

Decision No. 358

**Aida Shekib,
Applicant**

v.

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

1. The present judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, Robert A. Gorman and Sarah Christie, Judges. The application in this case was filed on 16 May 2006 by the guardian of the widow of a deceased staff member. The Bank filed its answer on 4 August 2006. A motion to intervene in the case was filed on behalf of the widow on 6 July 2006, and was granted by the Tribunal on 14 July 2006 pursuant to Rule 21 of its Rules. Comments were filed by the widow as Intervenor on 8 September 2006. Communications from a third party were admitted in the proceedings, and the Applicant, the Respondent and the Intervenor were allowed to file comments thereon.

2. The Applicant challenges a decision of the Pension Benefits Administration Committee (PBAC) rendered on 23 February 2004. The PBAC decided to make payment of pension benefits to the Intervenor rather than to the Applicant, who is a business associate of a child of the Intervenor by an earlier marriage, and who has served for several years as the guardian of the Intervenor's estate pursuant to a court order in the state of Illinois, USA. The central question to be decided is whether the PBAC abused its discretion in declining to give "full faith and credit" to the Illinois guardianship order and in deciding instead to pay the disputed pension benefits to the Intervenor.

Background Facts

3. The application in this case arises from a dispute relating to the pension benefits accorded to Mrs. Maimona Naseem, the widow of a deceased staff member of the Bank, Mr. Muhammad Naseem. Mr. Naseem worked in the Bank from 1979 to 1991, when he died while in the Bank's service. Mrs. Naseem, his surviving spouse on the date of his death, was thereafter entitled to a survivor's pension under Section 4.1 of the Staff Retirement Plan (SRP): "Upon receipt of proof satisfactory to the Benefits Administrator of the death of a participant or a retired participant, a pension shall be paid for life to a surviving spouse" The initial amount of Mrs. Naseem's monthly pension was approximately \$3,100, and her current monthly pension is about \$4,700. Upon the death of Mr. Naseem, the Bank commenced paying the monthly pension benefits directly to Mrs. Naseem.

4. Mrs. Naseem is currently 69 years old. Her marriage to Mr. Naseem was her second, and she has children from both marriages. A family feud over Mrs. Naseem's pension benefits has developed among the children of her two marriages, particularly between Ms. Farah Ahmad (a daughter from Mrs. Naseem's first marriage) and Ms. Saira Khan (a daughter from Mrs. Naseem's marriage to Mr. Naseem).

5. It appears that in late 2000 this family feud led to guardianship proceedings in respect of Mrs. Naseem. These proceedings were held in Kane County, Illinois, where Mrs. Naseem resided at the time. Mrs. Naseem, on the ground of her alleged disability, filed a petition asking the court in Illinois to name her daughter, Ms. Ahmad, the plenary guardian of her estate and person. In support of that petition, a handwritten physician's report by Dr. Vedak ("Physician's Report") regarding Mrs. Naseem's disability was submitted. The Illinois court entered a guardianship order in January 2001 appointing Ms. Ahmad as the plenary guardian of Mrs. Naseem's person, and Ms. Aida Shekib (the Applicant), as the plenary guardian of Mrs. Naseem's estate. (Ms. Shekib is not related to Mrs. Naseem, but is an accountant for Ms. Ahmad.) The Illinois court order noted that Mrs. Naseem "lacks some but not all of the capacity" as specified in the Illinois Probate Act of 1975. The Bank was

not involved in the guardianship proceedings.

6. In March 2001, the Applicant notified the Benefits Administrator of the Bank by letter that she had been appointed as the guardian of Mrs. Naseem's estate, and requested that future pension payments be deposited directly into the bank account she had opened for Mrs. Naseem. The Bank accordingly commenced depositing the payments into that account.

7. The guardianship order did not, however, end the family quarrel over Mrs. Naseem's pension benefits. In August 2002, Mrs. Naseem traveled to Saudi Arabia to visit relatives. For the purposes of this trip, Ms. Ahmad appointed her half-sister, Ms. Khan, as Mrs. Naseem's short-term guardian for three months beginning 1 August 2002. In September 2002, following Mrs. Naseem's arrival in Saudi Arabia, and continuing for nearly a year thereafter, Mrs. Naseem and Ms. Khan began communicating with the Benefits Administration Unit of the Bank, raising a number of concerns about the guardianship and pension-related matters. In her e-mails of 15 and 17 September 2002 to the Benefits Administration Unit, Ms. Khan complained that: (i) Mrs. Naseem had been "blackmailed" to petition for guardianship by the daughters of her first marriage; and (ii) Mrs. Naseem had not received any money from the Applicant since 1 August 2002, and prior to that "she [had] only received not even 1/5th of the pension each month." Ms. Khan stated that Mrs. Naseem would stay in Saudi Arabia indefinitely, and requested that the Bank send the full pension directly to Mrs. Naseem in Saudi Arabia.

8. In response, in October 2002, the Senior Pension Administration Officer, Ms. Sharada Sundar, spoke to Mrs. Naseem and Ms. Khan over the telephone. The latter informed Ms. Sundar that the Applicant had previously agreed to send Mrs. Naseem a monthly allowance in the amount of \$750. During that conversation, Ms. Sundar requested Mrs. Naseem to write to the Benefits Administration Unit with all of the pertinent details. Mrs. Naseem then sent to Ms. Sundar a two-page, typewritten and signed letter dated 15 October 2002 detailing her concerns. Among other things, Mrs. Naseem wrote that she had submitted to the Kane County, Illinois, proceeding only because Ms. Ahmad had insisted that Mrs. Naseem request that Ms. Ahmad be made her guardian and had threatened that otherwise she would send a brother to jail; that Ms. Ahmad only "wanted to control and run my money" and that she had previously and "forcefully" opened a trust account through which she had improperly disbursed \$24,000 of Mrs. Naseem's money; that Ms. Ahmad had forced Mrs. Naseem to sell the Chicago home in which she and Mr. Naseem had lived, with the sale proceeds being given to another daughter from Mrs. Naseem's first marriage; that Ms. Ahmad restricted and monitored the telephone calls made by Mrs. Naseem; and that

[d]uring this period, my legal financial guardian was paying Farah \$1,000 per month for my upkeep. I thought the amount was a bit too high but I was unable to say anything. [The Applicant], herself, was charging \$400 fee. To me, she was only giving \$500 a month. Later, it was increased to \$700 per month upon my insistence.

...

Since August of 2002, I am residing in Saudi Arabia with Saira Khan I am fed up of courts and guardian in America, therefore, I shall be here, indefinitely. ...

I am capable of running my money myself. ... At this point, I would like to receive full pension so I may maintain my house and look after myself. I have much future travels in my agenda. And, all this requires funds more that [sic] \$750 a month. So, I kindly, request you to look into this matter with serious consideration. ...

In addition to present needs, I would like future protection of my funds as well. I would also like protection from the courts of Kane County. I wouldn't want them to come after me or harm me overseas or ask me to return to America unwillingly. Two daughters from my previous marriage do not want me to receive my pension.

9. In November 2002, Ms. Sundar wrote to Ms. Khan noting that Mrs. Naseem could pursue three options: (i) requesting the Applicant to redirect the entire pension to another account of Mrs. Naseem's choosing; (ii) taking the actions necessary to revoke the guardianship; and (iii) requesting that the pension be suspended

pending resolution of the matter between the parties. It appears that Mrs. Naseem resorted to the first two options without any success. (Specifically, the record indicates that in 2003 and again in 2005, Mrs. Naseem requested the Illinois court to vacate the guardianship order, but the court ultimately denied this request and its judgment was affirmed on jurisdictional grounds in November 2006.)

10. In the meantime, the family quarrel intensified. In June 2003, Ms. Ahmad wrote to Ms. Khan demanding that Mrs. Naseem be returned to the United States immediately, and informing Ms. Khan that the Applicant had been instructed to stop payments to Mrs. Naseem effective 1 July 2003.

11. In response to Ms. Ahmad's letter, Mrs. Naseem wrote on 7 July 2003 to Ms. Sundar requesting that the Bank suspend payment of her pension benefits until further notice. The Benefits Administrator, Mr. Krishnan Nagarajan, in a letter dated 14 July 2003 informed both the Applicant and Mrs. Naseem that the Bank had suspended payment of Mrs. Naseem's pension benefits effective 1 July 2003 until the settlement of their disagreements. This action was taken pursuant to Section 12.2 of the SRP, which allows the Bank to withhold payment of a benefit that is subject to a dispute until the matter is resolved "by the Administration Committee or the World Bank Administrative Tribunal, or settled, whether by agreement, arbitration, or a court with proper jurisdiction over the matter."

12. In August 2003, Mrs. Naseem, unable to reach an agreement with the Applicant, appealed again to the Benefits Administration Unit for an alternative solution that would allow her to receive her pension directly. Specifically, she asked whether the Bank would accept an instrument from another court indicating that she was competent and able to manage her financial affairs. In September 2003, after finding that the parties had made no progress in resolving the dispute, the Benefits Administrator referred the matter to the PBAC for a decision.

13. In October 2003, based on the recommendation of the Benefits Administrator, the PBAC decided that Mrs. Naseem should undergo an Independent Medical Evaluation (IME) to determine her current medical condition, and that the Bank's Health Services Department (HSD) should help identify a doctor in Saudi Arabia to perform the evaluation. In reaching its decision, the PBAC took into account that:

- (i) the wishes of the beneficiary, Mrs. Naseem, should be honored;
- (ii) Mrs. Naseem was not receiving her full benefits, which ran counter to the benefit-inalienability provisions of Section 13.1 of the SRP;
- (iii) Mrs. Naseem intended to remain in Saudi Arabia indefinitely, and keeping the pension suspended would be greatly disadvantageous to her;
- (iv) the guardianship of an estate is generally limited to the borders of that state in which assets are located;
- (v) the guardianship order noted that Mrs. Naseem had some capacity, and that Ms. Sundar had found her seemingly competent; and
- (vi) the application of Section 12.6 of the SRP, which establishes special payment arrangements for disabled pensioners, depended on a finding by the PBAC that Mrs. Naseem was "unable to care for [her] own affairs," but if she were instead able to care for herself, "arguably there would be no basis to continue paying Ms. Shekib."

14. HSD arranged for an IME of Mrs. Naseem in Saudi Arabia by Dr. Fateh Al Alim Abdulrahim of the King Faisal Specialist Hospital and Research Center. Dr. Abdulrahim met with Mrs. Naseem in Riyadh in December 2003 and again in January 2004. He also met separately with Ms. Khan and her husband, and reviewed the Physician's Report filed in 2000 in the Illinois court. Dr. Abdulrahim concluded that Mrs. Naseem "is able to make sound judgment and is capable of managing her financial affairs including receiving her full pension." Dr. Bernard Demure of HSD reviewed Dr. Abdulrahim's report, and in a memorandum to the Bank's

Benefits Administrator affirmed that HSD agreed with the report and its findings.

15. In February 2004, the PBAC, based on the IME report and the recommendation of the Benefits Administrator, decided that the amounts due to Mrs. Naseem during the period of the suspension, and also future payments, should be paid directly to her. The PBAC concluded that Section 12.6 of the SRP did not apply because it could be reasonably concluded that Mrs. Naseem was able to care for her own affairs. Accordingly, the PBAC decided that payments should be made directly to her as the surviving spouse, per the normal practice of the Bank.

16. The decision of the PBAC disappointed both the Applicant and Ms. Ahmad. Ms. Ahmad raised complaints about the PBAC decision with a number of Bank offices, including Human Resources and the Office of the President. She also referred the matter to the Office of the Kane County State's Attorney, who contacted the Bank about the matter. Separately, Ms. Ahmad pursued kidnapping charges against her half-sister, Ms. Khan, and made inquiries with both the U.S. Federal Bureau of Investigation and the U.S. Embassy in Saudi Arabia about having Mrs. Naseem returned to the United States. In response to Ms. Ahmad's letter to the U.S. Embassy in Riyadh, the consular staff met with Mrs. Naseem at the embassy in April 2004. Later, U.S. Consul Charles L. Glatz, Jr., wrote to Ms. Ahmad that "the Embassy has no reason to think that your mother is being held outside the U.S. by your half sister, Ms. Khan. Nor does the Embassy have reason to think that Ms. Naseem is incompetent and cannot decide where and with whom she wishes to reside."

17. Throughout 2005, the Bank, the Applicant and Ms. Ahmad exchanged a number of communications concerning the PBAC decision. The Bank advised the Applicant that the proper body to review that decision was the Administrative Tribunal. On 16 May 2006, the Applicant filed an application with the Tribunal challenging the PBAC's decision to allow pension benefits to be paid directly to Mrs. Naseem, allegedly in disregard of a valid guardianship order in which the Applicant had been appointed the guardian of her estate. The Bank has agreed not to raise jurisdictional objections on the basis of the Applicant's lack of standing or the application's untimeliness.

Contentions of the Parties

The Applicant's Contentions

18. According to the Applicant, the Bank should not disregard the guardianship order of the Illinois court, and should pay Mrs. Naseem's pension benefits to the Applicant as the guardian of Mrs. Naseem's estate. Such an outcome is dictated by the fundamental principle of "full faith and credit" embodied in the U.S. Constitution. If Mrs. Naseem desires to revoke or undo the guardianship order, she should have petitioned the Illinois court, but she had not done so as of the date of the filing of this application. Moreover, the Tribunal should take into account the possibility that Mrs. Naseem was under the influence of Ms. Khan when she requested the Bank to make payments directly to her account in Saudi Arabia, as shown by Ms. Khan's repeated requests to the Bank and the likelihood that she prepared the communications from Mrs. Naseem to the Bank. Finally, the Illinois court appointed the Applicant as the guardian of the estate upon a finding that Mrs. Naseem was unable to handle her financial affairs, and no valid reasons exist for disregarding that guardianship order.

The Bank's Contentions

19. The PBAC's decision to pay directly to Mrs. Naseem the surviving spouse's pension to which she is entitled under the SRP was not an abuse of discretion for the following reasons. This decision is consistent with the Bank's regular practice to pay pension benefits directly to the beneficiary holding the entitlement. It is also consistent with the Bank's Staff Rules. Apart from Section 12.6 of the SRP, whereby special payment arrangements for a retiree or beneficiary can be made if he or she "is unable to care for his [or her] own affairs," general transfers or assignments of pension benefits to third parties are prohibited under Section 13.1 of the SRP. Thus, contends the Bank, although in the present case the payment of Mrs. Naseem's pension benefits to the Applicant might have been justified if there had been sufficient credible evidence of

Mrs. Naseem's incapacity, no such evidence exists. The PBAC's conclusion to that effect was reasonable, as shown by the consistent conclusions of Dr. Abdulrahim in his IME, of HSD, and of the U.S. consular staff at the U.S. Embassy in Riyadh. Absent sufficient credible evidence of inability to handle her own financial affairs, Mrs. Naseem is entitled as the principal beneficiary under the SRP to control the receipt of her pension benefits, and to use the benefits as she sees fit. Nor does the evidence suggest that Mrs. Naseem was manipulated by Ms. Khan for the latter's gain.

20. The Bank acknowledges that in appropriate cases the Bank might pay benefits to a guardian appointed for a disabled pensioner under the laws of the jurisdiction in which the pensioner resides, but only if doing so would be consistent with Section 12.6 of the SRP and the interests of the disabled pensioner. The payments of Mrs. Naseem's pension benefits to the Applicant would not, however, be appropriate in the circumstances of the present case. Moreover, the Bank – because of its immunity from the jurisdiction of national courts – is not obliged to honor local court orders. Even assuming that the Bank had no such immunity, the Applicant would still need to invoke the judicial processes applicable to the enforcement of the Illinois court order in the District of Columbia. The Applicant has never taken such a step. In addition, the Applicant ignores the fact that Mrs. Naseem no longer lives in Illinois, as she now resides in Saudi Arabia. The Applicant has never attempted to enforce the guardianship order in the jurisdiction where Mrs. Naseem resides.

The Intervenor's Contentions

21. According to the Intervenor, Mrs. Naseem, the Tribunal should dismiss the application and uphold the decision of the PBAC. The Tribunal is not bound to give "full faith and credit" to the Illinois court order because the Tribunal has declared that laws of a member state "do not govern the Bank or an organ within it such as the PBAC." Moreover, even if the Tribunal were governed by the laws of the United States, it would not be bound by the Illinois court order. The U.S. Supreme Court, in interpreting the scope of the Full Faith and Credit Clause of the U.S. Constitution, has stated that "a judgment [of a state court] has no constitutional claim to a more conclusive or final effect in the State of the forum than it has in the State where rendered. ... [I]t is clear that the State of the forum has at least as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered." Under U.S. law, state courts may modify or refuse to enforce a guardianship order of another state court if the best interests of the ward or the circumstances so require. Moreover, under U.S. federal law, federal agencies paying federal benefits may make their own determination of a beneficiary's competency, and may choose to pay directly to a beneficiary in disregard of a state court-appointed guardian. Thus, in the present case, even if the PBAC or the Tribunal were bound by the laws of the United States, they would have the power to modify or refuse to enforce the Illinois guardianship order based on the known facts. This conclusion is in any event reinforced by the fact that the Applicant cannot enforce the Illinois guardianship order without invoking the judicial processes applicable in the District of Columbia or in Saudi Arabia, which she has not done.

22. The Intervenor contends, finally, that the standard that the Tribunal is to apply in this case is not determined by the laws of the United States, but by the terms of the SRP. Under the latter, if the PBAC finds that a beneficiary is unable to care for his or her own affairs, it may make payments to any person it deems most appropriate for the beneficiary's welfare. The PBAC has reasonably concluded that Mrs. Naseem was in fact capable of managing her own financial affairs, and that the payment of her pension benefits directly to her would be in her best interests.

Analysis and Conclusions

23. The Tribunal is given authority by Section 10.2(f) of the SRP to hear appeals from decisions of the PBAC. In such an appeal, "[t]he Tribunal may examine: (i) the existence of the facts; (ii) whether the conditions required by the SRP for granting the benefits requested were met or not; (iii) whether the PBAC in taking the decision appealed has correctly interpreted the applicable law; and (iv) whether the requirements of due process have been observed." *Baartz (No. 2)*, Decision No. 265 [2002], para. 22.

24. The principal question for the Tribunal to resolve is whether the PBAC was, as a matter of law, entitled to

make its own determination of Mrs. Naseem's competence to manage her pension moneys, independent of the guardianship order issued in 2001 by the state court of Illinois. The Tribunal will also consider whether there were any substantive or procedural irregularities in the PBAC proceedings and decision as to constitute an abuse of discretion.

25. The Illinois state court order of 11 January 2001 stated, among other things, that Mrs. Naseem "lacks some but not all of the capacity" specified in Illinois statutory law. The state trial court took the view that this finding provided the foundation for the appointment of both a "plenary guardian of the estate" and a "plenary guardian of the person." The Applicant, the guardian of the estate, invokes the U.S. Constitution and asserts that the PBAC was required to give "full faith and credit" to the Illinois guardianship order.

26. Article IV, Section 1, of the U.S. Constitution provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State." Technically, this clause is altogether inapplicable to the case at hand. Designed to eliminate the prospect of repeated and evasive litigation within a nation composed of many states with separate court systems, the clause by its terms applies only when one state in the U.S. is asked to enforce or to ignore the laws or judgments of the courts of another state. Obviously, the World Bank, and the PBAC, are not a "state."

27. Beyond that, there is a more fundamental reason why the Full Faith and Credit Clause is not controlling. The Tribunal recently noted: "The Tribunal ... 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)." *Rodriguez-Sawyer*, Decision No. 330 [2005], para. 14. Otherwise, the Bank's operations could be encumbered by entanglements in the domestic laws and judgments of scores of its member nations.

28. In *Rodriguez-Sawyer*, a case also arising under the Bank's SRP, the question was the effect of a state divorce decree upon a former wife's entitlement to a lump-sum death benefit under her deceased husband's explicit beneficiary designation. Although other family members contended that the state decree granting a divorce to the benefit claimant should be accepted as an implicit revocation of the staff member's beneficiary designation, the Tribunal concluded that PBAC policies of ease of administration and insulation from uncertain and conflicting state laws within the U.S. could reasonably be given priority over the state divorce decree.

29. The situation in the present case is quite similar. A family member is contending that Mrs. Naseem, who would otherwise clearly succeed under the SRP to the pension rights of her deceased husband, should be deprived of the full enjoyment of those rights by virtue of a state-court decree creating a new relationship of guardian and ward. The Tribunal concludes here, as well, that the PBAC has articulated significant substantive policies that favor the designated pension beneficiary, and that it has not abused its discretion in giving those policies higher status than the guardianship order of the Illinois court.

30. The policies implemented by the PBAC decision can be extracted from several provisions of the SRP. Section 4.1 provides: "Upon receipt of proof satisfactory to the Benefits Administrator of the death of a participant or a retired participant, a pension *shall be paid for life to a surviving spouse* or surviving domestic partner if either is entitled to a pension" [Emphasis added.] Section 13.1 of the SRP provides: "No benefit under the Plan shall be subjected in any manner to ... alienation, ... transfer, assignment, ... encumbrance, seizure or charge, and any attempt to do so shall be void." Section 12.6 provides: "If the Administration Committee finds that a retired participant or other person entitled to a pension or other payment is *unable to care for his own affairs*, any payment not claimed by a duly appointed legal representative, may be paid to his spouse, child, parent or another person, as the Committee deems most appropriate for his welfare, or the Committee may make such payment directly for his support and maintenance." [Emphasis added.]

31. These SRP provisions articulate a policy that favors full pension payments to the widow or widower of a deceased staff member; that disfavors the diversion of any part of those payments to another; and that allows

for such diversion only in the extraordinary circumstance of the surviving spouse being “unable to care for his [or her] own affairs.” The PBAC concluded that Mrs. Naseem should be clearly favored under these provisions, and that the Illinois guardianship proceedings of some three years before – especially when viewed in the light of a new and thorough medical examination, and of her *bona fide* relocation to Saudi Arabia – no longer provided a satisfactory basis for depriving her of the SRP benefits to which she would otherwise be entitled.

32. Such treatment of the Illinois judgment is strongly supported by several decisions of U.S. courts which uphold the discretion of various federal agencies to pay benefits to persons who would otherwise be ineligible by virtue of state-court guardianship orders. For example, in *In the Matter of the Guardianship of Blunt*, 358 F. Supp. 2d 882 (D.N.D. 2005), the court applied a federal statute so as to uphold the payment of certain veterans’ benefits to the administrator of a Veterans Home in which the incapacitated veteran was living, rather than to a guardian previously appointed for him by a state court. There was, in effect, no obligation on the part of the federal agency to give that state-court order full faith and credit, and the exercise of discretion not to do so was upheld because it was the product of a fair procedure, was based on evidence, and was not otherwise an abuse of discretion. See also an Illinois case, *Nelson v. Colegrove*, 267 Ill. App. 317 (1932), which also applied the terms of a Veterans’ Act which provided that the federal Veterans’ Administration had discretion whether or not to make payments to a guardian of its own creation rather than to one previously designated in a state-court proceeding. Other federal statutes, such as those regulating Social Security benefits and certain benefits payable to American Indians, also provide for the making of independent determinations by the responsible federal agencies concerning the distribution of benefits to guardians and the like, despite pre-existing guardianship determinations in state courts. See, e.g., *In the Matter of the Will of Mural W. Barnes*, 30 Interior Board of Indian Appeals (IBIA) 7 (1996).

33. It is obvious that in the several cases just mentioned, the Full Faith and Credit Clause does not technically apply, as the decision-making body is not a state court but rather an agency of the federal government. Moreover, the body of law being applied by the federal agency in determining benefit entitlements is federal statutory law, which under the U.S. Constitution has priority over state law and state-court judgments. But these cases nonetheless support the principle that deference to state judicial decrees is not obligatory when there are significant substantive policies to be served as may be articulated by the U.S. Congress and implementing agencies. The Tribunal also believes this to be the case when such policies are articulated by an international organization such as the World Bank for the distribution of pension benefits to its staff members and their survivors.

34. The Tribunal thus rejects the Applicant’s contention that principles of Full Faith and Credit apply when the initial forum is a U.S. state court and the second “forum” is the World Bank and its PBAC.

35. But even if those principles were to apply to the World Bank to the same extent as they do when the second forum is another state court, the PBAC would still be free to make an independent determination that Mrs. Naseem should be directly paid her benefits under the SRP rather than to have those benefits paid to the Applicant as guardian of her estate.

36. The Supreme Court of the United States has consistently stated that “a judgment has no constitutional claim to a more conclusive or final effect in the State of the forum than it has in the State where rendered. ... [I]t is clear that the State of the forum has at least as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered.” *People of State of New York ex rel. Halvey v. Halvey*, 330 U.S. 610 (1947). In that case, in which a Florida state court granted a divorce to a wife along with full custody of her infant son, it was held that a New York court, in a subsequent action brought by the wife, could constitutionally grant visitation rights to the divorced husband because a Florida court reserved the power so to modify its own custody decrees. See also *Ford v. Ford*, 371 U.S. 187 (1962) (under Full Faith and Credit, if the first forum would allow relitigation to take account of changed circumstances and the best interests of the child, so too may the second forum).

37. The highest court of the state of Illinois has also expressly endorsed this view of Full Faith and Credit.

That court, invoking the *Halvey* decision of the Supreme Court, stated in a child-custody case that the second court is at least as free to modify a decree as the first court would be, typically based on changed circumstances or the child's best interests. *People ex rel. Strand v. Harnetiaux*, 46 Ill.2d 424 (1970). Indeed, the highest court in the state of New York has stated: "The full faith and credit clause does not apply to custody decrees," so that the best interests of a child domiciled in the second forum must prevail over principles of comity to a custody judgment in the first forum. *Bachman v. Mejias*, 1 N.Y.2d 575 (1956). Although subsequent legislation has been enacted in almost all states, requiring greater enforcement of extra-state child-custody decrees, that has been a product of special concerns about the kidnapping of children, and their transportation across state lines, by disappointed parents.

38. These protective state statutes not only do not apply in the circumstances of the present case, but they also do not purport to change the constitutional dimensions of the Full Faith and Credit Clause. These dimensions are generally understood to be as flexible in adult custody and guardianship situations as they are in child-custody cases. The Applicant has failed to argue or to prove that Illinois custody decrees are not subject to modification in the face of a change in circumstances or a change in the ward's best interests, and the Illinois decision referred to in the previous paragraph clearly supports quite the opposite conclusion. Accordingly, these decrees are as modifiable in a second forum, even one constrained by the Full Faith and Credit Clause of the U.S. Constitution.

39. The Tribunal concludes, for all the reasons mentioned above, that the PBAC was free to make its own determination whether Mrs. Naseem was competent to manage her business affairs and in particular her pension payments, without treating the Applicant as Mrs. Naseem's guardian to whom those payments must continue to be made.

40. Because the Applicant has rested her case almost totally on the question of law that the Tribunal has resolved in favor of the PBAC, she has said nothing to challenge either the substance of the PBAC's findings and conclusions, or the procedures utilized by the PBAC in making its determination. The Tribunal nonetheless considers it appropriate to make some examination of these matters before rendering a judgment that would affirm the PBAC disposition.

41. In the judgment of the Tribunal, the PBAC clearly did not abuse its discretion when it decided to resume pension payments under the SRP directly to Mrs. Naseem, rather than to pay those benefits to the Applicant as her guardian. The PBAC properly framed the legal question before it as whether, under Section 12.6 of the SRP, Mrs. Naseem was or was not "unable to care for [her] own affairs."

42. The PBAC in its February 2004 decision paid particular attention to the IME report prepared by Dr. Abdulrahim in Riyadh, who had examined Mrs. Naseem in late December 2003 and early January 2004. He had concluded, *inter alia*, that her "current mental state is normal," and that she "has full knowledge about the extent of her bounty, she is able to make sound judgment and is capable of managing her financial affairs including receiving her full pension." On the basis of this report, the Bank's Director, HSD, stated on 5 February 2004 that "HSD agrees with the fact that Ms. Maimona Naseem has a sound mental state and recommends that she be reinstated in her capacity to manage herself her pension." So too, the PBAC concluded that the IME report was "comprehensive and credible" and "thorough and conclusive" on the issue of Mrs. Naseem's competence, and that "the medical evidence does not support a finding of incapacity under Section 12.6."

43. Moreover, although an assessment made by laypersons is normally entitled to less weight than that of a medical professional, the Tribunal notes that Ms. Sundar, Senior Pension Administration Officer, had been in contact with Mrs. Naseem and her daughter Ms. Khan by telephone and in written correspondence on several occasions during late 2002 and early 2003, and that she too had concluded that Mrs. Naseem was "seemingly competent." And in a letter of 20 April 2004 – shortly after a meeting with Mrs. Naseem and her daughter Ms. Khan and two of Mrs. Naseem's grandchildren – Mr. Glatz, a Consul in the U.S. Embassy in Riyadh, Saudi Arabia, wrote to Ms. Ahmad that "[d]espite their lack of professional training to evaluate her, it seems to the Embassy consular staff that Ms. Naseem was performing competently at a physical and mental

level consistent with her 67 years,” and that “[a]t this point, the Embassy has no reason to think that your mother is being held outside the U.S. by your half sister, Ms. Khan. Nor does the Embassy have reason to think that Ms. Naseem is incompetent and cannot decide where and with whom she wishes to reside.” (Although this letter was written after the PBAC proceeding, it seems appropriate to consider it here, given its proximity in time to the pertinent PBAC meeting and given the fact that it was written in direct response to a claim of wrongdoing put forward by Ms. Ahmad, who is in effect united in interest with the Applicant.)

44. The Tribunal also notes that, in its meeting of 11 February 2004, the PBAC gave consideration to the interests of the Applicant as guardian. Among other things, doubt was expressed that her guardianship status “would apply at all in light of Mrs. Naseem’s residency in Saudi Arabia for the indefinite future and the immunity of the pension plan and trust from Illinois law.”

45. The Tribunal concludes that the principal factual finding of the PBAC, i.e., that Mrs. Naseem was “capable of managing her own financial affairs,” was supported by probative and credible evidence and was altogether reasonable.

46. Finally, the procedures utilized by the PBAC in reaching its conclusions were, in the judgment of the Tribunal, fair and thorough. Although the Applicant here contends that Mrs. Naseem was detained in Saudi Arabia against her will by Ms. Khan, with the alleged purpose of inducing the PBAC to deny Full Faith and Credit to the Illinois decree, the Tribunal finds no probative evidence whatever in the record that supports that claim. The Tribunal finds the assessment of Mr. Glatz from the U.S. Embassy, quoted in part just above, to be convincing. Beyond that, the Applicant has made no claim that the PBAC proceeding was irregular, inconsistent with staff rules or the rules of the SRP, or otherwise an abuse of discretion.

Decision

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

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Nassib G. Ziade
Nassib G. Ziade
Executive Secretary

At Washington, DC, 3 February 2007