

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 NUMBERS: [REDACTED]; [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] (previously [REDACTED]), born on [REDACTED] 1929 in Frankfurt am Main (Germany). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1899 in Bittenhausen/Württemberg (Germany) and died on 11th November 1957 in Brooklyn, New York; [REDACTED] was born in 1899 in Haigerloch/Württemberg (Germany) and perished in the Minsk ghetto in 1942. [REDACTED], who was a store manager in Frankfurt

am Main was incarcerated in Dachau (Germany) and deported to the Minsk ghetto in 1937 and from there to the Bergen-Belsen concentration camp.

2. The Respondent is [REDACTED].
3. The Appellant submitted a ‘*European Insurance Company Claim Form*’ to the Holocaust Claims Processing Office (HCPO), which forwarded a copy to the International Commission on Holocaust Era Insurance Claims (ICHEIC). He further signed a ‘*Declaration of Consent*’ on an ICHEIC form dated 12th and 27th January 2000.
4. The ICHEIC registered this claim giving it claim numbers [REDACTED], [REDACTED] and [REDACTED] and submitted it as follows:
 - a) Number [REDACTED]
To [REDACTED] as the company the Appellant named in its claim form and which ICHEIC believed responsible for policies issued by “[REDACTED]”; it so informed the Appellant in a letter dated 1st March 2000.
 - b) Number [REDACTED]
To the [REDACTED], the [REDACTED] (asking at the same time for further information about the [REDACTED], an entity the Appellant named also in its claim form) and so informed the Appellant in a letter dated 1st March 2000.
 - c) Number [REDACTED]
This claim was not submitted to an insurance company. In a letter dated 22nd January 2001 the ICHEIC informed the Appellant: *“It appears from the information you provided in your claim form that there has been a previous application for compensation for the attached policy through the BEG (the Bundesentschädigungsgesetz – the German government compensation programme). In accordance with the Commission’s guidelines, claims that were subject to the BEG cannot be resubmitted through the Commission’s claim process ... We regret that we are therefore unable to process your claim”*.
5. There are various copies of documents on these three files (for details see paragraph 20), which most probably were provided by the Appellant. However, the exact sources of these documents are unclear.
6. [REDACTED] (claim number [REDACTED]) checked its registers on the basis of the above (paragraph 1) given names and data and informed the Appellant in a letter dated 7th July 2000 that it had found no reference to his mother’s or his name. However, it found a document concerning the Appellant’s father and informed the Appellant that further research would be done.
7. In a further letter dated 5th September 2000 [REDACTED] summarized the results of its research and concluded: *“As we learned from a letter dated 26th January 1968 the Compensation Office in Wiesbaden determined the loss of the life insurance too small (less than 50 German Marks) to pay compensation for it. They referred to Paragraph 64 BEG. Therefore, the compensation proceeding was properly completed. A claim against our company does not exist”*.
8. The Respondent informed the Appellant in a letter dated 4th March 2003 – referring to claim number [REDACTED] - that the ICHEIC *“has forwarded your inquire concerning a life insurance contract concluded prior to 1945 to us because [REDACTED] has been taken over by [REDACTED]. ... Our colleagues at [REDACTED] informed you already with letter dated July 07, 2000 that there are no references for life insurance policies for your*

mother and for yourself. However, your father did indeed take out a life contract with us. You were informed with the letter dated September 05, 2000 that a compensation proceeding took place. The request for compensation was denied on the grounds that the loss of the life insurance was too small to pay compensation for it. Our intent is – in accordance with the guidelines of the International Commission – to compensate life insurance claims, which have remained unsettled so far. However, this does not apply to Mr [REDACTED]’s life insurance, as the policy was part of compensation proceedings. We hope you will understand that we cannot comply with your wish for further settlement”.

9. [REDACTED] (claim number [REDACTED]) informed the ICHEIC in a letter dated 10th March 2000 that it is sorry *“having to say we are unable to find any data about the company “[REDACTED]” in our archive file”*. [REDACTED] advised to refer to the *“Bundesaufsichtsamt für das Versicherungswesen (BAV)”* (the German Federal Insurance Authority).
10. As the *“Bundesaufsichtsamt für das Versicherungswesen (BAV)”* did not respond to a letter dated 15th March 2000, which had been sent to this authority, the ICHEIC did further research and discovered by calling the Appellant on 13th November 2001 that the *“[REDACTED]”* is not an insurance company but a veterans association. After being so informed, the claim was referred to the Member Companies and treated as an unnamed claim.
11. The Appellant submitted an appeal, which was not dated and which the Appeals Office received, via a Dutch post box where dates of receipt are not noted, between March and July 2003. The Appellant had filled in the box *‘your claim number’* with *“NR[REDACTED]”* and indicated that the company that issued the decision was *“[REDACTED] + [REDACTED]”* and the date of the decision *“11. Oct.1966”*.
12. 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.
13. The Appeals Office requested the Appellant by letter dated 24th July 2003 to sign an amended Appeal Form.

On 18th September 2003 the Appeals Office received the new Appeal Form, which is dated 7th August 2003 and mailed a copy to the Respondent on 4th November 2003.
14. [REDACTED] responded in a letter dated 28th November 2003 and requested the Appeals Panel for reasons it had set out before to *“reject the appeal submitted with respect to this claim and to confirm our decision on it”*.
15. On 11th December 2003 the Appeals Office informed both parties that the appeal will 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.

16. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
17. 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

18. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
- a) In the claim form the Appellant identifies [REDACTED], his father, born in [REDACTED] 1899, as the ‘*insured*’.
 - b) The beneficiary is identified as the ‘*claimant*’.
 - c) Further information concerning the Appellant’s family is given in a letter written by the State of New York – Banking Department - , in which it is stated, “*Mr [REDACTED]’s father, [REDACTED], was born in Bittenhausen, Germany (June 29, 1899). Before the war, [REDACTED] was a department store manager in Frankfurt am Main, Germany. He was incarcerated in Dachau in 1937 and deported to Minsk ghetto and from there to Bergen-Belsen. [REDACTED] died in 1957 in Brooklyn, New York.*”
 - d) In answer to question 5, of the HCPO claim form concerning ‘known facts about insurance policy (ies), two names are written, ‘[REDACTED]’ and ‘[REDACTED]’.
 - e) In answer to question 6, regarding ‘*basis for your claim on the policy(ies) listed above*’ the Appellant writes, “*the claim is 10.000 Mark. They refused to pay that amount and only paid very little of the above claiming he did not pay anymore when he was in a concentration camps he could not since he was in Death Camps and the Germans took everything we owned and we had no money in the camps*”.
 - f) In answer to question 7, regarding ‘*basis for belief that a policy was not paid*’, the Appellant writes, “*They lied. We could not pay in more since we all were put in 1941 in to the ghetto in Minsk and in concentration camp till 1945*”.
19. In his reasons for appeal the Appellant writes, “*this insurance was paid up to my father was put into concentration camp DACHAU, and then was sent with my mother and brother and me to Getto in Minsk Russia were he was imprisoned till we were freed in April 1945 and all our insurance papers were taken in the beginning of the war.*”

THE INVESTIGATION AND DECISION BY THE RESPONDENT

20. In a letter dated 28th November 2003, written in response to the Appeals process and summarizing all previous correspondence, [REDACTED] writes, “*the claimant’s father, Mr [REDACTED], had at first concluded the life insurance contracts [REDACTED] and [REDACTED] with [REDACTED] which were later replaced by the insurance contract [REDACTED] and later by [REDACTED] with [REDACTED]. Our documents reveal that Mr [REDACTED] had concluded the insurance contract No. [REDACTED], commencing on April 1, 1936 with a sum insured of RM 681 and an insurance term of 20 years. As of September 1, 1937 no premium payment was made for this contract. Therefore, the insurance contract was cancelled by our company due to non-paid premiums. As no surrender value existed at that time the contract expired without any value. Assuming that the victims of the holocaust stopped premium payments due to their deportation or emigration the Federal Law on Compensation (= Bundesentschädigungs-gesetz, BEG) offered the possibility to apply for compensation after the war. With respect to the policy number [REDACTED] a compensation proceeding took place. With letter of January 25, 1968 the compensation authority declared in accordance with the law that the application was to be denied because the BEG states in paragraph 64 that any amount considered as negligible shall be declined. Since the compensation would have amounted to only DM 17,55 (in 1968 this would have been approximately \$4,20) the decision was made upon approval by the lawyer Mr [REDACTED] who was the representative of the applicants at that time. The compensation authority refers to the acceptance of the lawyer in the letter dated January 25, 1968. Therefore, the denial of the application for compensation concerning the loss of life insurance was agreed on by the lawyer and the compensation authority. The further compensation procedure not concerning life insurance contracts was – to the best of our knowledge – accomplished irrespective of this decision. According to Section (2) (c) of the Agreement a claim concerning life insurance policies is eligible for compensation, if the policy in question. This does not apply to Mr [REDACTED]’s life insurance contract [REDACTED], which was subject of a compensation proceeding. The exemptions mentioned in Section 2 (1) (c) are not complied in this case”.*

FURTHER INFORMATION ON THE CLAIM FILES

21. Claim File number [REDACTED]

It would appear from the file that this claim was meant to deal with the insurance company named as [REDACTED]; the claim form in this file is indeed a copy of the claim form that is the subject of this appeal. After it had become clear that the “[REDACTED]” is not an insurance company this claim has been processed as an unnamed claim.

22. Claim File number [REDACTED]

This file appears to have dealt with policy number [REDACTED] issued by [REDACTED]. Much pre-ICHEIC communication is in the file, including a letter from [REDACTED] to a lawyer in America providing specific policy details for policy [REDACTED] issued by

[REDACTED] on 1st April 1936. However, according to the ICHEIC database the status of this claim is classified as invalid and finalised. In a letter sent by ICHEIC to the Claimant dated 22nd January 2001 the ICHEIC informs the Appellant – as already set out above [paragraph 4. c)] - that it is unable to process the claim because it appears that there has been a previous application for compensation through the BEG.

THE ISSUES FOR DETERMINATION

23. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), for the purpose of the appeals procedure to consolidate claim numbers [REDACTED] and [REDACTED]. The same decision letter, which is the letter sent by [REDACTED] dated 4th March 2003, denied both claims. The claims are the same in substance but have, nevertheless, been processed in two separate claim procedures by the ICHEIC. They were appealed in one appeal form by the Appellant, and, even if the decision letter of [REDACTED] only mentions claim number [REDACTED], its content makes clear that claim number [REDACTED] also falls within its scope: the decision letter dated 4th March 2003 refers to the letter issued by [REDACTED] dated 5th September 2000 in the claim procedure number [REDACTED] and only deals with the “[REDACTED]” insurance contracts ([REDACTED] and [REDACTED]), which later were replaced by [REDACTED], which finally became [REDACTED]) for which “[REDACTED]” assumed responsibility.

24. Based upon the facts given above, there is no doubt that the Appellant’s father had two insurance policies with nos. [REDACTED] and [REDACTED] with “[REDACTED]” (which later were renumbered [REDACTED] and finally [REDACTED]) for which [REDACTED], having taken over “[REDACTED]” and later “[REDACTED]”, is now liable. Moreover, Appellant, as heir of his parents, could be entitled to the proceeds of these policies and all family members were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement mentioned in no. 12 above. But the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. According to Section 17.3 Appeal Guidelines the claimant is not entitled to payment from the Foundation funds if;

“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.”

25. The Respondent has met his burden of proof in this regard. There is written evidence in form of a letter dated 25th January 1968 that the Restitution Authority (“*Entschädigungsbehörde*”) Wiesbaden has informed the representative of the Appellant’s father in this procedure, [REDACTED], that “*the loss on policy number [REDACTED] was less than DM 50.00 and there would be no decision of a compensation, because there is only an insignificant damage pursuant § 64 BEG*”. § 64 (1) 1 BEG reads “*Victims of persecution are entitled to compensation for loss of occupational or financial advancement if they were adversely affected more than insignificantly in their occupational or financial advancement in the territory of the empire as at December 31st, 1937*”. A definition of “*more than insignificantly*” is given in § 56 (1) BEG, which reads “*Victims of persecution will be entitled to compensation if assets belonging to them in the territory of the Empire as at December 31st, 1937 were damaged. ... No compensation will be paid for damage not exceeding a value of 500 Reichsmarks*”. 500 Reichsmarks are the equivalent of DM 50,00. The representative of the Appellant’s father did not object and ceased claiming restitution for said policy.

26. Where policies are covered by a decision of a German restitution or compensation authority a claim is not eligible for compensation under the Agreement [Section 2 (1) (c)], and there is no difference whether the covering decision of a German restitution or compensation authority was an award or a denial . The same applies to settlements.
27. While in this case there was no decision of a Restitution Authority, neither an award nor a denial, the BEG procedure nevertheless covered the policy in question and the restitution claim was settled because the representative of the claimant’s father did not object to the opinion of the restitution authority that, according to the existing law, there is no possibility for compensation by reason of the “*insignificance*” in the sense as set out above (paragraph 25).
28. Therefore, the insurance policy, which is subject of the claim and the appeal, which is the insurance policy number [REDACTED], originally issued by “[REDACTED]” and later taken over by “[REDACTED]”, “[REDACTED]” and finally by the Respondent, is covered by a resititution proceeding, and, accordingly, the Panel has no jurisdiction in the matter (§ 2.2.2. Appeal Guidelines).

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Abitrator Gafni dissents.

Dated this 16th day of March 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member