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Content:

Award in Case No. 255 (176-255-3) of 26 April 1985

Arbitrators: Nils Mangård (chairman), Richard M. Mosk, Parviz Ansari Moin (dissenting)

Parties:

- Respondents: Tehran Redevelopment Corp., The Government of The Islamic Republic of Iran

Subject matters:

- jurisdiction of the Tribunal; controlled entity (Art. VII(3) of the Claims Settlement Declaration)
- law governing assignments of contractual rights
- validity of an assignment of contractual rights (Iranian law; contractual prohibition on assignment)
- validity and enforceability of oral agreement; definiteness of contractual terms
- quantum meruit
- failure to object to invoices for a lengthy period
- effect of termination on damage remedy
- proper exchange rate for awarding damages
- increase in costs for inflation
- the Government as a respondent

FACTS

On 2 July 1975, DIC and Underhill, both United States corporations, and a Swiss company called Starrett and Eken S.A. ("Starrett") entered into a contract with the Tehran Redevelopment Corp. ("TRC") to provide technical assistance and management in connection with the construction of the concrete superstructures for eight buildings of a housing project in Iran. These eight buildings comprised Phase I of the 33-building project. DIC, Underhill and Starrett were treated separately throughout the contract and were each assigned separate obligations and a specific percentage remuneration.

DIC, Underhill and Starrett were subsequently engaged by TRC to perform similar work on the successive phases of the Ekbatan project. Contracts for Phase II and Phase IA, covering additional buildings were signed on 1 October 1976. Their provisions were substantially the same as the contract for Phase I. Claimants contend that a fourth agreement was orally entered into on or before 9 September 1977 relating to Phase III of the project, while Respondents denied the existence of such an agreement. Asserting that certain payments under these agreements had not been made, Claimants and Starrett sent TRC notices of default on 28 June 1978. These notices

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provided for termination of the contracts if no payments were made. Claimants brought this Claim for the outstanding payments, which they alleged amounted to US $3,110,626. They also sought US $3,321,53 as the amount they would have earned in the absence of certain alleged breaches by Respondents, and payment for extra work performed, plus interest and costs. TRC asserted counterclaims that sought, inter alia, reimbursement of payments previously made, damages for defective performance and delay, and return of certain documents. All of the counterclaims were dismissed on the merits.

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[...]

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[...]

The arbitrators then considered the specific claims for payment of the invoices submitted for additional amounts that would have been earned in the absence of certain breaches by Respondents, and for extra work performed. They denied the claim for extra work as unproven, and awarded US$ 2,772,670 as payment of the invoices and US$ 795,000 for amounts that would have been earned. The arbitrators made the following points of general interest:

"It appears from the record before the Tribunal that TRC did not at the time of the submission of the final requisitions object to the specific figures in these requisitions. In addition it does not appear that TRC raised significant objections to the figures in previous requisitions. There is one reference to a disagreement over requisition No. 12 in Phase I, thus showing that if TRC did object, it transmitted those objections. Until October 1977, TRC actually made payments, although none within the specified period for payment. The Respondents submitted to this Tribunal certain requisitions showing handwritten modifications and a direction by someone who appears to work for TRC that payments of modified amounts be made to the Contractors. These modifications were not major. It appears that the modified sums were paid, but it can be inferred that the Contractors did not accept the modifications because such modifications were not incorporated into subsequent requisitions.

(....)

"TRC asserts that it paid more than reflected on the requisitions. Yet, it never objected to the amounts shown as paid upon receiving the requisitions . . . .

(....)

Referring Principles:

I.1.2 - Prohibition of inconsistent behavior