

THE APPEALS PANEL

Established under an Agreement dated 16th October, 2002 made by and among the Foundation “Remembrance, Responsibility, and Future”, the International Commission on Holocaust Era Insurance Claims, and the [REDACTED]

THE APPEALS OFFICE, PO BOX 18230, LONDON EC1N 2XA, UNITED KINGDOM

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Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]

CLAIM NUMBER: [REDACTED]

BETWEEN

[REDACTED]

APPELLANT

AND

[REDACTED]

RESPONDENT

PANEL DECISION

The Appeals Panel makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW and enters the following decision pursuant to section 10 of the Appeal Guidelines:

BACKGROUND

1. The Appellant is [REDACTED], née [REDACTED] (later [REDACTED]), born on [REDACTED] 1925 in Nuremberg (Germany). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1887 and declared dead on 31st December 1945. He was persecuted and deported in November 1941 to an unknown place. [REDACTED] was born on [REDACTED] 1903 in Nuremberg and died on 8th October 1990 in New York.

After her first marriage, which ended by divorce, [REDACTED] married in 1941 [REDACTED], who was born on [REDACTED] 1894 in Memmingen or Altenstadt and died on 16th September 1978 in New York.

The Appellant's grandmother is [REDACTED], née [REDACTED], who was born on [REDACTED] 1872 in Nuremberg and died in 1939 or 1940 in a Jewish hospital in Nuremberg. The Appellant's mother had a brother, [REDACTED], who was born in 1900 and died in a concentration camp at an unknown time.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim on a “*European Insurance Company Claim Form*” issued by the Holocaust Claims Processing Office (HCPO) in New York and filled a “*Declaration of Consent*” issued by the International Commission on Holocaust Era Insurance Claims (ICHEIC). This form was incomplete or incompletely forwarded by the HCPO in that pages 2, 4, 5 and 6 out of seven pages were missing. Page 3 was sent five times and contained information about the following insured persons: [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Neither the “*HCPO form*” nor the “*ICHEIC declaration*” was signed or dated. The “*ICHEIC declaration*” has two dates, which were added with a rubber stamp (“*JAN 27 2000*” and “*04 APR 2000*”).
4. The ICHEIC submitted the claims to the Member Companies as unnamed claims.
5. In a letter dated 5th February 2001 [REDACTED] informed the Appellant that it had checked its central register on the basis of the five names quoted above (paragraph 3) and the Appellant's name and continued “*we regret, no entries exist in the register for yourself, Mr. [REDACTED] and Mrs. [REDACTED]. ... Our central register contains an entry for ... Mrs. [REDACTED], Mr [REDACTED] and Mr. [REDACTED]. This means that all three of them applied for life insurance coverage with [REDACTED]. Based on the application numbers we have searched for corresponding files in our archives. Unfortunately, no such files exist. ... The documents we have researched reveal no evidence for the existence of an open claim. Please rest assured that despite this fact, we will continue our research*”.
6. In its decision letter dated 7th February 2003 [REDACTED] informed the Appellant of the results of its further research, which were that documents of the “*Oberfinanzdirektion München – Landesentschädigungsamt*” (Compensation authority) revealed that the life insurance policy of Mr. [REDACTED] had been compensated in the course of compensation proceedings, whereas no compensation payment was awarded for the insurance contracts of [REDACTED] and [REDACTED], née [REDACTED]. The reason for this was that one policy ([REDACTED]) had expired in 1925; the second policy with the application number [REDACTED] was not compensated in a compensation procedure because “*despite demand – no particulars were made concerning the data of the life insurance contracts*”. [REDACTED] ended its letter writing, “*We hope you will understand that we cannot comply with your wish for further settlement*”.
7. The Appellant submitted an appeal to the Appeals Office dated 20th March 2003, which was accompanied by an attachment setting out the reasons for the appeal.
8. The Appeal Form received from the Appellant was an incorrect Appeal Form in that it did not contain a declaration of consent to the adjudication of the appeal by way of arbitration in Geneva Switzerland under Swiss federal law, a declaration of being bound to the Agreement Concerning Holocaust Era Insurance Claims dated 16th October 2002 made by and among the Foundation “*Remembrance, Responsibility and the Future*”, the ICHEIC and the [REDACTED] and to the Appeal Guidelines, a declaration waiving any right to appeal

such decision as provided in the Appeal Guidelines and in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law and a declaration waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.

9. The Appeals Office requested the Appellant by letter dated 24th July 2003 to sign an amended Appeal Form.
10. On 2nd October 2003 the Appeals Office received the new Appeal Form, which is dated 9th August 2003 and mailed a copy to the Respondent.
11. [REDACTED] responded in a letter dated 29th October 2003 and requested the Appeals Panel for an extension of time of four weeks because it wished to submit several further documents.
12. By letter dated 31st October 2003 the Appeals Office informed [REDACTED] that the Appeals Panel extended the timeline until 28th November 2003.
13. On 10th December 2003 the Appeals Office informed both parties that the appeal would be on a “*documents only*” basis unless it received notification from either party requesting an oral hearing within 14 days of the date after receipt of this letter.
14. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
15. In a letter dated 23rd January 2004 [REDACTED] submitted the promised further documents and asked the Appeals Panel for the reasons it had previously set out to “*reject the appeal submitted with respect to this claim and to confirm our decision on it*”. The Appeals Office forwarded a copy of this letter plus attachments to the Appellant on 26th January 2004.
16. The Appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002 made by and among the Foundation “Remembrance, Responsibility and the Future”, the ICHEIC and the [REDACTED] and its Annexes, including, but not limited to Annex E, the Appeal Guidelines.

The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

THE CLAIM

17. The Appellant has submitted the following information in relation to the claim for the proceeds of life insurance policies.
 - a) In the Claim Form she provides five copies of page 3 concerning ‘*insured information*’ and names the following persons:
 - 1) [REDACTED], born on 23rd April 1894 – her step-father
 - 2) [REDACTED] (prior [REDACTED]), born on 26th April 1903 - her mother
 - 3) [REDACTED], born on 1st September 1872 – her mother’s mother
 - 4) [REDACTED], born 1900 – her mother’s brother

- 5) [REDACTED]– her father
- b) In answer to question 7 concerning ‘basis for belief that a policy was not paid’ the Appellant writes, *“I firmly believe that the parties listed in claimant information of which there are five persons shown. I am the only person rightfully entitled to the proceeds from these policies. I am the only living survivor.”*
- c) No specific details concerning the policies were given and the Appellant did not identify a specific insurance company as having issued insurance policies.
18. The Appellant asserts in her ‘old’ Appeal Form *“I noticed in your letter of 02/07/03 you mentioned [REDACTED] and [REDACTED]. Please take note that my mother [REDACTED] was divorced from [REDACTED] and was married in the U.S to [REDACTED]. However, prior to leaving Germany my mother [REDACTED] had her own insurance policy in Nuremberg. Therefore, your records would reflect her name as [REDACTED], geborene [REDACTED].”* In her ‘new’ Appeal Form the Appellant writes, *“my mother had insurance but I do not know the name of the company. My mother’s name was [REDACTED]. She married again in 1941 and her name became [REDACTED].”*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

19. [REDACTED] disclosed in its final decision letter dated 7th February 2003 the following *“Zentralregister (ZRG)”* (central register) entries:
- a) ZRG entry no. [REDACTED] for [REDACTED] – the Appellant’s stepfather - , born on [REDACTED] 1894.
- b) ZRG entry [REDACTED] for [REDACTED] born [REDACTED] 1887 (from the entry card the number [REDACTED] has been crossed through and has been replaced by [REDACTED]).
- c) ZRG entry [REDACTED] for [REDACTED] née [REDACTED], born [REDACTED] 1903.
20. Further, [REDACTED] gives the following information in its letter of 7th February 2003:
- a) Policy [REDACTED]
With respect to life insurance policy [REDACTED] for [REDACTED] – the Appellant’s stepfather – it writes *“According to documents of the compensation authority (enclosure 4) Mr [REDACTED] had concluded a life insurance with us, commencing on 01.04.1929 with a sum insured of RM 20,000 and an insurance term of 21 years. It was supposed that the premium payment was made until 31.03.1935. The surrender value as of 01.04.1935 was RM 3555. It could not be ascertained when and to whom the surrender value was paid out. Within the framework of the German State compensation procedure, Mr [REDACTED] received a compensation payment*

in the amount of DM 2115.70 for the losses from the life insurance contract concluded with [REDACTED] due to persecution (enclosure 5). The purpose of the compensation was to act towards Mr [REDACTED] as if no such loss from the life insurance had occurred. Since the contract file had been destroyed the specifications of the claimant formed the basis of the calculation of indemnity.”

b) Policy [REDACTED]

Regarding policy [REDACTED] for [REDACTED] and [REDACTED], née [REDACTED], it writes: *“Starting from the documents of the compensation authority we know that you applied for compensation in the framework of compensation proceedings. ... The number [REDACTED] appears both on the entry of Mr [REDACTED] and Mrs [REDACTED]. We therefore know that only one application was made with regard to the last-mentioned number. In the course of the compensation procedures your demand concerning the life insurance contracts in question was rejected legally binding by the Compensation authority ‘Oberfinanzdirektion München – Landesentschädigungsamt’, notification of 19.09.1967 (enclosure 7). The reason for the denial was that – despite demand (enclosure 8) no particulars were made concerning the data of the life insurance contracts”.*

21. [REDACTED] makes further comments in its letter of 23rd January 2004 with respect to policy number [REDACTED]. In this letter [REDACTED] writes, *“in order to exclude all possibility of doubt with regard to the aforesaid information of the Oberfinanzdirektion München we required the forwarding of the complete decision concerning the claim of Mrs [REDACTED] as heir of her father Mr [REDACTED]. On top of page 3 of this decision (which is marked with ‘2’) it states that all the claims enumerated on the preceding page of the decision and thus including the loss of economic advancement are to be declined as no further information was provided (attachment 2, page 3, on top). The enumeration on the preceding page (Attachment 2, page 2, on bottom) is accompanied by remarks in handwriting referring to the pages of the original file. Page 29 refers to the notice of our company to the ‘Bayerisches Landesentschädigungsamt’ (cf. Attachment 1, Enclosure 6, top right in handwriting) in which Mrs [REDACTED] was asked via the compensation authority to complete the particulars required to enable our company to make a calculation with regard to the policy. This request was then forwarded to the lawyer of Mrs [REDACTED], Mr [REDACTED] (Attachment 1, Enclosure 8). All this correspondence is headed by the reference number of the declining decision of the compensation authority ([REDACTED]). We therefore know that the policy in question ([REDACTED]) was covered by the decline of the compensation authority. Again, according to section 2.4 of the ICHEIC Valuation Guidelines no award can be offered.”*

22. The following documents were sent by the Respondent in addition to the final decision letter:

a) A letter from [REDACTED] to the Compensation authority of Bavaria dated 29th September 1964. This letter references life insurance policy [REDACTED]. The policyholder and insured person are identified as [REDACTED]. The date of issue is

given as 1st April 1929 and the date of maturity as 1st April 1950. The insured sum is given as RM 20,000. It is stated that premiums were paid until 31st March 1935 and that redemption value was paid. [REDACTED] could not establish when and to whom the redemption value of RM 3555 was paid. [REDACTED] calculates compensation as being DM 1,090.90 [File number: [REDACTED]].

- b) A hand-written document concerning life insurance policy [REDACTED]. This document calculates the total compensation due for this policy (DM 2115.70) and uses the basic figure of DM 1,090.90 provided by [REDACTED]. [File number [REDACTED]].
- c) A settlement from the Bavarian compensation authorities, dated 29th October 1964, which states that compensation of DM 2,115.70 is to be paid to [REDACTED] for loss of “*financial betterment, policy losses, other than social security*”. This document does not specifically refer to policy no. [REDACTED] and is stamped with the word ‘draft’. On the second page is a handwritten comment stating that the amount is to be transferred to the [REDACTED] in New York. [File number [REDACTED]].
- d) A letter dated 14th August 1964 from [REDACTED] to the Bavarian Compensation authorities referencing policy no. [REDACTED] of [REDACTED] – the Appellant’s father. This document states: “*we have tried to reconstruct the policy details; but we have been unable to do so, despite all our efforts. We would therefore be grateful if you would inform us what technical data should be used in estimating under § 128 BEG.*” There is a note with regards to policy no. [REDACTED] which states, “*from our further research, however, we found in our records that this was terminated as early as 1925, so that the requirements for claiming compensation under the Federal compensation law may not apply to start with. We do not therefore believe any further enquiries are necessary in respect of this policy.*” [File number [REDACTED]].
- e) A letter from the Oberfinanzdirektion München dated 7th October 2002 states that all applications for compensation by [REDACTED], as the heir of [REDACTED], with the exception of liability losses were rejected in the ‘Bescheid’ of 19th September 1967 because of lack of account/evidence.
- f) A letter from the compensation authority to [REDACTED]’s representative, Dr [REDACTED], dated 25th August 1964 confirms that investigations revealed two life insurance policies concluded with [REDACTED] by [REDACTED]. Dr [REDACTED] is informed that one of these policies was terminated in 1925 and therefore there is no right to compensation. As far as the second policy is concerned it is stated that the insurance company requires various details in order to reconstruct the terms because of the lack of documentation. An answer to the enclosed letter from the insurance company is requested by 30th November 1964 at the latest. [File number [REDACTED]].
- g) A copy of a ‘Bescheid’ (decision) dated 19th September 1967. The application for compensation made by [REDACTED], née [REDACTED], was dismissed. There is no specific reference to any life insurance policies in this ruling. [File number [REDACTED]].

THE ISSUES FOR DETERMINATION

- 23. There is no doubt that the Appellant’s parents and her stepfather had insurance policies with [REDACTED], that the Appellant as heir of her parents and her stepfather could be entitled

to the proceeds of these policies and that all family members were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement dated 16th October 2002. But the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. According to Section 17.3 Appeal Guidelines the Appellant is not entitled to payment from the Foundation funds if;

“17.3.1 the policy was cancelled before the insured event occurred and before the beginning of the Holocaust in the relevant country, in accordance with Section 7.5.1 of the Valuation Guidelines.

17.3.4 the policy (or policies) in question are considered to have been covered by a decision of a German restitution or compensation authority in accordance with Section 2 (1) (c) of the Agreement.”

24. As far as policy [REDACTED] of [REDACTED] is concerned this policy had expired in 1925 and thus before the start of the Holocaust Era as defined in the Agreement (see 7.5.1. of the Valuation Guidelines in connection with Schedule 1 “*Germany (i) Start of Holocaust Era/NS persecution*”, which was in Germany in 1933). This is proved by the note at the end of the letter dated 14th August 1964, which states, “*From our further research, however, we found in our records that this was terminated as early as 1925, ...*”.

25. As far as policy [REDACTED] of [REDACTED] and [REDACTED], née [REDACTED], is concerned this policy is covered by a decision of the Bayerische Landesentschädigungsamt (the Bavarian restitution authority) dated 19th September 1967. Even if the above named policy is not specifically named in this decision it becomes clear from other documents provided by the Respondent that this decision also covers insurance policy [REDACTED]. On top of page 3 of this decision (which is marked with page number “-2-“) it is stated that all the claims enumerated on the preceding page of the decision – and thus including the loss of economic achievement – are to be declined as no further information was provided within the timeline given by § 190a para.1 BEG (Bundesentschädigungsgesetz). The enumeration on the preceding page [with the caption “*Sachverhalt und Entscheidungsgründe*” (Facts of the case and grounds for the decision)] at the bottom is accompanied by remarks in handwriting referring to the pages of the original file. Page “29”, which is one of the pages mentioned there, refers to the notice of [REDACTED] to the Bayerische Landesentschädigungsamt dated 14th August 1964, which is marked as “*enclosure 6*” of the letter from the Respondent dated 23rd January 2004. This letter is marked in handwriting with a “29” at the top on the right hand side and refers to policy number [REDACTED]. The application number on this letter is “[REDACTED]”, which also appears on a letter dated 25th August 1964 written by the Landesentschädigungsamt to the lawyer Dr. jur. [REDACTED] in New York, in which he is asked for further details on the insurance policy (“*enclosure 8*” of the letter from the Respondent dated 23rd January 2004). Finally, this application number also appears on the decision dated 19th September 1967 (“*attachment 2*” of the letter from the Respondent dated 23rd January 2004). All of this documentation established that the decision dated 19th September 1967 also covers the life insurance policy [REDACTED].

Where policies are covered by decision of a German restitution or compensation authority a claim is not eligible for compensation under the Agreement [Section 2 (1) (c)].

As far as policy number [REDACTED] of [REDACTED] is concerned this policy is also covered by a decision of the Bayerische Landesentschädigungsamt dated 23rd / 29th October 1964 (“*attachment 1, enclosure 5*” of the letter from the Respondent dated 23rd January 2004) for the reasons set forth above.

Appellant: [REDACTED] Appeal Number : [REDACTED] Claim Number: [REDACTED]

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 16th day of March 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member