

Does Federal Law Prevent a U.S. Citizen from Seeking to Satisfy a Judgment Against Iran?

by Andrew J. Haile

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ISSUES

Did the respondent relinquish his right to attach certain Iranian-owned property in the United States by accepting partial payment of a judgment he held against Iran under the Victims of Trafficking and Violence Protection Act of 2000, as amended (VPA)?

Is the Iranian property that was attached by the respondent a “blocked asset” under the Terrorism Risk Insurance Act of 2002 and therefore subject to attachment?

FACTS

The petitioner, the Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran, is a part of the government of Iran. Respondent, Dariush Elahi, is a naturalized United States citizen.

On October 23, 1990, Elahi’s brother was murdered in Paris. Though born in Iran, Elahi’s brother was a naturalized United States citizen as well as a leader in the effort to bring democracy to Iran. French authorities eventually tried and convicted

two Iranian nationals living in Paris of conspiracy to commit terrorist acts, including the murder of Elahi’s brother. The two Iranian nationals had links to the Iranian intelligence service.

Following his brother’s murder, Elahi filed a wrongful death claim against Iran and the Iranian intelligence service in the United States District Court for the District of Columbia. Iran and the Iranian intelligence service failed to respond to the complaint, and the D.C. district court entered a default judgment against the defendants on December 20, 2000. The default judgment awarded Elahi and his siblings \$11.7 million in compensatory damages and \$300 million in punitive damages.

Elahi found it difficult to enforce the judgment against Iran, however, because there are limited Iranian-owned assets in the United States and competing claims with respect to those assets. In an effort to

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MINISTRY OF DEFENSE AND
SUPPORT FOR THE ARMED FORCES
OF THE ISLAMIC REPUBLIC OF IRAN

v. ELAHI

DOCKET No. 07-615

ARGUMENT DATE:

JANUARY 12, 2009

FROM: THE NINTH CIRCUIT

Case at a Glance

This case considers whether an individual who holds a judgment against the nation of Iran may seek to satisfy his judgment by attaching certain property owned by Iran in the United States or whether he relinquished the right to attach the property by accepting partial payment of his judgment under a federal program established by Congress to compensate victims of state-sponsored terrorism. The Ninth Circuit held that the individual judgment-creditor retained the right to attach the property. The Iranian Ministry of Defense appeals.



enforce his judgment, in November 2001, Elahi attached a particular Iranian asset that had been created within the United States: a federal court judgment obtained in 1998 by the Iranian Ministry of Defense (MOD) against Cubic Defense Systems, Inc., an American weapons manufacturer.

The Cubic Judgment

MOD’s judgment against Cubic (the Cubic judgment) resulted from Cubic’s breach of a contract originally entered into between the parties in 1977 for the manufacture and installation of an arms system known as an air combat maneuvering range (ACMR). Shortly after the execution of the contract and partial payment by MOD to Cubic for the ACMR, the Islamic Revolution and American embassy hostage crisis occurred in Iran. Those events led to President Carter’s issuance of an executive order freezing all Iranian assets in the United States and prohibiting commerce between United States companies and the government of Iran. See Exec. Order No. 12,170 (Nov. 14, 1979). Consequently, Cubic never delivered the ACMR to Iran. Instead it sold the system to the Canadian government.

The United States and Iran resolved the hostage crisis on January 19, 1981, by entering into the Algiers Accords. The Algiers Accords required Iran to release the American embassy hostages and obligated the United States (i) to “restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979 [the date Iranian assets were frozen by President Carter’s executive order]” and (ii) to “ensure the mobility and free transfer of all Iranian assets within jurisdiction [of the United States].” Algiers Accords, General Principles. The Algiers Accords also established the

Iran–U.S. Claims Tribunal (the Claims Tribunal) at The Hague to resolve disputes between the two nations relating to the Algiers Accords.

In 1982, Iran filed a claim in the Claims Tribunal against both Cubic and the United States alleging that they breached the contract for the ACMR system (the ACMR contract). That claim was dismissed by the Claims Tribunal as to both defendants due to a lack of jurisdiction. Under the Algiers Accords, the Claims Tribunal has no jurisdiction over claims against private parties and therefore had no jurisdiction over the claim brought by Iran against Cubic. The Claims Tribunal held that it also had no jurisdiction over the United States with respect to Iran’s breach of contract claim because the United States was not a party to the ACMR contract.

Following dismissal by the Claims Tribunal, Iran continued to seek redress against Cubic by initiating an arbitration proceeding before the International Chamber of Commerce (the ICC) in Zurich, Switzerland, in 1991. After lengthy proceedings, the ICC panel ruled in favor of MOD and issued a final award against Cubic in the amount of \$2.8 million (the ICC Final Award). In June 1998, MOD petitioned the United States District Court for the Southern District of California to confirm the ICC Final Award. The court did so by entering the Cubic judgment on December 7, 1998.

Iran’s Claim Against the United States before the Claims Tribunal

In addition to its claim alleging breach of contract with respect to the Cubic contract, Iran also filed a claim against the United States in a separate proceeding before the Claims Tribunal alleging that the United States violated the Algiers

Accords by refusing to allow delivery of the ACMR system. In that proceeding (the Claims Tribunal Proceeding or the Proceeding), Iran contends that the United States refusal to allow delivery of the ACMR system breached its obligation under the Algiers Accords to “ensure the mobility and free transfer of all Iranian assets within jurisdiction [of the United States].” Algiers Accords, General Principles.

Iran’s claim against the United States for failing to fulfill its obligations under the Algiers Accords is still pending before the Claims Tribunal. As explained below, the Cubic judgment’s relation to the pending Claims Tribunal Proceeding may render Elahi’s attachment of the Cubic judgment invalid.

Elahi’s Acceptance of Partial Payment under the VPA

MOD disputed Elahi’s November 2001 attachment of the Cubic judgment. In an action brought before the United States District Court for the Southern District of California, MOD argued that under various federal statutes, a judgment held by a sovereign state is immune from attachment. In November 2002, the United States District Court for the Southern District of California held against MOD, finding that the Cubic judgment is not immune from attachment because MOD waived immunity by petitioning the court in June 1998 to confirm the ICC Final Award. Consequently, the court upheld Elahi’s attachment of the Cubic judgment. MOD appealed this decision to the Ninth Circuit.

While the appeal was pending, Elahi applied for and received \$2.3 million from the United States Treasury in partial satisfaction of his judgment against Iran pursuant to a program established under the Victims of Trafficking and Violence Protection Act of 2000, as amended.

In the VPA, Congress authorized the Secretary of Treasury to make payments to certain individuals with terrorism-related judgments against Iran. In electing to accept payment under the VPA, however, a judgment-holder must relinquish some rights, including the right of “enforcement against property that is at issue in claims against the United States before an international tribunal or is the subject of an award by such a tribunal.” VPA § 2002(d)(5)(B). When Elahi accepted the \$2.3 million payment, he signed an agreement, as required by the VPA, “relinquish[ing] ... all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal or that is subject to awards by such a tribunal.” In its appeal to the Ninth Circuit challenging the validity of Elahi’s attachment of the Cubic judgment, Iran argued that by accepting the VPA payment and signing the agreement Elahi had relinquished his right to attach the Cubic judgment because the judgment constitutes property “at issue” before the Claims Tribunal.

The Ninth Circuit rejected Iran’s contention that the Cubic judgment is property “at issue” in the Claims Tribunal Proceeding. It found instead that the ACMR weapon system itself was “at issue” in the Claims Tribunal case and that because the Claims Tribunal has no jurisdiction over private parties (such as Cubic) the Cubic judgment is not “at issue” in the pending Claims Tribunal Proceeding.

“Blocked Asset” Argument

In addition to the dispute over whether the Cubic judgment constitutes property “at issue” before the Claims Tribunal, Elahi and MOD disagree over whether the Cubic judgment is a “blocked asset” under the Terrorism Risk Insurance Act of 2002 (TRIA).

In 2002, Congress enacted TRIA to amend the VPA. TRIA authorizes certain creditors to attach “the blocked assets of [a] terrorist party.” TRIA § 201(a). A “blocked asset” is defined under TRIA to include “any asset seized or frozen by the United States” pursuant to the federal statute pursuant to which President Carter froze Iranian assets in the United States during the U.S. embassy hostage crisis. Therefore, if (i) Elahi did not relinquish his right to attach the Cubic judgment by accepting payment under the VPA (because the Cubic judgment is not “at issue” before the Claims Tribunal), and (ii) the Cubic judgment is determined to be a “blocked asset,” TRIA expressly authorizes attachment of the Cubic judgment by Elahi.

In the proceeding before the Ninth Circuit, Iran contended that because the Cubic judgment was never “seized” or “frozen” by the United States under President Carter’s executive order it is not a “blocked asset.” The Ninth Circuit rejected this argument, however, and found that while the Cubic judgment itself was never frozen, the judgment represents Iran’s interest in the ACMR. The Ninth Circuit further reasoned that because the ACMR was frozen by President Carter, the Cubic judgment (which represents Iran’s interest in the ACMR) is a “blocked asset” subject to attachment by Elahi.

Intervening circumstances since the issuance of the Ninth Circuit’s opinion may largely render moot the dispute over whether the Cubic judgment is a “blocked asset.” On October 25, 2007, the U.S. Department of State designated the Iranian Ministry of Defense and Armed Forces Logistics as an entity engaged in activities relating to the proliferation of weapons of mass destruction and therefore blocked

all of its “property and interests in property” in the United States. See 72 Fed. Reg. 71,991-71,992 (Oct. 25, 2007). If the Iranian Ministry of Defense and Armed Forces Logistics is the same entity as MOD (the Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran), the Cubic judgment would now be a “blocked asset,” regardless of whether it was at the time of the Ninth Circuit opinion.

CASE ANALYSIS

There are two issues presently before the Court. The first is whether the Cubic judgment is property “at issue” before the Claims Tribunal. If it is, then Elahi has relinquished the right to attach the judgment based on his acceptance of a payment under the VPA. If the Cubic judgment is not “at issue” in the Claims Tribunal Proceeding, the Court must consider whether the judgment is a “blocked asset.” If the Cubic judgment is a blocked asset, TRIA expressly authorizes attachment.

Property “At Issue” Under VPA
MOD contends that Elahi relinquished his right to attach the Cubic judgment by accepting partial payment for his judgment against Iran under the VPA. The VPA, as amended by TRIA, provides that any person receiving payment under the VPA:

shall ... be required to relinquish rights ... with respect to enforcement against property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.
VPA § 2002(d)(5)(B), as amended by TRIA § 201(c)(4).

According to MOD, the Cubic judgment is “at issue” in the Claims

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Tribunal Proceeding because any award that Iran receives from the Claims Tribunal would be offset by funds paid to Iran under the Cubic judgment. In other words, because payments under the Cubic judgment would ultimately affect the amount of any damages awarded to Iran in the Claims Tribunal Proceeding, MOD contends that the judgment is “at issue” in the Proceeding.

MOD supports this contention by arguing that the structure and policy behind the VPA’s “relinquishment” provision indicate a legislative intent that the statute’s “at issue” language be construed broadly. As to the statute’s structure, MOD points out that the “relinquishment” provision is disjunctive and covers two different aspects of proceedings before the Claims Tribunal: property at issue before the Tribunal and property that is the subject of awards by the Tribunal. Thus, according to MOD, property can be either “at issue” or “the subject of an award,” and while the Cubic judgment may not be “subject to an award” (since it is not directly in dispute in the Claims Tribunal Proceeding), the judgment comes within the broader “at issue” language because of its potential impact on any award granted in favor of Iran in the Claims Tribunal Proceeding.

As to the policy reasons supporting a broad interpretation of the VPA’s “at issue” language, MOD argues that the VPA, as amended by TRIA, fashions a “comprehensive statutory scheme in which affected individuals holding judgments against certain foreign sovereigns (and otherwise unable to enforce those judgments), could, instead, receive payments from the public fisc.” MOD argues that while Congress wanted to allow victims of terrorism to recover on their judgments, it “was understandably concerned that such

parties should not be suffered to receive excess payments, or even worse, through further attempts at enforcement, actually embarrass United States’ foreign policy objectives, whether the prosecution of subrogation claims against those foreign sovereigns or the ultimate normalization of relations with those nations.” MOD contends that these policy concerns are implicated in the present case because if the Cubic judgment is held not to be immune from attachment by Elahi, the United States would lose the benefit of an offset in the Claims Tribunal Proceeding and could ultimately have to pay more to Iran in that Proceeding.

MOD provides two additional reasons why the Court should broadly construe the term “at issue.” First, MOD contends that courts have interpreted other statutes with similar language broadly. In addition, MOD argues that under general principles of international law a dispute extends not just to the principal claim but also to setoffs and recoupments (both of which are potentially implicated in the Claims Tribunal Proceeding by the Cubic judgment). Based on this general principle of international law, MOD contends that the Claims Tribunal Proceeding places the Cubic judgment “at issue,” because it is a potential setoff to any award granted to Iran in that Proceeding. In sum, MOD argues that the Cubic judgment is “property at issue” in the Claims Tribunal Proceeding because “the United States’ [financial] obligations under the Algiers Accords [as to be determined by the Claims Tribunal] are inextricably linked to the ultimate disposition of the Cubic judgment.”

In contrast, Elahi argues that Congress’s concern in enacting and amending the VPA was not to constrain terrorism victims’ ability to

enforce judgments they hold against state sponsors of terrorism, but to “ensure the widest latitude for execution of judgments, secured by victims of terrorism, like [Elahi].” In furtherance of that legislative intent, Elahi contends that Congress intentionally drafted the VPA’s “relinquishment” provision to apply only to property that is the direct subject of a claim by Iran against the United States before the Claims Tribunal. Since it is the ACMR, the actual underlying military equipment paid for by Iran, that has been identified by Iran and the United States as the property in dispute in the Claims Tribunal Proceeding, the Cubic judgment is not “at issue” in the Proceeding.

Elahi further supports his position by arguing that the Claims Tribunal has no jurisdiction over the Cubic judgment because the judgment came into existence in 1998 when entered by the United States District Court for the Southern District of California. According to Elahi, the Claims Tribunal has jurisdiction only over disputes involving property that existed as of January 19, 1981, the date of the Algiers Accords. Because the Cubic judgment is separate and distinct property from the ACMR and did not even exist at the time of the Algiers Accords, it is outside the scope of the Claims Tribunal’s jurisdiction and therefore cannot be “at issue” in the Proceeding.

Elahi also argues for a narrow interpretation of the term “at issue” based on policy considerations. In particular, he contends that the broad interpretation espoused by MOD is “unworkable and inequitable” because terrorism victims cannot foresee every argument that might be made before the Claims Tribunal that could possibly implicate a setoff or recoupment. As a result, Elahi contends that terror-



ism victims have no way of knowing what rights they are relinquishing by accepting payment under the VPA if “at issue” is interpreted as broadly as MOD proposes. To prevent this unfairness, Elahi argues that the term “at issue” should be construed to include only property “(1) existing at the time of the Algiers Accords and that (2) would reasonably be understood by a third party, based on the nature of the property itself, as subject to a potential Iranian claim against the United States based on the Algiers Accords.”

Blocked Asset Arguments

As discussed above, TRIA specifically authorizes attachment of the blocked assets of a terrorist party. Section 201(a) of TRIA provides:

Notwithstanding any other provision of law ... in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under [federal law granting sovereign immunity], the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

Therefore, unless Elahi relinquished his right to attach the Cubic judgment by accepting payment pursuant to the VPA, TRIA grants him express statutory authority to attach the judgment if it satisfies the definition of a “blocked asset.” The Ninth Circuit held that the Cubic judgment is a blocked asset because it represents Iran’s rights in the

ACMR, which was frozen by President Carter’s 1979 executive order.

While the parties vigorously contested this issue before the Ninth Circuit, and it was brought forward on appeal to the Supreme Court, subsequent events have potentially rendered the issue moot. The State Department’s designation of the Iranian Ministry of Defense and Armed Forces Logistics as an entity engaged in activities relating to the proliferation of weapons of mass destruction blocked all of that Ministry’s assets in the United States. See 72 Fed. Reg. 71,991-71,992. As a result, the issue of whether the Cubic judgment is a blocked asset now turns on the determination of whether MOD (Ministry of Defense *and Support for the Armed Forces of the Islamic Republic of Iran*) and the Iranian Ministry of Defense and Armed Forces *Logistics* are the same entity, despite their slightly different names. Elahi contends that they are. MOD does not deny this but argues that the Court should remand the issue to the lower courts to consider evidence on the issue and make an initial determination of whether the Ministry of Defense and Armed Forces Logistics is the same entity as MOD.

SIGNIFICANCE

The Court’s decision in this case will determine the scope of assets available to satisfy judgment-creditors of state-sponsors of terrorism. In addition, it will affect the extent of liability that the United States may incur in pending and future Claims Tribunal decisions. If Elahi’s attachment of the Cubic judgment is upheld, the United States may not be able to use amounts paid by Cubic as a setoff to any award against the United States in the Claims Tribunal Proceeding.

Therefore, while the decision in this case will obviously affect the amount Elahi ultimately recovers on his judgment against Iran, it may also affect the amount of future liabilities the United States must pay on claims brought against it in the Iran-U.S. Claims Tribunal.

ATTORNEYS FOR THE PARTIES

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AMICUS BRIEFS

In Support of Reversal

United States (Gregory G. Garre, Solicitor General (202) 514-2217)