

Ninth Circuit Upholds Foreign Arbitration Award In Favor Of Iran, Finding Enforcement Of The Award Does Not Violate Public Policy

Under the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (referred to as the New York Convention), there is a strong presumption in favor of the recognition and enforcement of foreign arbitration awards. Countries that are signatories to the convention, which includes the United States, are bound by this presumption to recognize and enforce foreign arbitration awards.

The Ninth Circuit Court of Appeals recently addressed enforcement of an arbitration award in favor of Iran's Ministry of Defense, which obtained an arbitration award against Cubic Defense Systems, Inc., a United States corporation. *Iran v. Cubic Defense Systems, Inc.*, 2011 WL 6225235 (9th Cir. Dec. 15, 2011 (Cal.)). The Ministry obtained its arbitration award after a lengthy judicial process stemming from a 1977 contract entered into by the parties for an air combat maneuvering range system. The Iranian Revolution resulted in nonperformance of the contracts. Consequently, the parties agreed in 1979 that the contracts would be discontinued and that Cubic would try to resell the equipment, with a later settlement of the accounts. In 1981, Cubic sold a modified version of the equipment to Canada. The Ministry initiated an arbitration to obtain the funds it had paid to Cubic, which ultimately resulted in the Ministry obtaining an arbitration award against Cubic.

Cubic sought to vacate the arbitration award and prevent its confirmation and enforcement in the Federal Courts, arguing that enforcement of the arbitration award would be against public policy. The court proceedings were suspended for a lengthy period of time while Iran's creditors attempted to attach the Ministry's judgment. Eventually, the Ninth Circuit addressed Cubic's efforts to fight enforcement of the arbitration award on the grounds that public policy prevented enforcement.

In ruling in favor of the Iranian Ministry, the Ninth Circuit noted that the presumption favoring upholding international arbitration awards under the New York Convention required any public policy exception to enforcement to be narrowly construed. Further, the Ninth Circuit held that public policy precludes enforcement only when confirmation or enforcement of a foreign arbitration award "would violate the forum state's most basic notions of morality and justice." The Ninth Circuit rejected Cubic's claims that the United States sanctions against Iran precluded confirmation of the arbitral award. The Ninth Circuit ruled that confirmation alone was not tantamount to payments or economic support to Iran. The Ninth Circuit further noted that equating confirmation with a payment to Iran was not fatal because transfers of wealth were not absolutely barred by the sanctions imposed on Iran since special licenses could be obtained authorizing such payments. Moreover, the fact that Iran could be represented in legal proceedings in the United States supported the use of the judiciary to confirm arbitral awards in favor of Iran. Thus, the Ninth Circuit held that Cubic failed to demonstrate a countervailing public policy sufficient to overcome the strong public policy in favor of enforcing arbitral awards.

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