

ORSELINA, IL 23 AGOSTO 2010

FEDERAL SUPERVISORY AUTHORITY FOR
FOUNDATIONS
LEITER STAMPFLI KURT
INSELGASSE 1
CH-3003 BERNA

Subject: Complaint (Anzeige) 4/64

Dear Sirs,

I am still waiting for any kind of response to my complaints. In this regard, since I am not a jurist, I would like to ask whether a complaint submitted to the Supervisory Authority can be withdrawn at a later stage.

Complaint No. 4 of 64 – August 23, 2010

On February 25, 2007, a private citizen filed a complaint with the Federal Supervisory Authority for Foundations regarding the "sale of a part of the Foundation (parcel No. 1640 RFD of Ascona, 'Casa Shanti')." On April 13, 2007, Bern issued a decision on the complaint, signed by the then Deputy Secretary-General, Mr. Bruno Ferrari Visca.

In reality, the decision was not to examine the substance of the complaint, as stated in point 1: **"1. The complaint of July 12, 2007, will not be considered."** (A rather odd date, considering that the decision was issued on April 13, 2007! [Editor's note]).

However, somewhat paradoxically, the Supervisory Authority at the time **did** in fact address the issue, as indicated in point 2 of the decision:

2. Il Consiglio di fondazione deve modificare lo statuto e stipulare un accordo con il suo presidente sull'usufrutto di «Casa Shanti» per determinati scopi. Tali documenti devono essere inoltrati all'autorità di vigilanza entro la fine del 2007.

(2. The Foundation Council must amend the statute and enter into an agreement with its president regarding the usufruct of *Casa Shanti* for specific purposes. These documents must be submitted to the supervisory authority by the end of 2007.)

Additionally, the Municipality of Ascona, in a letter dated January 30, 2007, requested the establishment of a protective measure in favor of the Eranos Foundation, specifically through the registration of a right of preemption in favor of the Foundation, after the signing of the sales contract (see Complaint 3/64).

The same Foundation, in a letter dated February 14, 2007, and signed by its president, John van Praag, decided and assured that:

"The decision to sell not to third parties but to a person close to the Foundation (the president's wife, who is herself a member of the Eranos Foundation Board) was made by the Council to keep the property within the scope of Eranos' use and objectives."

Additionally, it stated:

"Furthermore, the Municipality should commit to keeping the property available for the Foundation and covering the renovation costs, just like the current buyer," in case the Municipality accepted to repurchase *Casa Shanti* from the van Praag couple.

None of the requirements set by the authorities for the Foundation were implemented (it is troubling that these requests were made to the Foundation and not to the new owner of the property, the president's wife, van Praag. Why was the new ownership identified with the Foundation?). Moreover, none of the Foundation's promises were registered against the parcel in question (which were made by its president on behalf of Ms. Liaping Fok, married van Praag, who was herself a member of the Eranos Foundation Board).

The signatory of this complaint had repeatedly brought this situation to the attention of various recipients. However, at the time, no positive outcome was achieved in favor of the Foundation. The property remained in the buyer's possession without any restrictions registered in favor of the Foundation.

At this point, I do not intend to reopen the matter that a similar amount of money (or even more), the proceeds from the sale of *Casa Shanti*, had previously been promised by the East West Foundation, as stated in the letter dated February 15, 2004, signed by Attorney Bergonzoli and addressed to the sole administrator, Ms. Danioth:

"For this purpose, the Council of the East West Foundation is preparing a cultural project that can materialize those synergies which, in the view of the East West Foundation, can be activated between the two Foundations to enhance their respective activities aimed at common cultural objectives."

"Not least, these collaboration projects, considering the intention to relaunch at an international level the cultural objectives deemed to be common, must also take financial aspects into account."

It is significant that the East West Foundation was certain of being culturally and historically comparable to the Eranos Foundation, of being able to develop cultural synergies with it, and of sharing common cultural objectives. But what exactly is the East West Foundation, and what has it concretely achieved since its founding in 2004?

A Google search returns only 40 results, almost all of them related to the Foundation's address or legal name. Therefore, it was certainly not chosen to manage the Eranos Foundation for its cultural strength. Instead, its selection was based on its ambitious promises to provide substantial financial resources to the Eranos Foundation.

This is evident from the fact that three out of the five members of the Eranos Foundation Board were—and still are, according to the commercial register—also members of the East West Foundation Board. This amounts to a full-fledged **takeover**, which even received the approval of the highest Ticino cantonal authorities involved.

In fact, it was the Canton of Ticino, the Municipality of Ascona, and Banca Stato that enabled the rescue of the Eranos Foundation and the payment of mortgage interest and current operating expenses. To find new financial resources that would allow for the implementation of a certain cultural policy desired and proposed by the East West Foundation, someone within the Foundation Board (see complaint number 3/64 of August 17, 2010) came up with the idea of selling *Casa Shanti* to Ms. Liaping Fok, married van Praag (see complaints 1/64, 2/64, 3/64).

When I became aware of the sale, I first requested and obtained a meeting with the Foundation's president and board member Claudio Metzger. Then, I reported the matter to the then-head of the Federal Foundation Supervisory Authority, Attorney Bruno Ferrari-Visca, both by phone and by email (see attachment dated March 15, 2007), pointing out the concrete possibility that the sale violated Article 3.3 of the cantonal law implementing the LAFE.

Unfortunately, the Supervisory Authority did not follow up on my report/complaint. It took no concrete action to verify the legality of the real estate transaction under LAFE conditions.

Thus, on March 15, 2007, I had reported by email (later attached, as the only response received from the Supervisory Authority) that the cantonal law implementing the LAFE, in Article 3, point 3, states that permission for the sale of property to foreign persons not domiciled in Switzerland must be denied if the property, including a house, **"had to be vacated by a person domiciled in Switzerland who had rented it as their primary residence, due to a termination notice given by the landlord within the three years preceding the application for authorization."**

"Must be denied" is an imperative—there can be no negotiation or compromise. As stated in my email, the termination notice was given to me by the then-sole administrator on January 27, 2004. Therefore, the LAFE authorization was requested by the current administrators **before** the three-year period required by law had passed. The sale of parcel no. 1640 RFD of Ascona (*Casa Shanti*) took place on January 29, 2007. I contested the termination, and a hearing before the conciliation office for tenancy matters was indeed held.

I would also add that any statement made by the Municipality of Ascona allowing the sale would be invalidated by the fact that the then-mayor, Mr. Rampazzi, was fully aware that I had rented *Casa Shanti* as my primary residence (letterhead, meetings, etc.). Furthermore, the entire Eranos Foundation Board, the secretary, and even the legal representative were all aware of this fact.

I am attaching the letter from Attorney Fritz Schiesser dated February 24, 2004, to illustrate the climate in which the Foundation operated during those years:

"... I will instruct our lawyer in Ticino to safeguard the interests of the Foundation, not only regarding the tenancy agreement. The matter could then take on a larger scope."

Pressure exerted in the spirit of the law on real estate leases... by a member of parliament in Bern... Pressure without specifying what my further serious shortcomings would have been (and never were), apart from the fact that I did not want to leave the apartment... After all, as I had suspected, the apartment in question was not subsequently made available, as specified in the letter, to institutions, universities, etc., for cultural purposes, but rather to the daughter of Eranos' secretary, Mrs. Gisella Binda...

But perhaps the original intentions were, in fact, different... Paraphrasing the old popular saying: *"Out of sight, out of knowledge."*

I kindly ask the Supervisory Authority to decide and take a position on the following questions:

1. Why did the then head of the Supervisory Authority take no steps to verify a possible violation of the Cantonal Law on the Application of LAFE in the sale of *Casa Shanti*?
2. Can he be held responsible for failure to act in his duties?
3. Who would be liable for damages?
4. Does the Supervisory Authority now intend to take the necessary steps—through the LAFE appeal commissions (both cantonal and federal) or the ordinary court—to verify whether LAFE was violated and, consequently, whether the sale should be annulled?

I would like to point out that if the sale were annulled, the new owner would have to return the property in the condition it was at the time of purchase or leave it in its current state without any financial compensation.

I remain available to provide any further elements for evaluation, as well as additional documents not included with this complaint—such as my letter of dispute regarding the eviction to the rental conciliation office.

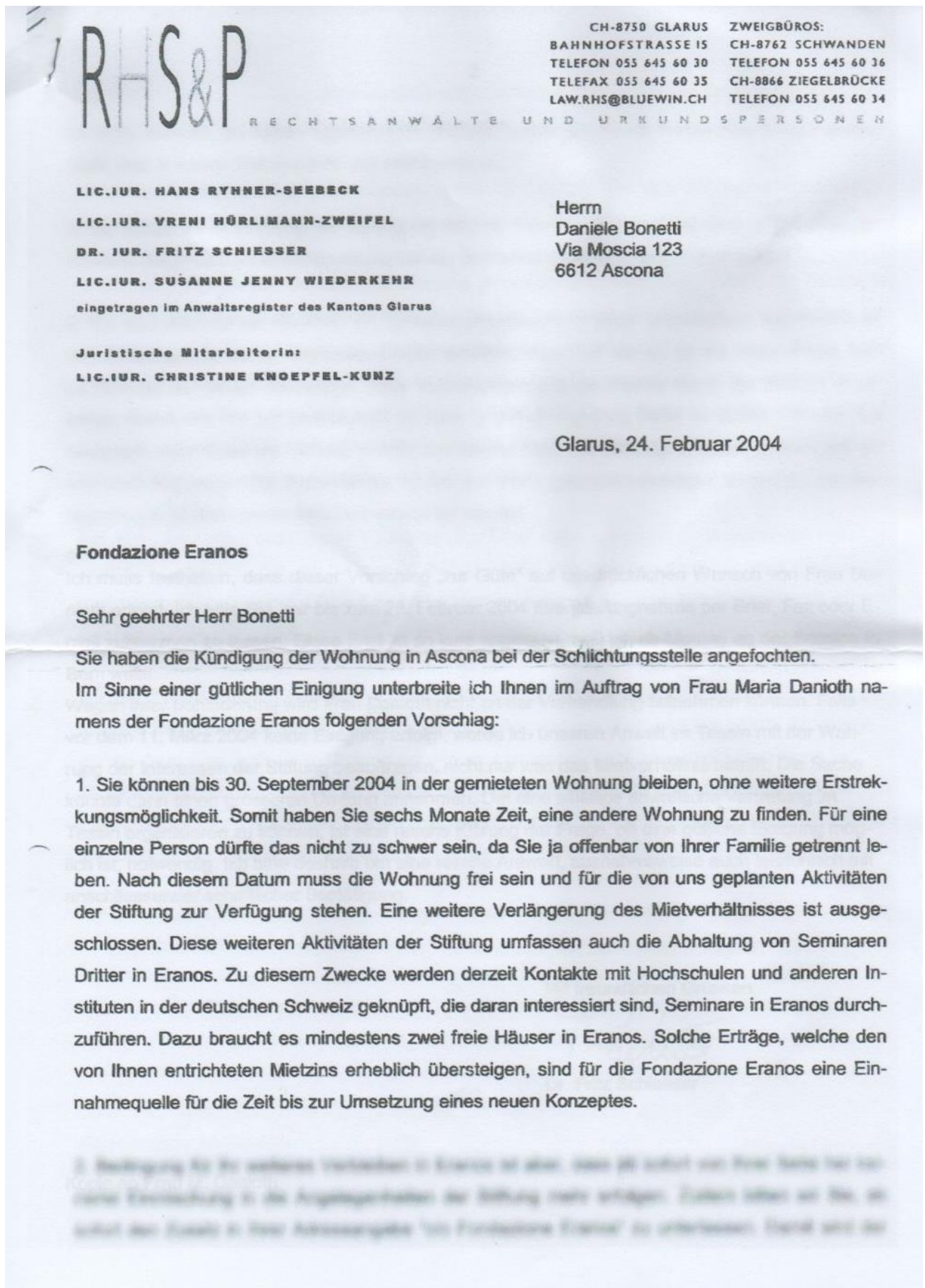
With the utmost respect and best regards,

Bonetti Daniele

Attached:

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- copy of letter Dr. Fritz Schiesser, lawyer of the Foundation and of Mrs. Danioth



Einstimmig anerkannt, die letzten irgendwelche offizielle Funktionen für die Fondazione Enrico Danioth über, was in keiner Weise zutrifft und irrelevant ist.

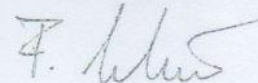
3. Sie ziehen die Aufhebung der Kündigung vom 18. Februar 2004 und das darin enthaltene ge-
kündigte Begehren um Mietvermehrung bei der Sachverhaltsgestaltung unternommen.

4. Sie sind offenbar der Ansicht der Domäne „Fondazione Enrico“ und besitzen die Rechte an der Hommage. Bevor wir rechtliche Schritte einleiten, fragen wir Sie an, ob Sie bereit wären, bei-
de Einträge auf dieser Hommage mehr vorzunehmen und die Rechte daran der Stiftung abzu-
treten. Damit und mit der Bereitschaft, zu einer gütlichen Einigung bereit zu sein, können Sie
bestimmen, dass Ihnen die Stiftung verbleibt um Herrens Hof. Die Stiftung ist bereit, Ihnen dafür ei-
nen nach festzulegenden Kriterien für die von Ihnen gestellten Auslagen zu zahlen. Der Be-
trag würde mit dem ersten Maljahr verrechnet werden.

Ich muss festhalten, dass dieser Vorschlag „zur Güte“ auf ausdrücklichen Wunsch von Frau Da-
nioth erfolgt. Ich bitte Sie, mir bis zum 28. Februar 2004 Ihre Stellungnahme per Brief, Fax oder E-
mail zukommen zu lassen. Diese Frist ist so kurz angesetzt, weil ich ab Montag an der Session in
Bern weile.

Wegen ihrer Behinderung wird Frau Danioth nicht an der Verhandlung teilnehmen können. Falls
vor dem 11. März 2004 keine Einigung erfolgt, werde ich unseren Anwalt im Tessin mit der Wah-
rung der Interessen der Stiftung beauftragen, nicht nur was das Mietverhältnis betrifft. Die Sache
könnte dann einen grösseren Umfang annehmen. Um eine allfällige anwaltliche Vertretung im
Tessin organisieren zu können, ist eine rasche Klärung der Frage, ob eine gütliche Einigung mög-
lich ist, notwendig. Ich bitte deshalb um eine rasche Antwort, ausnahmsweise auch telefonisch mit
anschliessender schriftlicher Bestätigung.

Mit freundlichen Grüssen



Dr. Fritz Schiesser

Kopie an Frau M. Danioth