

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

Fax:

++ 44 (0) 207 269 7303

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], who was born [REDACTED] 1927 in Bad Homburg v.d.H. (Germany). He is the son of [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1896 in Schmitten (Germany) and died in December 1993 in New York; [REDACTED], nee [REDACTED], was born on [REDACTED] 1900 and died in 1990 in New York. The Appellant has a brother, [REDACTED], who was born on [REDACTED] 1926 and lives in New Jersey.
2. The Respondent is [REDACTED], the [REDACTED].

3. The Appellant submitted two Claim Forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC) dated 25th May 2000 and 11th May 2003. In the Claim Form dated 11th May 2003 he claims that his father [REDACTED] had insurance policies purchased in “*Germany and/or Italy*”. The ICHEIC checked the claim form dated 11th May 2003 again. This is a claim form, which is identical to the one previously received. This claim was inadvertently given a new claim number ([REDACTED]). However, in a note dated 7th August 2003 a request was made “*to inform the claimant that we amalgamated his claim number 00[REDACTED] with the earlier submitted 000[REDACTED]*”.
4. The ICHEIC submitted the claim dated 25th May 2000 to the German Companies.
5. In a letter dated 19th December 2001 [REDACTED] informed the Appellant, that it conducted a research in its registers and archives on the basis of his data. They further gave him the following information: “*We regret, no entry exists in the register for yourself, Mrs [REDACTED] and Mr [REDACTED]. For this reason, we know that no life insurance contract under these names existed with us. Our central register does contain an entry for Mr. [REDACTED]*”. In another letter dated 18th April 2002 [REDACTED] sent a copy of a letter dated 10th November 1938, which is signed by [REDACTED]. According to this letter [REDACTED] cancelled the life insurance contracts No. [REDACTED], [REDACTED] and [REDACTED] on 10th November 1938 and requested to pay out the surrender values. The Appellant answered in a letter dated 24th April 2002 i.a.: “*In summary I claim that the letter dated November 10th 1938 was not written by [REDACTED] but by the Police, the SS or in the KZ ..., and if indeed the signature is that my father was obtain under duress, in a location, and under circumstances, where he had no choice but to comply with the request or demand of the authorities. Consequently his signature is null and void and I therefore make a request for payment of the full value ...*”.
6. In the final decision letter issued by [REDACTED] dated 17th June 2003 [REDACTED] states, “*the German authorities have now confirmed that Mr. [REDACTED] had filed a claim under the German Compensation Laws regarding your father’s life insurance policy No. [REDACTED] over RM 5,000.00 (Reichsmark), No. [REDACTED] over RM 10,000.00 (Reichsmark) and No. [REDACTED] over RM 5,000.00 (Reichsmark) all taken out with [REDACTED]. As you can see from the attached documents, the surrender value of these policies was paid out on 10th November 1938 on a bank account No. [REDACTED] at a [REDACTED]*.”
7. The Appellant submitted an Appeal Form to the Appeals Office dated 4th July 2003, in which he sets out the reasons for the Appeal. The Appeals Office received this Appeal Form on 7th August 2003.
8. The Appeals Office sent the Appeal Form with the reasons for appeal to [REDACTED] on 7th August 2003.
9. [REDACTED] responded in a letter dated 2nd 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*”.

10. On 5th September 2003 the Appeals Office sent a copy of the letter from [REDACTED] to the Appellant and 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 of receipt of its letter.
11. No request for an oral hearing has been received from the Appellant. [REDACTED] informed the Appeals Office in a letter dated 10th September 2003, that it does “*not require an oral hearing, unless the appellant wishes to address the Panel orally*”. 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 Commission and the [REDACTED] (the Agreement) and its annexes, including, but not limited to Annex E, the Appeal Guidelines.
13. The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made in that place.

THE CLAIM

14. The Appellant submitted the following information in relation to the claim for the proceeds of a life insurance policy. In answer to Question 9.1 (“*Have you or anybody else participated in any compensation/restitution procedure for this claim ?*”) of the Claim Form dated 25th May 2000 the Appellant indicates that compensation has been received and writes, “*Deutschewiedergutmachung 2000 to each [REDACTED] and [REDACTED]. Both parents received payments until their death. Amounts from which scheme unknown.*” In the Claim Form dated 11th May 2003 he answered Question 9.1 regarding ‘compensation’ with “*ICHEIC # 000[REDACTED]*” and “*see attached letter April 18, 2002 from [REDACTED] and my copy dated April 24, 2002*”. In answer to Question 11.2 (“*Please add any other information which might be helpful*”) he provided the following information: “*As you can see from the enclosure I do not accept the ICHEIC decision that the case is closed since the policy have possibly been paid out. If in deed they were paid out, it was done under duress since [REDACTED] was arrested during the Kristallnacht and on November 10th, when supposedly he requested the policies to be paid out, was either under arrest in the Festhalle in Frankfurt or was en route to, or already in the Buchenwald Konzentrationslager*”.
15. In his Appeal Form the Appellant refers to a letter dated 4th July 2003 to [REDACTED]. In this letter he repeats - what he already pointed out in letters dated 24th April 2002 and 3rd November 2002 – the reasons, why he is convinced that his father could not have written the letter dated 10th November 1938, by which the life insurance contracts No. [REDACTED], [REDACTED] and [REDACTED] were cancelled, or why – in case of his father wrote this letter – it must have been written under duress. The Appellant writes, “*I appreciate all the information that you have give me in your letter dated 17th June 2003 regarding a further payment made in 1964, but all that does not change the fact that Mr [REDACTED] had no need to cash in the policies, he had sufficient funds for living expenses until they could leave Germany, and he certainly wanted the protection that the life insurance gave to his wife and two minor children. Consequently the cashing*

in of the policies, having been done under duress by the Nazi authorities, has to be considered null and void, and therefore still in existence now.”

16. The Appellant maintains in correspondence to the ICHEIC throughout the case that his father was forced to sign the letter dated 10th November 1938 terminating his insurance contracts since he was arrested on 09th November 1938.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. By its decision letter dated 17th June 2003 [REDACTED] informed the Appellant, that *“the Restitution Authority (Entschädigungsbehörde) Wiesbaden has awarded Mr. [REDACTED] on 12th June 1964 a compensation payment in the amount of DM 2,531.81 for the policies mentioned above (No. [REDACTED] over RM 5,000.00 (Reichsmark), No. [REDACTED] over RM 10,000.00 (Reichsmark) and No. [REDACTED] over RM 5,000.00 (Reichsmark). All Reichsmark (RM) amounts had been converted into Deutsche Mark (DM) by law in 1949 on the basis of 10:1. According to the documents of the Restitution Authority (Entschädigungsbehörde) Wiesbaden the compensation payment was paid out on 18th June 1964.”*

18. Submitted with the final decision letter issued by [REDACTED] are 5 pages of the ‘decision’ made by the *“Entschädigungsbehörde”* in Wiesbaden and correspondence between [REDACTED] and the Claimant’s father and the *“Entschädigungsbehörde”* in Wiesbaden prior to the restitution proceeding. The decision made by the *“Entschädigungsbehörde”* in Wiesbaden in 1964 specifies the policies and is summarised as follows:

“1) Nr. [REDACTED] over RM 5,000 – issued 1 August 1927, date of maturity 01 August 1957. The amount of premium paid on a quarter yearly basis was RM 40,70. Premiums were paid until 31 January 1938. In November 1934 a loan of RM 500 was taken out against the policy.

2) Nr. [REDACTED] over RM 10,000 – issued 01 September 1930, date of maturity 01 September 1957. The amount of premium paid on a quarter yearly basis was RM 88,60. Premiums were paid until 28 February 1938. In November 1934 a loan of RM 500 was taken out against the policy.

3) Nr. [REDACTED] over RM 5,000.00 – issued 01 July 1934, date of maturity 01 July 1961. The amount of premium paid annually was RM 184. Premiums were paid until 30 June 1938.

regarding 1) – 3):

All three insurance contracts cease with the cancellation on 10 November 1938 by the policyholder. The surrender values of 1) RM 490 2) RM 1020 and 3) RM 330 were transferred on 20 December 1938 to the [REDACTED]-Account Nr. [REDACTED] of the Claimant ([REDACTED]) in Frankfurt/Main”.

19. With respect to the above-named insurance contracts the *Entschädigungsbehörde* in Wiesbaden decided that the surrender of the contracts had been brought about by

persecution and therefore compensated [REDACTED], the Appellant's father, with the sum of DM 2,531.81.

20. The correspondence between [REDACTED] and the Claimant's father contains an earlier letter dated 20th October 1954, which refers to the above mentioned insurance policies and reads as follows: *"From the reference given in your letter, we have found the life assurance policies above for you in our files. The details of this policies are as follows ... On receiving the redemption receipts signed irrevocably by yourself and your wife as beneficiary, our company's Frankfurt am Main division transferred the total of M 1,840.00 to your account no. [REDACTED] at the [REDACTED] as instructed on 20th December 1938. With the payment of the redemption value, your rights under the policy expired, so there are no further claims against us"*.

ISSUES FOR DETERMINATION

21. There is, after the facts given above, no doubt that the Appellant's father had several insurance policies with [REDACTED], that the Appellant as heir of his parents 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 under 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."

22. The Respondent has met his burden of proof in this regard. There is written evidence that the Restitution Authority ("*Entschädigungsbehörde*") Wiesbaden has awarded the Appellant's father on 12th June 1964 a compensation payment in the amount of DM 2,531.81 for the three policies, which are subject of the appeal.

23. The payment made in 1964 was based on the ground that in redeeming the policies as the result of being persecuted, the Appellant's father lost his protection under the policy, and that his financial betterment was not merely slightly impeded; therefore, he was entitled to compensation under §§ 64, 127 et seq. of the Federal Law on Compensation for the Victims of National Socialist Persecution ("*Bundesentschädigungsgesetz*" - BEG). The fact that the Appellant's father - in the words of the Appellant - signed "*under duress by the Nazi authorities*" and "*had no need to cash in the policies*" as "*he had sufficient funds for living expenses until he could leave Germany, and he certainly wanted the protection that the life insurance gave to his wife and two minor children*" was the very reason for the compensation decision made in 1964 and constitutes no legal reason for further claims. In cases where the policies in question are - as in the case here - 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)).

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES

The appeal is dismissed.

Dated this 17th day of October 2003

The Appeals Panel

Timothy J. Sullivan,
Chairman

Rainer Faupel,
Panel Member

Abraham J. Gafni,
Panel Member