Decision No. 330

**Dominique Rodriguez-Sawyer,
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

1. The World Bank Administrative Tribunal, composed of Bola A. Ajibola, President, Elizabeth Evatt and Jan Paulsson, Vice Presidents, Robert A. Gorman, Francisco Orrego Vicuña, Sarah Christie and Florentino P. Feliciano, Judges, has been seized of an application, received on June 9, 2004, by Dominique Rodriguez-Sawyer against the International Bank for Reconstruction and Development. Ms. Rodriguez-Sawyer is the daughter and Personal Representative of the Estate of Fritz Rodriguez, a former staff member of the Bank, now deceased. As will be explained in greater detail below, an adverse decision was rendered with respect to the Applicant by the Pension Benefits Administration Committee (PBAC); it has been appealed to the Tribunal. In the course of her appeal, and pursuant to Rules 21 and 23 of the Rules of the Tribunal, the Tribunal permitted intervention by a former spouse of Mr. Rodriguez whom the Tribunal determined likely had a "right which may be affected by the judgment to be given by the Tribunal." An exchange of pleadings among the Applicant, the Respondent and the Intervenor took place. The case was listed on March 22, 2005.

2. The application presents the Tribunal with an appeal from a decision of the PBAC directing the payment of Fritz Rodriguez's lump-sum death benefit under the Staff Retirement Plan and Trust (SRP) to his former second wife, Hafida Rodriguez, rather than to his estate. The question presented is whether this decision by the PBAC was consistent with the Bank's governing rules and was reasonable, or whether it constituted an abuse of discretion.

Background Facts

3. Mr. Rodriguez joined the Bank in 1972 and promptly began to participate in the Bank's SRP. During his years of Bank service, he worked as a sanitary engineer. He was married to his first wife, Ruth Rodriguez, for 23 years. They had two children, Dominique (the Applicant) and Fritz Jr. The Rodriguezes divorced in May 1990. In September of that year, Mr. Rodriguez married his second wife, Hafida.

4. In February 1991, Mr. Rodriguez – who had apparently until then so designated his first wife, Ruth – formally designated in writing Hafida Rodriguez as his sole beneficiary to receive certain benefits payable on account of his death. The standard form that Mr. Rodriguez signed, entitled "Change of Designation of Beneficiary," provided in relevant part that he revoked "all designations of beneficiaries, if any, heretofore made by me" with respect to SRP death benefits; and that

> I hereby authorize the Bank to make payment of such amounts to the beneficiary or beneficiaries designated hereby or pursuant hereto and agree on behalf of myself and my heirs, administrators and representatives and all persons claiming by, through, or under me, that payment of any such amounts to such beneficiary or beneficiaries shall be a complete discharge and release of the Bank, the Corporation, and the Plan for and to the extent of the amounts so paid.

5. Mr. Rodriguez retired from Bank service in 1997 at the age of 63, and commenced receipt of a normal

pension from the SRP at that time. He and Hafida Rodriguez were divorced in December 1999. Their Separation and Property Settlement Agreement (hereinafter "Property Settlement Agreement") provided that, in consideration of certain monetary transfers, including a payment of $225,000 to Hafida Rodriguez, Fritz retained "all of his right and interest in that [World Bank] retirement plan and the Wife waives and releases any claim to any portion of same." These terms were also incorporated as part of the judgment of divorce granted by the Circuit Court for Montgomery County, Maryland.

6. Some three years after that divorce, Mr. Rodriguez died on November 30, 2002. At no time before his death did he revoke or revise the written designation of Hafida as the beneficiary of his SRP death benefit. Section 4.1(b) of the SRP provides for the calculation and payment of a lump-sum benefit in the event of the death of a retired staff member not married on the date of death; and Section 4.1(d) of the SRP states that this death benefit "shall be paid to the beneficiary or beneficiaries designated by the participant or retired participant in a witnessed document received by the Benefits Administrator before the death of the participant or retired participant."

7. In the months following Mr. Rodriguez's death, no payment of the death benefit was made, because the Benefits Administrator had difficulty contacting Hafida Rodriguez. In the spring of 2003, the attorney for the Applicant and the Estate contacted the Benefits Administrator, and on June 30, 2003, the attorney submitted a petition asking the PBAC to find that Mr. Rodriguez's 1991 beneficiary designation of his then wife Hafida was invalid and that the death benefit should be paid directly to Mr. Rodriguez's estate. In October 2003, the Benefits Administrator was able to contact Hafida and inform her that: (i) she was the beneficiary designated to receive the death benefit; and (ii) the Estate had requested that the beneficiary designation be disregarded by virtue of the terms of the divorce between Hafida and Mr. Rodriguez. The Benefits Administrator provided for an exchange of adversarial statements between the Estate and Hafida Rodriguez.

8. The PBAC met on February 11, 2004, to consider the petition submitted by the Applicant. On March 22, the Benefits Administrator wrote a letter to the Applicant's attorney stating that the PBAC had decided that there was no basis to find the 1991 beneficiary designation invalid on account of the 1999 Property Settlement Agreement and divorce decree involving Fritz and Hafida. He explained the decision of the PBAC in part as follows:

> The PBAC believes that the Plan wisely assigns to participants and retirees the responsibility of identifying their beneficiaries, and updating these designations as appropriate. In this case, Mr. Rodriguez's most recent designation was submitted in 1991, and the PBAC believes that the Plan is obliged to honor the retiree's wishes, as indicated in the designation submitted to the Plan. Whether Mr. Rodriguez intended to revoke this designation before his death or even considered the question is purely a matter of speculation. As a general matter, it would not be in the interest of the Plan or its participants and retirees for the PBAC to entertain challenges to beneficiary designations based on the presumed intent of deceased retirees. Indeed the very purpose of requiring written designations is to avoid inquiries of this sort. In any event, such an inquiry does not appear to be within the PBAC's authority, as specified in Article 10 of the Plan, nor is it authorized elsewhere in the Plan.

9. The PBAC decided to suspend payment to Hafida Rodriguez of the lump-sum death benefit of some $157,000 pending the outcome of any possible appeal to the Tribunal that might be taken by the Applicant on behalf of the Estate. The PBAC took this decision pursuant to Section 12.2 of the SRP, which states that "[i]f there is a dispute about the right of any person to payments under the Plan, the Bank may withhold payment until the dispute has been settled, whether by arbitration, a court of competent jurisdiction, or agreement." The Applicant did indeed file an application with the Tribunal on June 9, 2004. On August 12, 2004, Hafida was furnished by the Tribunal with a copy of the application, and she later filed comments upon the Applicant's and the Respondent's pleadings, to which the Applicant responded in turn.

Contentions of the Parties

10. The Bank contends that its intended payment of Fritz Rodriguez's death benefit to Hafida is required by the

terms of the SRP, and that those terms are reasonable and not an abuse of discretion. As noted above, Section 4.1(d) of the SRP provides that in the case of a retiree who dies without a surviving spouse, a lump-sum death benefit is payable "to the beneficiary or beneficiaries designated by the participant or retired participant in a witnessed document received by the Benefits Administrator before the death of the participant or retired participant." Mr. Rodriguez formally designated Hafida as his sole beneficiary in February 1991, a few months after their marriage, and he made no change in this designation upon their divorce in 1999 or at any time before his death in 2002. The Bank points out that there are no provisions in the SRP that provide for having intervening events – in particular the spouses' Property Settlement Agreement and their divorce decree – supersede the written beneficiary designation. The Intervenor, Hafida Rodriguez, presents similar legal arguments.

11. The Applicant, on the other hand, although not challenging the initial validity of Fritz's beneficiary designation in 1991, asserts that it was effectively revoked by subsequent events. The Applicant contends that the 1999 divorce from Hafida constituted an implied revocation, and that in the Property Settlement Agreement – incorporated in the divorce decree issued by the circuit court in the state of Maryland – Hafida expressly waived her rights to the death benefit under the SRP. The Applicant particularly emphasizes Section 5.3 of that Agreement, which as noted above provides:

> The Husband has an interest in the World Bank Pension Plan by virtue of his former employment. In consideration of the transfers set forth herein the Husband shall retain all of his right and interest in that retirement plan and the Wife waives and releases any claim to any portion of same.

The Applicant thus claims that the 1991 designation of Hafida as beneficiary was superseded before the date of Mr. Rodriguez's death, and that his death benefit should properly be paid instead to the Estate of Mr. Rodriguez, as represented by the Applicant.

Analysis by the Tribunal

12. The Tribunal notes that the Applicant appears not to be challenging the validity, in and of itself, of the provision of the SRP (Section 4.1(d)) that death benefits are to be paid to the person designated in a writing provided to the Plan Benefits Administrator. Nor does the Applicant claim that Mr. Rodriguez's 1991 designation of Hafida Rodriguez was a product of fraud or misrepresentation or was otherwise invalid at the time of its execution. Rather, the Applicant claims that that designation should be treated, as a matter of law and of fact, as having been revoked as a result of the divorce of Fritz and Hafida and also as a result of their Property Settlement Agreement. The disregard of these later events by the PBAC is said by the Applicant to constitute an abuse of discretion which the Tribunal should review and overturn.

(a) The Governing Law

13. The Applicant places much reliance upon several decisions of the United States federal and state courts which are said to support her contention. These cases deal variously with bequests to a divorced spouse, the payment of life insurance proceeds to a divorced spouse, and the payment of pension-based death benefits to a divorced spouse. In all of these decisions, the courts have concluded that a divorce – either alone or along with the terms of a property settlement or waiver agreement – results in the rescission of an earlier grant or designation made by a former spouse.

14. The Tribunal, however, has often declared that the laws of a member state within the Bank, whether statutory or judicial, do not govern the Bank or an organ within it such as the PBAC (*de Merode*, Decision No. 1 [1981], para. 36; *Mould*, Decision No. 210 [1999], paras. 23-24; *Cissé*, Decision No. 242 [2001], para. 23). Moreover, even if the Bank were to look to judicial decisions for informal guidance, the cases proffered by the Applicant are particularly unhelpful.

15. As noted, the cases deal variously with different situations: wills, insurance proceeds, pension benefits and stock option plans. These have differing characteristics which may warrant different treatment with respect to

the issue of spousal designation. For example, within the United States, wills typically are governed by state statutory law (the so-called Uniform Probate Code, in force in 28 of 50 states), and private pensions are governed by federal statutory law (the Employee Retirement Income Security Act, or ERISA). And as for the latter – which explicitly exempts the pension plans of international organizations such as the World Bank from its coverage – there is no express statutory provision on the question of implied revocation, and so federal courts have had to extract a so-called "common law" rule from the general policies of the Act. Different federal appellate courts have fashioned various rules. Even in the decisions that support the position of the Applicant there are strongly expressed dissenting opinions that support the rule proffered here by the Respondent, i.e., that a formally unchanged beneficiary designation is not superseded by divorce decrees or property settlement agreements. Moreover, the several courts that do examine the texts of such instruments look for varying degrees of specificity in the language used before finding a relinquishment of such rights.

16. The Bank's determination to apply only its own internal rule concerning beneficiary designations is thus quite reasonable, not only because of the uncertain state of the law in the U.S. but also because of additional elements of uncertainty in the choice of law: the pension funds may be said to be "located" in the District of Columbia where the Bank is situated, while the divorce decree (with the incorporated property settlement agreement) was issued by a Maryland state court, and the former staff member Fritz Rodriguez (whose intention at the time of his death is the central matter here) died in the state of Florida and his estate, represented by the Applicant, is legally situated there. Beyond that, of course, to require the PBAC to refer to the laws of one or another nation would potentially render its decision-making thoroughly impracticable, given the fact that staff members come from 184 nations, with no doubt widely differing approaches to the respective rights of divorced spouses.

(b) The Divorce and Property Settlement Agreement

17. Concluding, then, that the beneficiary-designation rules are properly to be dictated by the Bank's own internal law, the issue before the Tribunal is whether the PBAC decision not to deviate from the terms of Section 4.1(d) of the SRP, and thus to pay the disputed death benefits to Hafida rather than to the Estate, is an abuse of discretion or is rather within the range of reasonable decision-making which the Tribunal must affirm.

18. At the core of the Applicant's argument is the assertion that Fritz's benign intentions towards his wife from 1991 to 1999 must be "presumed" to have altogether changed by virtue of their later divorce. The Applicant argues, in part, that the presumption of change is conclusive and irrebuttable as a matter of law. Such is apparently the case under the widely adopted Uniform Probate Code with respect to bequests by will. The Applicant also argues, in part, that a staff member's changed intention is to be inferred, as a matter of fact, from all of the pertinent facts and circumstances in each particular case. On the facts here, she asserts that it cannot reasonably be assumed that Fritz would have wished his SRP death benefit to be paid to his divorced spouse Hafida.

19. The assumption that underlies the SRP, however, is that the best indicator of the staff member's intention upon death is the formally executed, and still unchanged, beneficiary designation. The PBAC concluded that the divorce alone did not override the 1991 beneficiary designation, and it also examined the particular terms of the Property Settlement Agreement and concluded that it did not clearly enough constitute a waiver by Hafida of her rights as designated beneficiary of Mr. Rodriguez's SRP lump-sum death benefit.

20. The Tribunal finds that these conclusions by the PBAC were well within its discretion.

21. The policies underlying the great weight given to the written beneficiary designation are largely twofold. First, it is assumed that the staff member should properly bear the burden of knowingly and formally making any changes on a matter as important as the designation of a beneficiary for a substantial death benefit. The Tribunal finds this to be a reasonable assumption.

22. The beneficiary-designation form itself, signed by the staff member, explicitly provides that he or she reserves "the right to change or revoke the above designation." It is telling that, upon his divorce from his first

wife Ruth and his marriage to Hafida in 1990, Mr. Rodriguez took the formal steps – signing a new form and transmitting it to the Plan Benefits Administrator – that the SRP declared necessary to identify Hafida as beneficiary of his death benefit. Mr. Rodriguez, presumably already familiar with these SRP rules, refrained from making a formal written change upon his *second* divorce, and indeed so refrained until his death. Although the Applicant contends that Mr. Rodriguez's written designation of Hafida was expressly limited by the fact that he added the word "spouse" to her name, the Tribunal concludes otherwise. It is at least as likely that this word was added in order to specify her relationship to him at the time, than that it was meant to represent a condition upon her entitlement in the event they subsequently divorced. Had he meant to impose such a condition, Mr. Rodriguez could have done so explicitly in drafting the beneficiary designation.

23. The second policy underlying the decision of the PBAC is the difficulty that can commonly be anticipated in proving whether there have been changed circumstances that justify an inference that a staff member, already deceased, would have intended that his beneficiary designation be revoked, despite the failure to revoke it in writing. The reluctance of the PBAC to undertake such an investigation is more than reasonable.

24. The deceased staff member cannot shed light on the principal issue, i.e., his or her intentions. Moreover, in an institution like the World Bank, key witnesses may be far-flung around the world, or may themselves be deceased. And even if the search for changed circumstances is limited to written instruments, the pertinent divorce decrees and property settlement agreements may come from around the world, and from varying legal environments (even when simply within the United States). These decrees and contracts may date back many years, and even recent ones may not readily come to the attention of the Bank, which of course is never a party thereto.

25. As related by the Benefits Administrator in his letter to the Applicant's attorney dated March 22, 2004, it was the view of the PBAC that "[a]s a general matter, it would not be in the interest of the Plan or its participants and retirees for the PBAC to entertain challenges to beneficiary designations based on the presumed intent of deceased retirees. Indeed the very purpose of requiring written designations is to avoid inquiries of this sort." So too, as was persuasively stated by the Respondent in its answer and rejoinder:

> From the perspective of orderly and efficient administration of the Plan, such an inquiry [into whether a revocation of the beneficiary designation was intended or implied] would not be desirable as a matter of general procedure. It also presents, paradoxically, the risk of *frustrating* the true intentions of a participant or retiree who takes the affirmative step of submitting a written beneficiary designation. (Emphasis in original.) … [T]he Benefits Administrator would ... likely not know that such agreements [between the deceased staff member and third persons] even exist unless it is specifically informed. Allowing for the implied revocation of properly filed beneficiary designations based on transactions unknown to the Benefits Administrator would put the Plan at a risk of loss, due to the possibility of prompt payment to a beneficiary designated by the participant or retiree, without knowledge of a subsequent implied revocation.
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> ...
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> This is a reasonable policy since the Bank cannot possibly monitor the personal intentions and various extraneous agreements of its staff and retirees, who are scattered around the globe, to determine if a designation should be disregarded by reason of a change of heart, changed family circumstances, or by agreement to which the Bank is not party.

26. A similar view has been expressed in the United States federal appeals courts, sometimes in majority opinions and sometimes in dissent. In one case, for example, the court, in addressing the application of the ERISA statute, stated:

> ERISA requires that a plan administrator discharge his duties "in accordance with the documents and instruments governing the plan." ... The designation of beneficiary under the plans named [the divorced spouse] as Dr. Parrott's beneficiary, and continued to do so, unchanged, for four years after their divorce. This clear statutory command, together with the plan provisions, answer the question; the documents control, and those name [the divorced spouse].

> We believe this resolution fulfills the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application. ... Under the plans, we determine his intent by the designation on file at the time of his death.
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> Such a holding also allows the parties to be certain of their rights and obligations. ... "Rules requiring payment to the named beneficiary yield simple administration, avoid double liability, and ensure that beneficiaries get what's coming to them without the folderol essential under less-certain rules." ... If the designation on file controls, administrators and courts need look no further than the plan documents to determine the beneficiary, thus avoiding expensive litigation as has occurred in the case before us.

McMillan v. Parrott, 913 F.2d 310 (6th Cir. 1990). Another federal appellate judge, in a dissenting opinion, also addressed how the policies underlying the ERISA statute would be promoted by the sort of strict and clear rules found here in the Bank's SRP:

> Strict adherence to [written beneficiary designations] ensures that all interested parties, including participants, beneficiaries, and plan administrators, can identify their rights and duties with certainty, a primary objective of ERISA. ... Forcing plan trustees to examine a multitude of external documents that might purport to affect the dispensation of benefits frustrates the statutory goals of efficiency in administration and certainty in expectations. ... And uncertainties over the interpretation of external documents will produce conflicts among parties asserting rights to plan benefits, miring plan assets in expensive litigation.

Estate of Altobelli v. International Business Machines Corp., 77 F.3d 78, 82-83 (4th Cir. 1996).

27. Of course, these are not the only reasonable policies that the SRP might adopt in cases such as this. Indeed, there are in the United States several federal court decisions, as well as state court decisions, that invite plan administrators to consider facts and circumstances surrounding divorces and settlement agreements, with a view toward possibly overriding the expression of intent found in an earlier beneficiary designation. But it suffices that the Tribunal concludes that Section 4.1(d) of the SRP, and its underlying policies and justifications, are in fact reasonable, and that their application in the instant case does not constitute an abuse of discretion.

28. It is conceivable that, on certain facts, it would indeed be an abuse of discretion to disregard post-designation events that might bear upon the equity of a strict application of Section 4.1(d) of the SRP. The burden of proving so would lie with the person attacking the written beneficiary designation, both because of that person's knowledge of and access to such unusual facts and because of the strong presumption of regularity accorded such a designation.

29. This is not such a case. For one thing, there was no evidence presented to the PBAC, or to the Tribunal, that Fritz Rodriguez had written or stated to anyone, before or after his 1999 divorce, that he viewed his divorce as revoking his written designation of Hafida as his death-benefit beneficiary, or that he had no intention to see Hafida collect his death-benefit payment. Quite to the contrary. The Tribunal regards it as particularly telling that Mr. Rodriguez had, during his marriage to Hafida, designated her as the beneficiary of his Bank-sponsored *life insurance policy*, and that in each of the three years after their divorce, he continued to pay annual premiums on that insurance policy without making any change in its beneficiary designation, although he was fully entitled to do so. This is more than passive ratification of that designation, but rather a series of knowing acts to affirm it. (Upon his death, the insurance company in fact paid the insurance proceeds to Hafida.) It is surely consistent with a continuing intention on the part of Mr. Rodriguez to maintain Hafida as the designated beneficiary of his lump-sum death benefit.

30. The Applicant's evidence to the contrary that the parties have discussed at perhaps greatest length in their pleadings is the Property Settlement Agreement of 1999 that preceded the formal divorce of Fritz and Hafida Rodriguez and that was incorporated by reference in their Maryland divorce decree. The pertinent language is as follows:

> 5.3 Retirement Funds. The Husband has an interest in the World Bank Pension Plan by virtue of his former employment. In consideration of the transfers set forth herein the Husband shall retain all of his right and interest in that retirement plan and the Wife waives and releases any claim to any portion of same.
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> ...
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> 10.1 Releases and Waivers. Each party hereby releases and forever discharges the other ... from any and all rights, claims, demands or obligations arising out of or by virtue of the marital relation of the parties ... or to take against the will of the other, right of inheritance or distribution in the event of intestacy, ...

The Applicant asserts that by this agreement Hafida waived the rights she would otherwise have as Fritz's designated beneficiary of the lump-sum death benefit under the SRP.

31. The Respondent, however, contends that even if the PBAC were properly to look beyond the beneficiary designation to the quoted provisions of the settlement agreement, Hafida's rights as beneficiary are not clearly meant to have been waived or relinquished by her. The Respondent asserts that under Section 5.3 Hafida should be understood to have waived only her interest in Fritz's lifetime pension, in which he had a then present "right and interest" by virtue of his employment-based contributions; the waiver should not apply to Fritz's death benefit, as to which he had no right to receive it himself but only to retain or formally to change his designated beneficiary. So too, the Respondent asserts that, under Section 10.1, any right of Hafida to the death benefit did not derive from the "marital relation of the parties" or from Fritz's will (he did not leave one) or his intestacy; Mr. Rodriguez was free to name anyone as beneficiary, so that the death benefit was altogether independent of the marital relationship and of any will and of his estate. Moreover, the Respondent invokes certain decisions of the U.S. courts, federal and state, that hold that any waiver of rights to death benefits under an explicit beneficiary designation must be detailed and explicit within the divorce agreement or decree.

32. It is not necessary for the Tribunal to determine whether the Respondent's contentions are more convincing than those of the Applicant. The two sets of tenable contentions as to the meaning of these waiver provisions in the Property Settlement Agreement and divorce decree are sufficient to reinforce the discretionary decision of the PBAC that there was inadequate reason to ignore Fritz Rodriguez's 1991 explicit beneficiary designation, made pursuant to Section 4.1(d) of the SRP.

33. Accordingly, the decision of the PBAC "to deny the estate's claim to the lump sum benefit payable under the Plan on account of Mr. Rodriguez's death" does not constitute an abuse of discretion. The Tribunal observes that the terms of the SRP, as interpreted by the PBAC and now by the Tribunal, are meant to instruct the Bank as to the disposition of possibly disputed death-benefit moneys. The SRP does not, however, purport to resolve conclusively the respective claims of designated beneficiaries and third parties who assert superior rights under contracts, judicial decrees or other instruments to which the Bank is not a party. Accordingly, the Tribunal notes that the PBAC has a continuing discretion to determine whether the dispute is in the process of being settled "by arbitration, a court of competent jurisdiction, or agreement," and to draw such conclusions as it may deem appropriate pursuant to Section 12.2 of the SRP.

(c) Additional Issues

34. In her reply, the Applicant raises for the first time claims to certain moneys allegedly due to the Estate on account of what are said to be unpaid salary and termination benefits to which Fritz Rodriguez was entitled at the time of his retirement from Bank service in July 1997. These claims are inadmissible, both because they have not first been presented through the Bank's system of internal remedies, here at least the Appeals Committee, and because they were not timely asserted within three years of Mr. Rodriguez's termination date as required by the statute of limitations under Staff Rule 11.01.

Decision

For the above reasons, the Tribunal hereby affirms the decision of the PBAC.

/S/ Bola A Ajibola
Bola A. Ajibola
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At London, England, May 13, 2005