEH,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.



AWARD

Appearances:

For the Claimant:

Mr. Ouziel Aryeh,
Mr. Eliyahou Aryeh,
Claimants;
Mr. Lewis M. Johnson,
Mr. John A. Westberg,
Counsel for the Claimants;
Mr. Gabriel Aryeh,
Witness;
Mr. Manoochehr Vahman,
Expert Witness.

For the Respondent:

Mr. M.H. Zahedin-Labbaf,
Agent of the Government of the
Islamic Republic of Iran;
Mr. F. Momeni,
Dr. A. Riyazi,
Legal Advisers to the Agent
of the Government of the
Islamic Republic of Iran;
Mr. R. Badri Ahari,
Legal Assistant to the Agent
of the Government of the
Islamic Republic of Iran;
Mr. Mehdi Golchin,
Witness.

Also present:

Mr. D. Stephen Mathias,
Agent of the United States
of America;
Dr. Sean D. Murphy,
Deputy Agent of the United
States of America.

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I. INTRODUCTION

1. The Claimants in these Cases are OUZIEL ARYEH (Case No. 839) and ELIYAHOU ARYEH (Case No. 840), brothers of dual Iran-United States nationality, residing in the United States (the "Claimants"). The Respondent is THE ISLAMIC REPUBLIC OF IRAN (the "Respondent" or the "IRI"). The Claimants contend that they were the owners of part shares in several pieces of real estate in villages of Karaj, a city approximately 40 km north-west of Tehran: one group of plots acquired through inheritance from their father in 1975; the remaining plots acquired during the mid-1970s on their behalf as beneficial owners, through their brother, Gabriel Aryeh. The Claimants allege that these properties were expropriated by the Respondent in around May 1979. They claim compensation in the amount of U.S.\$4,034,728.05 (as revised). Interest and costs are also sought.

2. The Respondent denies liability. It argues, inter alia, that: the Claimants are not of dominant and effective United States nationality, and thus the Tribunal does not have jurisdiction over their claims; the Claimants have not proved their ownership of the properties in question; the IRI has not expropriated property belonging to the Claimants; and the Claimants' claims should be barred by the application of the caveat in Case No. A18.

II. PROCEDURAL HISTORY

3. The Claimants in Cases Nos. 839 and 840 filed separate Statements of Claim on 19 January 1982.

4. By Order of 28 June 1985 the Tribunal noted that the Full Tribunal in Case No. A18 had held that "it has jurisdiction over claims against Iran by dual Iran-United States nationals when the

dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States" and ordered the Parties to file all the written evidence they wished the Tribunal to consider on the nationality issue. On 2 and 20 September 1985, 15 March 1991 and 16 October 1991 the Claimants filed submissions on nationality. On 20 May 1991 the Respondent submitted a request to dismiss the case on the basis of the caveat in Case No. A18.

5. By Order dated 23 October 1991 the Tribunal co-ordinated the proceedings in Cases Nos. 839 and 840, noting that the Claimants are brothers and that "there is an apparent close connection between their Claims." The Tribunal also set a schedule for future pleadings.

6. On 5 January 1993 the Claimants filed a request for the consolidation of their Cases with Case No. 266, which involves the claim of their brother, Moussa Aryeh. The Claimants also asked for the suspension of the proceedings "pending the outcome of negotiations between Claimants and Respondent." The Respondent objected to this request on 8 January 1993 and the Claimants responded thereto on 13 January 1993. By Order of 26 January 1993 the Tribunal noted that "there is not an apparent close connection between the Claims in Case No. 266 and these Cases" and rejected the request for consolidation or co-ordination of all three cases. The Tribunal also rejected the request for suspension of the proceedings.

7. The Claimants submitted a Hearing Memorial on 31 March 1993. The Respondent submitted its Brief on Jurisdictional Issues and Merits on 28 April 1994. On 2 May 1994 the Claimants filed an unauthorized second volume to their Hearing Memorial containing a valuation report, which document was accepted into evidence by Order of 13 May 1994. In the same Order the Tribunal invited the

Respondent to reply to the Claimants' valuation report. On 31 October 1994 the Respondent filed its brief on valuation. The Claimants submitted their Rebuttal Memorial on 20 January 1995.

8. On 25 September 1995 the Respondent requested the Tribunal to order the Claimants to produce the original of the Will relied on by the Claimants in their pleadings. By Order of 4 October 1995 the Tribunal requested the Claimants to produce the original of the Will for a document inspection by the Respondent to be held several days before the Hearing.

9. The Respondent submitted its Rebuttal Memorial on 20 November 1995.

10. On 21 November 1995 the Respondent submitted the Brief of the Islamic Republic of Iran on the Issue of the Caveat in Case A18. By Order of 19 December 1995 the Tribunal requested the Respondent to submit the relevant parts of laws cited in this Brief. Upon a request of the Claimants dated 14 December 1995, by Order of 18 January 1996 the Tribunal requested the Respondent to produce certain information regarding district property valuation that was publicly available in Iran. This evidence was submitted on 16 February 1996. Also by Order of 18 January 1996, the Tribunal accepted into evidence a deed of transfer submitted by the Claimants on 14 December 1995, noting the "amount of time remaining before the Hearing, the nature of the document and the absence of any discernible prejudice to the Respondent."

11. On 4 March 1996 the Claimants submitted a letter in which they sought to explain their inability to produce the original of the Will in compliance with the Tribunal's Order of 4 October 1995.

12. A Hearing was held in these Cases on 12 and 13 March 1996. In response to a request by the Claimants at the Hearing that was

not objected to by the Respondent, on 12 March 1996 the Tribunal accepted the submission of two new deeds for inclusion in the record.

III. JURISDICTIONAL ISSUES

Dominant and Effective Nationality of the Claimants

13. The Claimants were born in Iran to Iranian parents: Ouziel Aryeh was born on 26 December 1940 and Eliyahou Aryeh on 23 June 1943. They are therefore Iranian nationals by birth. In addition, Ouziel Aryeh was naturalized as a United States citizen on 21 May 1963 and Eliyahou was naturalized as a United States citizen on 18 November 1966. There is no evidence in the record that either Claimant has relinquished or otherwise lost either his Iranian nationality in accordance with Iranian law, or his United States nationality in accordance with United States law. Consequently, the Tribunal finds that since 21 May 1963 and 18 November 1966, respectively, the Claimants have been citizens of both Iran and the United States.

14. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, in which it determined that the Tribunal has jurisdiction over claims against Iran by dual Iran-United States nationals "when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States."¹ Accordingly, for the Tribunal to have jurisdiction over their claims, it must be shown that the Claimants' United States nationality was dominant and effective during the relevant period, i.e., from the date their claims arose until 19 January

¹ Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265 [hereinafter "Case No. A18"].

1981 (the Tribunal's jurisdictional cut-off date). The Tribunal has held previously that the assets of the Aryeh family were expropriated by the Islamic Republic of Iran on 14 May 1979, see Moussa Aryeh and The Islamic Republic of Iran, Award No. 583-266-3, para. 49 (25 September 1997), reprinted in _ Iran-U.S. C.T.R. _, _. Consequently, for the purposes of its inquiry into the dominant and effective nationality of the Claimants, the Tribunal concludes that the relevant period is that between 14 May 1979 and 19 January 1981.

15. In order to reach a conclusion as to the Claimants' dominant and effective nationality during the relevant period, the Tribunal must determine whether the Claimants had stronger ties to Iran or to the United States during that period. To this end, the Tribunal must consider all relevant factors, such as the Claimants' habitual residence, center of interests, family ties, participation in public life and other evidence of attachment. See Case No. A18, Decision No. DEC 32-A18-FT, 5 Iran-U.S. C.T.R. at 265. While the Tribunal's jurisdiction is dependent on the Claimants' dominant and effective nationality during the period between 14 May 1979 and 19 January 1981, "it is necessary to scrutinize the events of the Claimant's life preceding this date. Indeed, the entire life of the Claimant, from birth, and all the factors which, during this span of time, evidence the reality and the sincerity of the choice of national allegiance he claims to have made, are relevant." See Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

1. Facts and Contentions

16. The record reveals that Ouziel Aryeh lived in Iran from 26 December 1940 until March 1947, when he moved to the United States with his family at the age of six. He claims to have

lived in the United States ever since and never even to have visited Iran since that time. The Claimant was naturalized as a United States citizen on 21 May 1963. He claims to have attended primary and high school in New York, and then to have attended a seminary in New Jersey for four years until 1968; he is an ordained Rabbi of the Orthodox Jewish community. The Claimant married a United States national in March 1971 and they have nine children. He has allegedly served as either substitute or assistant Rabbi in his congregation since his ordination in 1969. He has also served as a trial juror.

17. In addition, the Claimant and his wife own a house in New York purchased in 1975 and he claims to have paid United States Federal, State and City income taxes since 1970. He claims never to have had an Iranian passport or to have been issued with an Iranian identity card and to have acquired an American passport in 1968.

18. The record shows further that Eliyahou Aryeh lived in Iran from 23 June 1943 until he moved to the United States in March 1947 with his family at the age of three. He was naturalized as a United States citizen on 18 November 1966. He claims to have attended primary and high school in New York, to have obtained a Bachelor's Degree from a college in Maryland, and then to have attended a seminary in New Jersey from 1964 to 1965. He studied in Israel from 1971 to 1972, then returned to the New Jersey seminary until 1982. He is an ordained Rabbi of the Orthodox Jewish community. The Claimant married a United States national in January 1975 and they have seven children.² He has allegedly served as either substitute or assistant Rabbi in his congregation since his ordination in 1969, and he has served as a trial juror. He acquired a United States passport in April

² His wife, Mireille, was born an Egyptian citizen and became a United States citizen in April 1965, i.e., almost ten years before they were married.

1967.

19. The Claimants conclude that they are dominant and effective United States nationals, as they grew up in the United States, all their emotional, social and economic ties are to the United States, and they have no ties to Iran beyond their claims for some property there.

20. The Respondent points out that the Claimants bear the burden of proving that their United States nationality is dominant over their Iranian nationality and contends that the Claimants have failed to make a prima facie showing that this is so. It argues that lack of evidence showing the Claimants' attachment to Iranian society is not in itself sufficient to prove the dominance of their United States nationality. It argues further that the evidence produced by the Claimants is sufficient to establish the Claimants' United States nationality but not the dominance of that nationality.

2. The Tribunal's Findings on the Claimants' Dominant and Effective Nationality

21. The Tribunal notes that the Claimants left Iran as children of 3 and 6 years old and resided in the United States for at least 30 years before their claims allegedly arose. Moreover, for some 16 of those years, Ouziel Aryeh resided in the United States as a United States national. Similarly, for more than 12 of those years Eliyahou Aryeh lived in the United States as a United States national. In addition, the Claimants married United States nationals, their children were born in the United States and Ouziel Aryeh owns a house there.³

22. Accordingly, the Tribunal finds that although the fact that

³ Eliyahou Aryeh purchased a house in the United States in 1982 -- after the Tribunal's jurisdictional cut-off date.

the Claimants allegedly purchased property in Iran demonstrates that they did not sever all their links with Iran, this factor does not outweigh their much closer and very lengthy ties to the United States. Their economic and personal activities have been centered in the United States throughout their adult lives. The Tribunal therefore finds that the dominant and effective nationality of the Claimants from the date their claim arose (14 May 1979) until 19 January 1981 was that of the United States, such that the Tribunal has jurisdiction over their claims in accordance with Article II, paragraph 1, and Article VII, paragraph 1, of the Claims Settlement Declaration ("CSD").

IV. THE MERITS

Ownership

23. The Claimants' real estate claims fall into two categories. First, they claim compensation for land allegedly purchased by the Claimants' brother, Gabriel Aryeh, on behalf of the Claimants and registered in either Gabriel Aryeh's name or that of his wife. This property consists of several pieces of real property in villages of Karaj, a city north-west of Tehran. Second, they claim compensation for land allegedly acquired by inheritance through the Will of the Claimants' late father, Yahya Aryeh (the "Will"). This property consists of approximately 100,000 square meters of real property in Vardavard, Karaj.

1. Claims Based on Beneficial Ownership

a) The Claimants' contentions

24. The Claimants seek compensation for the expropriation of properties allegedly purchased between 1973 and 1977 for the Claimants by their brother, Gabriel Aryeh, who was living in Iran

at the time. These properties were all registered either in the name of Gabriel Aryeh or that of his wife, Nava Yedidsion, but the Claimants contend that Gabriel and/or his wife were only the nominal owners of the properties and that the Claimants were the beneficial owners.

25. The basis of this claim is set forth in Ouziel Aryeh's affidavit, which states that

[m]y brother, Eliyahou . . . , and I asked our brother Gabriel Aryeh to purchase various real properties for us in Iran during the 1970's. We paid all the funds for the purchase of the properties . . . with the understanding that Gabriel Aryeh would take title in his own name for our benefit and would transfer or sell such properties on our behalf as requested by us. . . . Our agreement with Gabriel was that he would receive five percent(5%) of the proceeds of any sale as his compensation for acting on our account in purchasing, holding and selling the properties.

Eliyahou Aryeh's affidavit is almost identical.

26. In further explanation of their contentions, the Claimants submit an affidavit by Gabriel Aryeh, in which he states:

After I had settled down to working in Tehran upon my return there, I was in continual communication with my family in the United States. I made trips to New York to visit them every two or three years. As Tehran was developing and growing in the 1960's and 1970's, I saw that there were substantial opportunities to invest in lands to the west of Tehran near Karaj. . . .

In discussing this with my brothers in New York, they asked me to act as their agent in purchasing good properties for investment purposes. The various brothers signed documents making me their agent or attorney-in-fact to purchase properties for them. . . .

In the case of my brother, Moussa, I was able to place the properties directly in his name using his Iranian Identity Card number but for the others it was agreed that, as a matter of convenience, I would buy the

properties in my own name for their account. In addition to Ouziel and Eliyahou, I was acting for my brothers Nouriel, Ouriel, Emanuel and Samuel in purchasing lands in Iran.

These brothers supplied the money for these purchases by sending me checks, sometimes cash, and in some instances gave me carpets, jewels or other property for the value of what I was purchasing for them. . . .It was our intention that I sell the properties and remit the profits to them. In effect, I was the family purchasing and selling agent in Iran (emphasis added).

At the Hearing, Gabriel Aryeh reiterated that he had purchased property in his name for the account of the Claimants.

27. To document their contentions, the Claimants have submitted a 1969 Power of Attorney, which gave Gabriel Aryeh and his wife the power to act on the Claimants' behalf. The Power of Attorney reads as follows:

[Gabriel Aryeh and Nava Yedidsion] have the authority, power and right to make investments in property, both real, personal and mixed, in [the Claimant's names] and in their own name, or in one of their names, whichever they deem advisable, within their business discretion in the country of Iran. Gabriel Aryeh and Nava Yedidsion have the power, without notice to [the Claimants], to sell any acquired property or properties and to reinvest said proceeds, subject only to an accounting when demanded by the undersigned, from time to time.⁴

28. The Claimants further submit handwritten and allegedly contemporaneous correspondence between themselves and Gabriel Aryeh purporting to document transactions entered into by Gabriel on the Claimants' behalf. In addition, in support of the

⁴ This 18 March 1969 Power of Attorney was replaced by a virtually identical Power of Attorney dated 18 December 1970. At the Hearing, the Claimants explained that they drew up a second Power of Attorney merely because the first had been mislaid.

contention that Gabriel Aryeh was buying property extensively for those Aryeh brothers who were living in the United States, the Claimants submit further correspondence between Gabriel Aryeh and several of their other brothers, discussing purchases of land made by Gabriel for them and their payment for such purchases. Furthermore, the Claimants have filed Deeds to property registered in Gabriel Aryeh's name, which they claim are the Deeds to the properties that the Claimants beneficially owned.

b) The Respondent's contentions

29. The Respondent challenges the Claimants' Power of Attorney to Gabriel Aryeh, saying that "[t]he said Power of Attorney seems very unusual and dubious." It points out that if the agreement between the Claimants and Gabriel Aryeh had been to purchase property in Gabriel's name for the Claimants' account, then a Power of Attorney would not, in fact, have been necessary. The Respondent also contends that the Power of Attorney lacks certain legal formalities, rendering it "not valid and enforceable in Iran."

30. In response to this latter point, the Claimants contend that the Power of Attorney was an authorization from them to Gabriel Aryeh to purchase properties in his name or in the name of his wife and that the document effectively authorized Gabriel to do so. At the Hearing, the Claimants stated that the Power of Attorney was intended, at least in some measure, to satisfy a requirement of Jewish law or custom that transactions -- even those between brothers -- be recorded in writing.

31. In response to the Claimants' contentions that they were the beneficial owners of the property, the Respondent argues that the applicable law is that of Iran and that under the laws of Iran only the registered owner of real property is recognized as the owner. It further argues that because the property at issue is

not registered in the names of the Claimants, under the laws of Iran the Claimants are not recognized as owning the property. In response to this point, the Claimants contend that while it is true that the Registration Law of Iran states that the government will recognize the person in whose name the property is registered as the owner, there is no prohibition on that registered owner acknowledging that he holds title for the benefit of another -- described as a "confession"⁵ in the Iranian Civil Code and regarded as the highest form of evidence. The Claimant contends further that beneficial ownership through a nominee relationship is a valid and recognized basis for claims before this Tribunal.

32. The Respondent further argues, on the basis of Article 989 of the Civil Code of Iran, that the Claimants allegedly purchased the properties at a time when "they had lost their capacity of acquiring ownership in a transaction of immoveable property." It relies on Article 365 of the same Code, which states: "An irregular sale is of no effect in passing ownership." The transactions therefore allegedly lack legal propriety and validity and cannot pass ownership of the object sold. The Claimants could not have been, and never were, the owners of the property claimed, argues the Respondent.

c) The Tribunal's findings

33. The Tribunal will now examine whether the Claimants have proven that they held a beneficial ownership interest in any of the properties allegedly purchased for them by Gabriel Aryeh. It is well-established in the Tribunal's jurisprudence that under appropriate circumstances a claimant who is not the record owner of property nevertheless may be found to hold a beneficial and compensable interest in that property. See, e.g., Reza Nemazee

⁵ Other translations of the Iranian Civil Code use the term "admission" rather than "confession."

and The Government of the Islamic Republic of Iran, Final Award No. 575-4-3, para. 54 (10 December 1996), reprinted in _ Iran-U.S. C.T.R. _, _ ("Nemazee"); James M. Saghi, et al. and The Islamic Republic of Iran, Award No. 544-298-2, paras. 18-26 (22 January 1993), reprinted in _ Iran-U.S. C.T.R. _, _; Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, 101; Howard Needles Tammen & Berghenoff and The Government of the Islamic Republic of Iran, Award No. 244-68-2 (8 August 1986), reprinted in 11 Iran-U.S. C.T.R. 302, 313; Foremost Tehran, Inc., et al. and The Government of the Islamic Republic of Iran, et al., Award No. 220-37/231-1 (11 April 1986), reprinted in 10 Iran-U.S. C.T.R. 228, 239-40. The Tribunal further has held previously that "[t]o establish such a beneficial ownership interest . . . it is incumbent on a claimant to produce strong evidence that he or she, and not the person registered as the legal owner, was in reality the true owner of the property." Nemazee, Award No. 575-4-3, para. 54, _ Iran-U.S. C.T.R. at _.

34. The Tribunal therefore turns to the factual evidence presented by the Claimants in support of their contentions. This evidence consists of: the Powers of Attorney from the Claimants to Gabriel Aryeh and his wife; the handwritten and allegedly contemporaneous letters between Gabriel Aryeh and the Claimants documenting transactions conducted by Gabriel on their behalf; the letter from the Claimants to the Registration Department of the Ministry of Justice; and correspondence between Gabriel Aryeh and other family members about property investments in Iran.

35. The Tribunal notes first that the Claimants have produced evidence indicating that certain transactions were concluded by Gabriel Aryeh on behalf of Aryeh family members who were resident in the United States. For instance, the existence of the Powers of Attorney from the Claimants to Gabriel Aryeh does suggest in general terms that an arrangement existed whereby Gabriel was to

purchase property for the Claimants. The fact that the Powers of Attorney were never actually used in Iran is not necessarily significant in that the Claimants allegedly were content (for the most part) not to have the property registered in their own names. Moreover, they explained at the Hearing that the Powers of Attorney were intended primarily to fulfill requirements of Jewish law or custom with regard to transactions.

36. The fundamental weakness in the Claimants' presentation, however, is their failure to identify with any degree of precision which pieces of property Gabriel Aryeh bought for which of his brothers. In this regard, there is very little documentary evidence in the record that links the Claimants to the specific pieces of real property they claim. The Claimants rely primarily on several handwritten and assertedly contemporaneous letters or other communications between themselves and Gabriel.

37. The first letter is from Gabriel Aryeh to the Claimants and is dated 22 April 1972. Gabriel states that he has "found several pieces of properties that I feel very strongly of their potential growth in value. . . . In accordance with our agreement, if you agree please either send money or assignment of goods so that I can go ahead and start negotiating." The next communication is dated 28 January 1974 and is unsigned. It is headed "Property Assignment" and begins "We, the undersigned, hereby assign for the account of Gabriel Aryeh's, the following items with a fair value of \$100,000.00 to \$120,000." It goes on to list several silk carpets and several pieces of jewellery.

38. The next letter is dated 6 February 1974 and addressed to the Claimants, but is unsigned. It reads as follows:

I am happy to inform you the properties that I purchased have already increased in value even beyond my expectations, there's no question that we made a

very prudent investment. I also accept your plan that the one hundred thousand dollar assignment will be as a 10% deposit for the current and future purchases -- towards my account. The following are the deed Nos. I have purchased for you. Deed Nos. 367/1904 & 52/362.

39. The third letter is from the Claimants to the Iranian Ministry of Justice. It refers the Ministry to plots of land purchased by Gabriel Aryeh for the Claimants "in the past eighteen months or so" and continues:

My brother, Gabriel, advised you at the time you prepared the deeds that he was only acting on behalf of his American brothers. Consequently, please find enclosed a photocopy of the deeds and a correspondence in my brother's handwriting affirming to the fact that the purchase was intended for us. Therefore, we would be very appreciative if you would transfer the deeds to our names accordingly.

At the Hearing, the Claimants and Gabriel Aryeh were questioned about the origin and object of this letter. They explained that it had been written because of a family dispute arising from the Claimants' wives' concern that their husbands' properties were registered in Gabriel Aryeh's name, due partly to the fact that the Claimants' wives allegedly had contributed to the payments for the properties. The Claimants had allegedly written the letter in the heat of the dispute, intending to have the properties transferred into their names. Under questioning, however, Gabriel Aryeh acknowledged that he was aware at the time that a handwritten letter of this nature, written in English, could not have effected a transfer at the Ministry of Justice; he testified that he had acceded to the Claimants' wishes in the hope that the dispute would blow over. The three brothers contended that the dispute was resolved through intervention by a senior member of the family and that Gabriel then continued to purchase property for the Claimants in his name.

40. In further support of their contentions, the Claimants submit an additional four handwritten family letters and a telex. The most significant of these letters (because it is also addressed to the Claimants) is a letter dated 15 December 1976 from Gabriel to Nouriel, Samuel, Emanuel, Ouriel, Ouziel and Eliyahou Aryeh confirming his purchase of land for each of the brothers. It states, in part, "as per Ouziel and Eliyahou's request, I have purchased for their account a small piece of land next to yours for a total of 2250 sq. meters."

41. The other family letters are: a letter from Gabriel to Emanuel dated 5 November 1976 confirming Gabriel's receipt of checks to purchase land and asking Emanuel to "notify the others"; a letter from Gabriel to Emanuel dated 24 November 1976 reporting on progress in a land contract and asking for his signature on some documents; an undated letter from Emanuel to Gabriel discussing limiting Gabriel's investment in land on his behalf; and a telex with the rather cryptic date "10/21" from Tehran (sender unclear) to Emanuel stating that a deal would be concluded soon and asking for Ouriel's account number.

42. In sum, then, the only letter that links the Claimants concretely to a specific piece of property involved in the claim is the letter dated 6 February 1974, which refers to deed numbers corresponding to properties that are the object of the present Cases.⁶ This letter, however, is not signed, which significantly diminishes its probative value.

43. A further weakness of all the letters submitted is that they

⁶ The deed numbers referred to in the letter are 367/1904 and 52/362. The number 367/1904 corresponds to the registration numbers on a deed filed in these Cases in its entirety. The number 52/362 corresponds partially to a deed filed in these Cases; the remaining part of this lot number was registered in a separate deed held in the name of Gabriel Aryeh's wife, Nava Yedidsion, which deed is not in the record.

are (except for the unsigned telex addressed to Emanuel Aryeh) handwritten and informal in style. Several lack either dates or signatures. While it is not inherently unreasonable for family members to send each other handwritten letters, there is also no independent corroboration that they were written or received contemporaneously, such as registered receipts or envelopes with a postmark.

44. Furthermore, the Claimants have failed to provide other documentary evidence that certainly would have been created by transactions of the nature they describe. Most importantly, with the exception of the handwritten "Property Assignment," the Claimants have not provided any receipts or records of payments made by them to Gabriel Aryeh. Particularly after the family dispute referred to above (see para. 39, supra), it is strange that no attempt was made to keep adequate records. This absence of documentation is especially striking given that details such as United States bank records would have been relatively easy for the Claimants to procure. Moreover, any such evidence would almost certainly have been kept in the United States, given that the Claimants were living in the United States at the time and conducted any business from there. Their records therefore would not have been vulnerable to confiscation by the revolutionary authorities in Iran.

45. The testimony given by Gabriel Aryeh at the Hearing was of very little assistance in clarifying the Claimants' links to specific pieces of property held in his name. Indeed, his testimony was vague in several respects, and he was occasionally evasive. While he listed the properties he allegedly purchased for the Claimants, when questioned, he was able to provide only general details about the method of payment for those properties and no details of contemporaneous records that he might have kept describing payments or ownership of the different properties (such as property assignments, records of cash payments or bank

statements). He maintained on the one hand that arrangements between the Aryeh brothers were made in telephone calls and letters, suggesting, however, that other records in the form of lists of payments or property assignments may have existed. He was unable to give any further details of such records. The Claimants' attorney was unable to assist in any way other than to contend that "they made the decisions, he made the decisions and they did in view of the funds they had available at the time and the opportunities that Gabriel developed in particular situations and communicated to them. And they were in touch and talked about it."

46. The Tribunal is further concerned that several of the pieces of property claimed in the present Cases were originally also claimed before the Tribunal by the Claimants' other brothers, Samuel, Emanuel, Ouriel and Nouriel Aryeh. These brothers had brought Small Claims before the Tribunal that were settled by the Governments of Iran and the United States and ultimately resolved by the Foreign Claims Settlement Commission of the United States ("FCSC").⁷ The FCSC Decision was issued on 24 August 1994, and the present Claimants withdrew their claims for the overlapping properties from the present Cases more than three months earlier, on 2 May 1994. There is thus no question of impropriety on the part of the Claimants. Nonetheless, the fact that such confusion could have occurred further underlines the inability of the Claimants and their advisers to link the Claimants clearly to specific pieces of property held in Gabriel Aryeh's name. At the Hearing, Gabriel Aryeh was unable to provide any explanation for the original duplication in his brothers' cases.

47. Moreover, several other factors raise a question as to whether the lands registered in Gabriel Aryeh's name were, in

⁷ See Nouriel Aryeh, et al. and The Government of the Islamic Republic of Iran, Decision No. IR-2365 (24 August 1994; finalized on 5 October 1994).

fact, his own rather than held for the benefit of the Claimants. First, Gabriel Aryeh could not have brought a claim to this Tribunal because he was a sole Iranian national throughout the relevant period.⁸ He therefore could have had an incentive to claim before this Tribunal that he held title to the lands for the benefit of the Claimants. While the Tribunal need not question the credibility of Gabriel Aryeh or the Claimants, this fact significantly undermines the Claimants' argument that Gabriel's statement that he owned the land beneficially is an "admission" in terms of the Civil Code of Iran and is therefore to be treated as the highest form of evidence under Iranian law.

48. Second, Gabriel Aryeh testified at the Hearing that, in addition to acting as agent for six of his brothers, he had purchased real property in Iran for himself. This increases the likelihood of confusion about whether the real property claimed in the present Cases was held for the benefit of the Claimants or was simply his own.

49. Third, Gabriel Aryeh referred to the Claimant's claims as "our" claims in submissions to the Tribunal dated 15 March 1991. When questioned on the matter at the Hearing, he could explain only that "I represent [the Claimants] because . . . first of all . . . they could not read Persian and aside from that . . . since I knew all about the documents I was able to follow it much better than if they would do it." Again, while certainly not dispositive in itself, this fact increases the uncertainty as to whether the real property was in fact owned beneficially by the Claimants.

50. In light of these factors, combined with poor documentary

⁸ Gabriel Aryeh stated at the Hearing that he did not become a United States national until the "1980s." Under the jurisdictional limits set by the CSD, therefore, he would not have been able to claim for property on his own behalf before the Tribunal.

evidence linking the Claimants to specific pieces of property, the Tribunal is concerned that some or all of the property held in Gabriel Aryeh's name may not have been held by him for the Claimants' benefit. The Claimants have been unable to provide adequate evidence to the contrary.

51. In sum, the Tribunal is not satisfied that the evidence provided by the Claimants is sufficient to specify which properties had been purchased for them by Gabriel Aryeh. In addition, the Claimants have not provided any independent evidence of any payments made by them to Gabriel Aryeh for these purchases, or, indeed, other documentation that would have been generated by transactions of the nature the Claimants describe. The Tribunal is consequently not satisfied that property purchased by Gabriel Aryeh was held by him for the Claimants and that they were therefore the beneficial owners of the property.

52. In light of the foregoing considerations, the Tribunal concludes that the Claimants have failed to meet their burden of establishing that they held ownership interests in the real properties acquired by Gabriel Aryeh.

2. Claims Based on the Will of Yahya Aryeh

a) The Claimants' contentions

53. The Claimants contend that they each inherited a one-half share in approximately 100,000 square meters of land in Karaj through the Will of their father, Yahya Aryeh.

54. In support of their contentions, the Claimants submit a copy of the Will of Yahya Aryeh, apparently executed on 13 February 1973, the relevant section of which reads as follows: "For reasons known only to myself and my wife, I hereby bequeath all my One Hundred Thousand Meters of land in Vardavard Karaj in

Teheran, Iran, to Two, of my children, namely Ouziel and Eliyahou." In addition, the Claimants submit their father's Death Certificate, which shows that he died on 1 August 1975 in New York. The Claimants consequently contend that upon their father's death on 1 August 1975, each became the owner of one half of their father's land holdings in Karaj.

55. In further support of their claim, the Claimants submit the deeds to property in the Karaj area in Iran owned by Yahya Aryeh at his death and allegedly inherited by them. These Deeds show that Yahya Aryeh owned an undivided partial interest in 14 plots of land and the entire share of one other plot. The total area of Yahya Aryeh's interest in the land was 103,211 square meters. He acquired the plots in 1969.

56. The explanation offered by the Claimants' brother, Gabriel Aryeh, for their father's having singled out Ouziel and Eliyahou from his 11 children for an extra bequest is the following:

Though it was not stated in the will, I know my father's reason for this special bequest was that these two sons had become rabbis and had devoted their lives to serving the educational and spiritual interests of the Jewish community rather than to commercial work for gain.

This explanation is supported by two letters dated 19 August 1975 written by a Rabbi Benjamin Kaminetzky, who appears to have been the Aryeh family's Rabbi, in which he reiterates this explanation for the benefit of the Aryeh family.

b) The Respondent's contentions

57. In the pleadings, the Respondent challenges the validity of Yahya Aryeh's Will on two grounds. The first ground is that it was allegedly contingent on the death of Yahya Aryeh's wife. The second ground is that it is allegedly inconsistent with the

principles of the Jewish religion and therefore invalid.

58. Regarding the alleged conditionality of the Will, the Respondent's Memorial contended that Yahya Aryeh had laid down a condition for the validity of the Will, namely that he die after his wife. The Respondent pointed out that the Claimants had failed to present Yahya Aryeh's wife's death certificate showing that she had died before her husband. The relevant provision of the Will reads as follows:

. . . All conditions and provisions of this will will take force only in the event I survive my dear wife. If, however, my demise precedes that of my wife's, all assets, holdings, and properties will be taken over by her. Any decision taken by her, whether or not in agreement with the above will have full validity and will supersede all the above mentioned conditions and provisions.

59. In response to this point, the Claimants produced the death certificate of their mother, Malkah Aryeh, which shows that she died on 12 January 1974, thus predeceasing her husband by more than 1 1/2 years.

60. The Respondent's second objection to the validity of the Will is that it is allegedly inconsistent with conditions prescribed by the Jewish religion and therefore invalid. The Respondent argues that in Iran the law of succession forms part of the regime governing personal status. For this reason, a testator was assertedly required to observe the laws of Iran applicable to testate succession even if residing abroad. Because the Claimants' father was an Iranian Jew, the applicable laws assertedly would include the Act Permitting Observance by the Courts of the Personal Status of Non-Shiite Iranians of 1933, which provides that the established rules and usages current in the religion of non-Shiite Iranians must be applied to their wills -- in this case, the Jewish religion.

61. The Respondent has submitted an opinion obtained from the Jewish Association of Tehran stating that the Will presented by the Claimants is "invalid under the holy Jewish religion and is not in conformity with its jurisprudence." No further explanation was provided for this conclusion.

62. In response to these contentions, the Claimants submit a legal opinion by the former Chief Rabbi of the Jewish Community in Tehran, who apparently was responsible for rendering opinions to the courts and government of Iran on legal issues under Jewish community law from 1950 until 1979. The Rabbi Yedidia Shofet's opinion states that

[t]aking into consideration the fact that [Yahya Aryeh] did not cut off any of his heirs from his estate and wealth and that in accordance with his own wishes he divided the remainder of his estate among his heirs and children, now therefore in accordance with the mandate of [several Jewish legal authorities] carrying out all of the articles of this will is without objection and valid under the rules of Jewish law.

63. The Respondent raises further technical objections to the validity of the Will. It contends that the Will is invalid because the subject matter of the Will is set out on the first page, and only the second page is signed by the testator. In addition, the Will allegedly does not bear the testator's seal, and the date has been changed without an affirmation by the testator of the change. The Respondent argues that these defects render the Will invalid.

64. As noted above, see para. 8, supra, by Order of 4 October 1995 the Tribunal requested the Claimants to produce the original Will for a document inspection by the Respondent to be held several days before the Hearing. On 4 March 1996 the Claimants responded that despite an extensive search for the original Will, they had been unable to locate it, see para. 69, infra. By Order

of 6 March 1996 the Tribunal expressed its "regret[]" that it was not informed earlier of the Claimants' inability to produce the original of [the Will]." At the Hearing, the Respondent contended that the Claimants' explanation for their failure to produce the original of the Will lacks credibility. It contends that the Tribunal cannot rely on the copy of the Will in the record.

c) The Tribunal's findings

65. The Tribunal therefore turns to the question whether the Claimants acquired ownership of real property under the Will of their father, Yahya Aryeh.

66. The Respondent's initial objection to the validity of Yahya Aryeh's Will was its alleged conditionality on the prior death of the Claimants' mother. As noted in para. 59, supra, the Claimants have submitted their mother's death certificate, which shows that she predeceased her husband. Consequently, the Tribunal is satisfied that this prior condition in the Will has been fulfilled.

67. The Respondent's second objection to the validity of the Will is based on its alleged inconsistency with Jewish law. This contention, however, is supported only by a general statement of its invalidity by a Jewish authority in Tehran. By contrast, the legal opinion obtained by the Claimants is detailed and contains reference to authorities. The Tribunal notes that it generally makes more credible reading. Its facial credibility is further enhanced by the credentials of its author, who had been Chief Rabbi of Tehran for many years, including the relevant period. The Tribunal therefore decides that on its face, the Will appears not to be inconsistent with Jewish law and not for that reason invalid.

68. The Tribunal is, however, far more troubled by the fact that the Will was never filed for probate either in the United States or in Iran. At the Hearing the Claimants' counsel stated that the Aryeh family's lawyer at the time of Yahya Aryeh's death advised against filing his Will for probate in New York, advice that the family accepted at least in part because it "didn't want to involve taxation in New York." According to the Claimants' brother, Emanuel Aryeh, he was appointed administrator of Yahya Aryeh's estate by the New York Surrogate's Court. The Claimants' counsel opined at the Hearing that Yahya Aryeh had died intestate insofar as the State of New York is concerned. He maintained, however, that the law of New York is not the applicable law to deal with the succession to Yahya Aryeh's assets in Iran, acknowledging, however, that there would be a conflict of laws question involved.

69. Also troubling is the Claimants' failure to produce the original Will. The explanation offered by the Claimants, and supported by the affidavit of Emanuel Aryeh, is that the original Will had been kept by the family's New York lawyer, who had subsequently died and whose files could not be traced. Since the Claimants could not locate the original Will, they sought to substantiate its existence by submitting affidavits, signed in 1996, by the original witnesses to the execution of the Will by Yahya Aryeh reaffirming that they had witnessed it in 1973. The Tribunal notes that these affidavits are both given by family members -- the first by Mrs. Renee Langsner, who is the mother of Ouriel Aryeh's wife; the second by Harry and Rose Auster, who are the parents of Ouziel Aryeh's wife. While there is no indication that these affiants were to benefit from the terms of the Will or in any other way by their testimony, their affidavits are unsupported by any external evidence, and the record leaves considerable doubt as to the status of the Will at the time of Yahya Aryeh's death in 1975.

70. Given the fact that the Will was never filed for probate in New York or Iran, the absence of any independent evidence corroborating its existence, and the uncertainty as to the location and effectiveness of the Will at the time of Yahya Aryeh's death, the Tribunal concludes that the Will is not a sufficiently reliable instrument for the Tribunal to base its decision on.

71. The Tribunal has also considered whether this claim should be decided on the basis of intestate rather than testate succession. In this regard, the Tribunal notes that throughout the written pleadings, the Claimants presented this claim as one based on testate succession. At the Hearing, the Claimants' counsel stated:

Insofar as New York is concerned I would presume that he was considered to have died intestate. At the same time we believe that the New York law is not the prevailing law to be considered by this Tribunal, that this Tribunal must consider that the Will has been presented here and that the Claimants are claiming under it in this proceeding.

72. The legal and factual issues involved in intestate succession in Iran appear to be different from those related to testate succession. Under Iranian law, testate and intestate succession fall under largely separate legal regimes. Indeed, Iranian law appears to treat testate succession as a form of contract, whereas intestate succession is regarded as occurring through operation of law. See Articles 825 to 949 of the Iranian Civil Code.⁹ In light of these differences, it is evident that a number of crucial considerations regarding intestate succession have not been presented to the Tribunal, such as: the applicable

⁹ The section on succession in the Iranian Civil Code is divided into two separate chapters for testate and intestate succession.

law (including the possible relevance of Jewish Law¹⁰); which persons are considered to be the intestate heirs under the appropriate succession regime; the size of their portions; and the pertinent tax regime. In sum, the Tribunal considers that the conspicuous gaps in the factual record distinguish the present Cases from a case such as Futura Trading Inc. and Khuzestan Water and Power Authority, Award No. 187-325-3 (19 August 1985), reprinted in 9 Iran-U.S. C.T.R. 46, where the Tribunal was in a position to decide a claim on the basis of the legal doctrine of unjust enrichment despite the fact that it had been pleaded solely as a contract claim. The Tribunal therefore concludes that it would be inappropriate to attempt to decide these claims on the basis of intestate succession.

73. In light of this conclusion, and given its decision that it cannot rely on the Will, the Tribunal holds that the Claimants have failed to prove that they became the owners of real estate in Karaj, Iran, through succession from their father. These claims are therefore dismissed.

¹⁰ See the Act Permitting Observance by the Courts of the Personal Status of Non-Shiite Iranians (1933), which refers to the established customs and rules of the faith of the deceased in questions of inheritance and wills.

V. AWARD

74. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The Claimants' claims are dismissed for failure to prove ownership of the real properties at issue;
- (b) Each Party shall bear its own costs of arbitration.

Dated, The Hague
25 September 1997

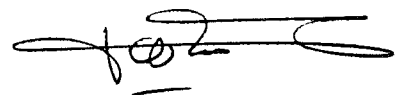


Gaetano Arangio-Ruiz
Chairman
Chamber Three



Richard C. Allison

In the Name of God



Mohsen Aghahosseini
Concurring