

Court Asks State Department's Opinion concerning Hamas Funds Frozen in Egyptian Bank

July 30, 2009: On February 5, 2009, Hamas leader Ayman Taha attempted to smuggle \$9 million and 2 million Euros packed in suitcases into Gaza through the Egyptian border crossing. Tipped off by Israeli intelligence the Egyptians stopped the terrorist official and barred him from entering Gaza with the funds.

After a several day long diplomatic stand-off, a compromise was reached whereby the Hamas funds were deposited by Egypt in the El Arish (Sinai) branch of the National Bank of Egypt ("NBE"). The idea was that once things had quieted down, Hamas would have the funds returned to them and devise a different means of smuggling the money into Gaza.

Immediately thereafter, however, lawyers for terror victims holding a \$116 million judgment against Hamas served a restraining notice on the New York branch of the NBE. The restraining notice prohibited the NBE from paying out the funds to Hamas and warned the garnishee bank that it would be held directly liable if the funds were otherwise released.

The lawyers for the victims also informed the NBE that the Terror Risk Insurance Act (TRIA) would override any sovereign immunity claims the NBE attempted to claim under the Foreign Sovereign Immunities Act. It is the terror victims' contention that they have a right to enforce their judgment against the restrained Hamas funds regardless of the fact that they were deposited in an overseas bank that is owned by the Government of Egypt. On February 10, 2009, the lawyers for the terror victims petitioned the court to "turnover" the funds to them.

The NBE opposed the turnover proceeding and have argued that once the funds were taken from Hamas and deposited in the NBE, they became the property of the Government of Egypt and cannot be executed against by the terror victims in NY. The NBE claims it is an instrumentality of Egypt and has a right to sovereign immunity. Moreover, the NBE alleges that the funds are not located in the US, that they are not currently being held by Hamas but rather the Egyptian Government, that Ayman Taha had never been designated by the US as a terrorist and, as such, the powerful enforcement provisions of TRIA cannot reach these funds.

The NBE has filed a pre-motion letter asking that the case be dismissed. The District Court in NY has ordered that the parties file all their briefs by November 17th. It has also ordered that all the court submissions be served on the legal adviser to the US State Department to see if it intends to become involved in this case in which a foreign state's claims of sovereign immunity are being challenged by the terror victims. The State Department will have to decide whether it intends to interfere in the proceedings on the side of those seeking to safeguard the Hamas funds in Egypt, or whether it will allow the American terror victims to proceed without interference in this private action to enforce their federal court judgment against the terrorists' assets. The terror victims believe that the State Department should either come in on their side, or better still, completely decline to become involved in the matter at all.

The lawyers for the victims intend to prove without a doubt that the money deposited is indeed Hamas funds, and should be immediately handed over to them as the law requires.

For a copy of the turnover petition: <http://www.israellawcenter.org/media/NBE%20Turnover%20Petition.pdf>

For a copy of the Judge's Endorsed letter : <http://www.israellawcenter.org/media/NBE%20letter%207.24.09.pdf>