

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]

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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], born on [REDACTED] 1921 in Leipzig (Germany). She changed her names and was also known as [REDACTED] and [REDACTED]. She is the daughter of [REDACTED] (also [REDACTED] or [REDACTED]) [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1892 in Leipzig and died on 4th January 1951 in Tel Aviv (Israel); [REDACTED] was born on [REDACTED] 1895 in Shklow (Russia) and died on 13th July 1962. The [REDACTED] family emigrated in 1934 to Palestine to escape persecution by the National Socialist Regime.
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim dated 9th July 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that [REDACTED] issued a policy of life insurance to her father [REDACTED].
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 2003 4th February 2003 “*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 policy as the policies were compensated in the course of compensation proceedings. We hope you will understand that we cannot comply with your wish for further settlement*”.
5. The Appellant submitted an appeal to the Appeals Office dated 23rd February 2003, which was accompanied by a statement setting out the reasons for the appeal.
6. 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.
7. The Appeals Office requested the Appellant by letter dated 24th July 2003 to sign an amended Appeal Form.
8. On 28th August 2003 the Appeals Office received the new Appeal Form, which is dated 31st July 2003 and mailed a copy to the Respondent.
9. [REDACTED] responded in a letter dated 22nd September 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*”.
10. On 26th September 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.
11. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
12. 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

13. 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] as the company that issued an insurance policy.
 - b) In question 3.1 of the claim form she provides three different policy numbers, but only claim number [REDACTED], which is the subject of this appeal, deals with an [REDACTED] policy No. [REDACTED]. She states that the policy(ies) were purchased in Germany and in answer to question 3.3 she writes, “[REDACTED] No. [REDACTED] [REDACTED] No. [REDACTED]”.
 - c) In section 5 the information relevant to [REDACTED] policy Nr. [REDACTED] has been highlighted during the claims processing in order to distinguish it from the other information concerning the [REDACTED] and [REDACTED] policies. The Appellant states that a life insurance policy was taken out for an insured sum of DM 40,000. She further states that this policy was issued on 1st January 1924 with a date of maturity in 1944. In answer to question 5.7, which asks ‘*Are you aware of any payments resulting out of the insurance policy?*’ the Appellant marked ‘yes’ and writes, “[REDACTED], 17 July 1963.” She states that payments were made to “*trust Konto [REDACTED].*” Furthermore she states that an amount of DM 6,933.80 was “*not received as [REDACTED] deceased on 13 July 1963 (it is meant 1962)*”. Similarly under ‘*other*’, the Appellant writes, “*not received as beneficiary [REDACTED] deceased 13 July 1963*”. Furthermore the Appellant states that she has approached the company about this insurance policy.
 - d) [REDACTED] ([REDACTED] or [REDACTED]) [REDACTED], the Appellant’s father, is identified as the policyholder. The employer of the policyholder is named as [REDACTED] of Leipzig and [REDACTED] of Leipzig.
 - e) The insured person is identified as the Appellant’s mother, [REDACTED] née [REDACTED].
 - f) The Appellant’s mother is identified as the named beneficiary.
 - g) In answer to question 9 of the claim form concerning ‘*compensation*’ the Appellant marks ‘yes’ and writes “*to my mother [REDACTED], deceased 13th July 1962...transfer was made on 05 July 1963 after death of my mother 13th July 1962*”.
 - h) In answer to question 11 the Appellant writes, “*please just to your attention also the correspondence in the [REDACTED] insurance matter [REDACTED] stating that the money for the insurance was transferred on the 9th April 1963 whereas my mother [REDACTED] deceased on the 13th July 1962 was never received in the trust acct of [REDACTED] (documents of the [REDACTED] and the [REDACTED] enclosed)*”.
14. The following documents appear to have been submitted by the Appellant with her claim form:
- a) A hand-written translation of a letter from the [REDACTED] to the Claimant dated 23rd April 2000. A copy of the letter in Hebrew and an official translation reveal this document to be a letter sent from the [REDACTED] to the Claimant that states,

“[REDACTED] closed down in 1968 and its business in Israel was transferred to [REDACTED]. You should therefore apply to the [REDACTED] Management and attach all the required documents in your possession for the purpose of clarification”.

- b) A hand-written letter from the Appellant to [REDACTED] dated 19th June 1967 providing [REDACTED] with her parents’ full names, dates of birth and employer’s name.
- c) A letter from [REDACTED] to the Appellant dated 20th August 1998 in which it states that further to a telephone conversation between the Appellant and Dr. [REDACTED] it had been agreed that the Lower Saxony compensation authorities would be asked to name the person to whom compensation was paid.
- d) A letter from the compensation authority of Lower Saxony to the Appellant dated 14th August 1998 which states that it is sending a copy of the ruling from the 9th April 1963, together with a letter from the person who held the ‘*power of attorney*’ at that time, the lawyer [REDACTED] from Hildesheim, and other documents including proof that the money was paid on 17th July 1963. The English translation reads, “*In view of these documents, the compensation amount DM 4,845.48 for insurance losses admitted by your company was included in the total compensation of the ruling of 09.04.63 of DM 7,229.24, which in turn after deducting an amount assigned to counsel of DM 295.44 was transferred at the [REDACTED], Tel Aviv, Trust Account [REDACTED]. This transfer was made on 17.07.63. As none of the parties involved complained that they had not received the money since, it must be assumed that the amounts also came into the possession of those entitled to them*”.
- e) A letter from [REDACTED] dated 19th June 1997 confirming an entry in the ZRG for the Appellant’s father, but no entry was found for the Appellant’s mother. No further information was given.
- f) A partial copy of the decision from the compensation authorities of Hildesheim, with the first two pages missing, dated 28th August 1964. In this decision an award for DM 4845.48 for policy number [REDACTED] with [REDACTED] is given.
- g) A hand-written translation of a letter from the [REDACTED] to the Appellant. Copy of the letter in Hebrew and an official translation show the Hebrew document to be a letter from the [REDACTED] to the Appellant dated 16th July 2000. This letter informs the Appellant that they were unable to locate a trustee account in the name of [REDACTED] or an account in the name of Mrs [REDACTED].
- h) A “*draft*” from the compensation authorities to the lawyer [REDACTED] dated 17th July 1963 stating that the DM 6933.80 is to be transferred to the [REDACTED], Tel Aviv Trust Account [REDACTED] and DM 295.44 is to be transferred to the Postscheckkonto Hannover [REDACTED].
- i) A payment sheet showing the transfer of the above mentioned sums took place on 17th July 1963. To the left of the figure DM 6,933.80 are some abbreviated words, which in German read “*laut Schreiben vom 05.07.63*” meaning “*according to the letter of 05.07.63*”.
- j) A letter from the lawyer [REDACTED] to the compensation authorities dated 05th July 1963 informing them of the account to which the compensation should be transferred namely, [REDACTED], Tel Aviv, Trust Account [REDACTED]. In addition he asks for part of the awarded amount, namely DM 295.44, to be paid into his own account (“*Postscheckkonto*”).

- k) An official document declaring the heirs of [REDACTED] as her two children and five grandchildren. The year of issue is not visible from the photocopy and appears to have been badly photocopied. However, there is a more legible copy that shows the document to have been issued in 1962.
 - l) A decision dated 28th August 196(?) from the compensation authorities of Hildesheim identifying the seven heirs of [REDACTED], and the representative of both children as the lawyer and notary [REDACTED]. (There is only one page).
 - m) A copy of a family book naming the first and second child as being [REDACTED] and [REDACTED].
 - n) A copy of marriage certificate of the Appellant's parents.
15. In the reasons for appeal the Appellant writes, "*the life insurance of my father [REDACTED] geb. [REDACTED] 1892 where RM 40,0000 – at the [REDACTED] AND for [REDACTED] of 6050 US\$ as per photo copy of the [REDACTED] datd 19 June 1997 (sgd Dr [REDACTED]) payments were interrupted because of the Antisemitic disturbances and the flight from Leipzig to Israel where my father had to struggle to provide a live (bread) so he could not pay any insurance. He died of heart failure in 8 January 1951 at the age of 59. All documents are with the [REDACTED] (Dr [REDACTED])*".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. The Respondent admits that a life insurance policy, number [REDACTED] was issued to the Appellant's father. In the final decision letter dated 4th February 2003 [REDACTED] writes, "*We have already informed you in the Pre-ICHEIC-Proceeding, our central register does contain an entry for Mr [REDACTED] (enclosure 1). Moreover, we informed you that your father had indeed taken out a life insurance policy with [REDACTED] with the number [REDACTED] and that concerning this insurance policy a compensation proceeding took place. The documents of the compensation authority (enclosure 2) reveal that Mr [REDACTED] had concluded a life insurance with us, commencing on January 01 1924 with a sum insured of RM 40,000 and an insurance over 20 years. As of December 31, 1934, no premium was made for this contract. In 1934 the contract was cancelled. The surrender value amounted to RM 17101.20 as of December 31, 1934. Within the framework of the German State Compensation procedure, Mr [REDACTED]'s community of heirs, consisting of yourself and 6 other relatives, received compensation in the amount of DM 4845.48, for the losses from the life insurance due to persecution (enclosure 3). The purpose of the compensation was to act towards Mr [REDACTED]'s heirs as if no loss from the life insurance had occurred. In the claim form you state that the compensation payment was never paid out. However, according to the compensation authority, a payment amounting to DM 6933.80, which included the compensation payment for our father's life insurance policy, was paid out on July 17, 1963 to the [REDACTED], Tel Aviv, trust Account [REDACTED]. 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 policy as the policies were compensated in the course of the compensation proceedings*".

17. The final decision letter includes documents from the compensation authority specifying the policy or policies claimed, which are:

- a) A letter from [REDACTED] to the Compensation authorities (enclosure 2) dated 10th February 1961 referencing policy [REDACTED]. It identifies v as the policyholder and the insured person. The policy was taken out on 1.1.1924 and had a maturity date of 1.1.1944. The insured sum was RM 40,000 with a quarter-yearly premium of RM 509. According to this document premiums were paid until 31.12.1934, and the surrender value was paid out. It cannot be established to whom this sum was paid, but an amount of RM 17101.20 was paid on 31.12.1934. [REDACTED] then calculates the compensation to be DM 1571.88.
- b) A copy of a partial decision (enclosure 3) issued by the compensation authorities of Hildesheim dated 9th April 1963 awarding a payment of DM 4,845.48 for the policy [REDACTED], which had been issued to the Appellant's father for the insured sum of RM 40,000. Seven heirs are identified in the partial decision, two children of [REDACTED] (one of whom is the Claimant) and his five grandchildren. It is acknowledged in this decision that [REDACTED]'s wife died on 13th July 1962. The lawyer [REDACTED] is identified as the representative of the Appellant and her sibling, and the lawyer [REDACTED] is identified as the assistant-representative of the Appellant and her sibling. The translated version of the partial ruling states, "to the legitimate inheritance must be added that the widow of the testator and co-heir, [REDACTED], appointed her two children, applicants 1 and 2 and her five grandchildren 3 to 7, as her heirs under her will of 01.05.1962. On 14.11.1962, the Hildesheim registry court issued a certificate of inheritance in favour of the heirs above, according to which applicants 1 and 2 were entitled as to 1/3 each and applicants 3 to 7 to 1/15 each. On the facts of the case, it must also be added that the testator had to surrender three of the life assurance policies he had taken out at the time when he emigrated, which caused him to suffer financial losses. The only heirs of his widow and co-heir according to the certificate of inheritance from the Hildesheim registry court, [REDACTED], deceased 13.07.1962, appear to be her children, applicants 1 and 2. The compensation claims for loss of financial betterment, which the community of heirs made are admissible and founded. On 01.01.1924, the testator took out a life assurance policy with [REDACTED] for RM 40,000.00 for a lump sum benefit with a term of 20 years, and with [REDACTED] a lump sum benefit life assurance policy for US\$ 6,050.00 for 20 years on 01.11.1929 and a further such policy on 01.09.1931. The beneficiaries in the event of death under the former life assurance policy cannot now be established, so the statutory heirs are to be regarded as such for all three policies. The compensation to be paid under §§ 127-128 BEG is based on the statements by the insurance companies, [REDACTED]'s statement based on reconstruction, in the absence of documents as follows:

1. Insurance policy no. [REDACTED] with [REDACTED]

<i>Insurance benefits</i>		<i>RM 40,000.00</i>
<u>Less</u>		
<i>Unpaid premiums</i>	<i>RM 4,780.00</i>	
<i>Redemption value</i>	<i>RM 17,101.20</i>	
<i>War Levy</i>	<i>RM 2,400.00</i>	<i>RM 24,281.20</i>

<i>Balance</i>	<i>RM 15,718.80</i>
<i>Compensation</i>	<i>DM 1,571.38</i>
<i>Long-standing savers' compensation</i>	<i>DM 2,640.00</i>
<i>4% interest from 01.01.1953 – 31.12.1958</i>	<i><u>DM 633.60</u></i>
	<i>DM 4,845.48”</i>

18. [REDACTED] sent additional documentation with respect to the Appeals Process and this included declarations of Assignment signed by the Appellant and her brother dated 10th June 1963. These declarations give their consent to the transfer of part of the award (DM 295.44) made by the compensation authorities to their representative’s account (“*Postscheckkonto*”).

THE ISSUES FOR DETERMINATION

19. There is, after the facts given above, no doubt that the Appellant’s father had an insurance policy with [REDACTED], that the Appellant as co-heir of her mother is entitled to the proceeds of this policy and that all family members were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement. 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;

“17.3.4 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.”

20. The Respondent has met its burden of proof in this regard. There is written evidence that within the framework of a restitution procedure the claim has been settled and pursuant to §§ 127, 128 BEG (Bundesentschädigungsgesetz) a payment to the Appellant and her co-heirs of in total DM 4,845.48 was made as a compensation for the policy, which is the subject of the appeal. In the partial ruling of the Compensation Authority dated 9th April 1963 the Appellant and her co-heirs were awarded DM 7,299.24 – i.a. for losses suffered by surrendering the life insurance policy No. [REDACTED] issued by [REDACTED], which were caused by the emigration in 1934. A letter dated 5th July 1963 written by the notary and attorney [REDACTED] who represented the heirs to [REDACTED] in the compensation procedure as an assistant counsel shows that he asked to transfer the awarded sum (minus DM 295.44 which he charged for his fees) to a trust account “[REDACTED]” at the [REDACTED] in Tel Aviv. A payment sheet – Reg. No. [REDACTED] – shows that an amount of (DM 7,299.24 – DM 295.44 =) DM 6,933.80 was transferred on 17th July 1963 “*laut Schreiben vom 05.07.63*” meaning “*according to the letter of 05.07.63*” on the above named account. As none of the parties involved in the compensation procedure complained that they had not received the money, it must be assumed that the money also came into the possession of those entitled to it. The statement dated 16th July 2000 made by the [REDACTED], a successor of the [REDACTED], does not challenge this. This statement only states that the bank was unable to locate a trustee account in the name of [REDACTED] and documents referring to the transfer in the bank’s files – it does not state that such an account never existed and the transfer in July 1963 was never made.

21. But even in the unlikely event that the Appellant and her heirs did not receive the money granted in the decision dated 9th April 1963 and, according to the evidence submitted, paid to the [REDACTED] account she would not be eligible in a claims procedure based on the

Agreement dated 16th October 2002 and its Annexes. There is proof - which the Appellant does not challenge - that the policy in question was covered by a decision of a German restitution or compensation authority in accordance with Section 2 (1) (c) of the Agreement. If it is true that she and her co-heirs nevertheless never received the money awarded in this decision they will have to go back either to the “Niedersächsisches Landesamt für Bezüge und Versorgung – Wiedergutmachung –“ (claiming that the award, contrary to the evidence submitted, was not paid out) or to the successors of their counsel in the compensation procedure, notary and attorney [REDACTED], or the successor of the [REDACTED] (if the award was paid out).

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