

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], born on [REDACTED] 1922 in Cologne (Germany). He is the only child of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1883 in Cologne and died in October 1958 in New York City; [REDACTED] was born on [REDACTED] 1895 in Zurich (Switzerland) and died on 20th December 1974 in Los Angeles. The [REDACTED] family lived until 1938 in Cologne; they fled Germany to escape persecution by the National Socialist Regime. .
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim dated 1st May 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), by which he claims the proceeds of life insurance policies which [REDACTED] and, possibly, other insurers unknown to him had issued.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 3rd April 2003 with regard to policy no. [REDACTED]: *“we are pleased to inform you that we can offer you a total of \$ 13,597.46 within the framework of the German Foundation “Remembrance, Responsibility and Future”. The amount of \$ 3,807.75 already remitted to you in 1998 is to be deducted from this payment. Therefore, the increased offer amounts to \$ 9,789.71; with regard to policy nos. [REDACTED] and [REDACTED], converted into [REDACTED], it denied the claim because a restitution proceeding with respect to these policies had taken place.*
5. The Appellant submitted, with regard only to the above mentioned denial, an appeal to the Appeals Office dated 26th May 2003, which was accompanied by an attachment setting out the reasons for the appeal and enclosures.
6. The Appeals Office forwarded copies of the appeal documents to the Respondent by letter dated 31st July 2003.
7. [REDACTED] responded in a letter dated 20th August 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”*. Attached to this letter were ten further documents.
8. On 2nd October 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.
9. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.
10. 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

11. The Appellant has submitted the following information in relation to the claim for the proceeds of life insurance policies:
 - a) In answer to question 3 of the claims form the Appellant identified [REDACTED] as the insurance company that issued policies to his father, [REDACTED].
 - b) He named his father, his mother and himself as the insured persons.
 - c) The Appellant was also the named beneficiary.
 - d) In answer to question 3 regarding the insurance company the Appellant wrote *“[REDACTED] (possibly other insurers unknown to me)”*.

- e) He stated that the policy was purchased in Cologne but added an "(?)". The policy was issued in DM (RM is meant) with the insured sum of DM 20,000 (RM 20,000 is meant) "for one out of 4 policies". The policy(ies) was (were) issued in 1925 with a maturity date of 28 years.
 - f) In answer to question 5.7 the Appellant stated hat he received US \$ 3,807.75 from [REDACTED] on 12th December 1998.
 - g) In answer to question 5.10 ("To the best of your knowledge, were all premiums paid ?") he answered "yes" and in answer to question 5.11 ("Has anybody approached the insurance company about the insurance policy ?") he answered "Yes, I did" and referred to attached documents issued by [REDACTED].
 - h) The answer to question 9.1 ("Have you or anybody else participated in any compensation/restitution procedure for this claim ... ?") was "No" and to the question "If no application was made, why not ?" referred to the correspondence with [REDACTED].
 - i) In answer to question 11 ("Further information") the Appellant referred to the following correspondence with [REDACTED]:
 - "[REDACTED] 2-7-1998
 - [REDACTED] 18-11-1998
 - [REDACTED] 14-5-1999
 - [REDACTED] 26-7-1999
 - [REDACTED] 17-5-2000
 - [REDACTED] 30-6-1999
 - [REDACTED] 10-12-1998 advise".
12. In a letter sent to the ICHEIC dated 18th July 2001 the Appellant states "while my father had three policies with [REDACTED], they are willing to recognize only one, entered into before 1925 in the amount of DM 20,000".
13. With his appeals form the Appellant wrote on 27th May 2003, with regard to the Respondent's denial "[REDACTED] in its letter of April 13 2003 deny compensation pertaining to policies [REDACTED] and [REDACTED] ([REDACTED]) based on the fact that my father's claim was rejected because 'it could not be proved' that my father or Mr. [REDACTED], to whom my 'father has assigned the insurance contract [REDACTED] had not received the surrender value'. My father was a wealthy partner in '[REDACTED] und Soehne' in Cologne and was well known and respected in the community. He took out at least three policies with [REDACTED], possibly also with other firms I am not familiar with. These were substantial amounts then and projected into today's D Marks amount to large sums. My father was forced to flee Germany and asked Mr. [REDACTED], a friend and business associate, to look after his interests. Mr. [REDACTED] was arrested and died in a concentration camp. Now [REDACTED] is hiding behind a 'Beschluss' of the Wiedergutmachungskammer by stating that 'compensation proceedings took place'".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. [REDACTED] stated in its decision letter of 3rd April 2003 with regard to the policies which are the subject of the appeal that the policies [REDACTED] and [REDACTED] were converted to insurance contract number [REDACTED] and that compensation proceedings took place in 1953. [REDACTED] continued "Your father's claim for compensation was rejected because it could not be proved that your father or Mr [REDACTED] – to whom

your father has assigned the insurance contract [REDACTED] – had not received the surrender value. 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 # [REDACTED], [REDACTED] and [REDACTED] as a compensation proceeding took place”. A copy of the compensation proceeding decision was attached to this decision letter.

15. In a letter sent by [REDACTED] dated 20th August 2003 in response to the Appeals process [REDACTED] writes, *“according to section 2. (1) (c) of the Agreement a claim concerning life insurance policy is eligible for compensation if the policy in question was not covered by a decision of a German restitution or compensation authority. This does not apply for Mr [REDACTED]’s life insurance contracts [REDACTED], [REDACTED] and [REDACTED], which were the subject of a compensation proceeding. The exemptions mentioned in Section 2. (1) (c) are not complied in this case.”*
16. There is a copy of the court decision in German from the ‘Wiedergutmachungskammer’ in Cologne of 1953. According to the English translation of this document, the grounds are established as follows: *“The applicant used to have a number of life insurance policies with [REDACTED], policy numbers [REDACTED], [REDACTED] and [REDACTED]. The first two policies were taken out before 1923, while the last was taken out on 14.II.1924, out of the two paper mark policies above. The insurers paid out the redemption value of this policy, including cumulative profits, on 5.VI.1940, the total amount being RM 610.12. The Applicant now alleges that this redemption value was paid out to the German Reich and has applied that the German Reich be held liable to pay compensation as it confiscated that redemption value. The Respondent has applied that the application be dismissed...The application as made is unfounded. The division has been unable to establish that the German Reich received the redemption value.”*

The court could not establish that the German Reich had received this sum, but on the basis of documents and other information it was established that the repurchase amount was not paid directly to the Claimant’s father. It might equally have been possible that the repurchase sum was paid out to Mr [REDACTED] to whom the Claimant’s father had ceded the repurchase value. This fact was deduced from correspondence between the Claimant’s father and the insurance company.

The ruling concludes, “The division has exhausted all the avenues of clarification open to it. It has been unable to prove that the German Reich confiscated that money. It is true that the possibility that the German Reich confiscated the money cannot be ruled out: but that in itself is not sufficient to consider that the application made here is justified because it is equally possible that the redemption value was paid to [REDACTED]. With the facts as they stand, the burden of proof must be considered as resting on the Applicant, even allowing for his difficulties in producing evidence. The application must therefore be dismissed.”

17. In response to the appeal [REDACTED] submitted further documentation relating to the compensation proceedings in a letter dated 20th August 2003. These are listed as follows (parts of these documents had already been provided by the Appellant):
 - a) Copy of a document dated 21st June 1939 presumably from [REDACTED] referencing policy [REDACTED]/ [REDACTED] [REDACTED] of [REDACTED]. In this document reference is made to the fact that [REDACTED] is unaware that [REDACTED] has assigned his rights to a third person. It is acknowledged by [REDACTED] that [REDACTED] has moved to London and for this reason the redemption value cannot be paid without the currency office’s consent.

- b) Letter from [REDACTED] to [REDACTED] dated 28th June 1939 asking clarification as to whether the redemption value should be paid to Mr. S. [REDACTED] of Cologne. It is stated that Mr. [REDACTED] has written to [REDACTED] informing it that the redemption value should be paid to him. [REDACTED] asks [REDACTED] to provide the certificates of insurance numbers [REDACTED] and [REDACTED].
- c) Document, which appears to be an index card, dated 16th October 1952, providing information on policy number [REDACTED].
- d) Letter from the 'Wiedergutmachungskammer' in Cologne to [REDACTED] dated 10th October 1952 asking if the letter dated 28th June 1939 can be examined again.
- e) Letter from [REDACTED] in Frankfurt) to its management in Stuttgart dated 3rd November 1952 stating that there are no documents concerning the policies. It states that policies [REDACTED] an[REDACTED] were *“combined to give a new paid-up sum insured of RM 377.00 as at 14.02.1924, plus interest and profits of RM 249.00, giving a total of RM 626.00 as at 14.02.141. The policy was redeemed as at 14.05.1940. The redemption value of RM 610.12 was paid out on 05.06.1940. We cannot now say to whom the sum was paid”*.
- f) This document appears to be the front and reverse side of an index card for reval. cert. [REDACTED]. Calculation of a loan and a redeemed stamp of 14th May 1940. It states that the certificates of insurance numbers were *“[REDACTED]/[REDACTED]”*.
- g) Document dated 9th October 1952 from [REDACTED] which states, *“from our central records, recording all insurance policies applied for to our company after the inflation in 1923, we are unable to find that [REDACTED] was insured with our company under the references he quotes, [REDACTED] an[REDACTED]. These may merely have been policies, which were taken out before 1923 and which suffered under the devaluation at the time. As we have no records of these old paper mark policies, we can only consider these policies if we have the certificates of insurance and other documents to hand”*.
- h) Document addressed to the branch of Lübeck dated 28th October 1952 signed by [REDACTED] in which [REDACTED] states that it is being required to give information about policy numbers [REDACTED]/165458 [REDACTED] (appears to be an internal document).
- i) Letter from [REDACTED] in Lübeck dated 4th November 1952 to the management in Stuttgart stating that it has no documents concerning the policies mentioned.
- j) Document of the United Restitution Office in Düsseldorf dated 12th November 1952 to the 'Wiedergutmachungskammer' in Cologne enclosing copies of a letter dated 21st June 1939 from which, from the Restitution Office's point of view, it can apparently be established that the insurance policy existed, but that it was not paid out to the person entitled and obviously the third party was not recognised as a representative. This letter asserts that either the German Reich or [REDACTED] are liable.
- k) Letter to [REDACTED] from the 'Wiedergutmachungskammer' in Cologne dated 19th September 1952 in which two numbers, [REDACTED]/ [REDACTED], are asked to be checked..
- l) Letter to the 'Wiedergutmachungskammer' in Cologne dated 18th November 1952 from [REDACTED] providing information about policy numbers [REDACTED] and [REDACTED] which were amalgamated into policy number [REDACTED]. Further precise policy details are given in this letter.

THE ISSUES FOR DETERMINATION

18. The subject of the appeal is – according to the Appellant’s reasons for appeal – only [REDACTED]’s denial to pay “*compensation pertaining to Policies [REDACTED] and [REDACTED] ([REDACTED]) based on the fact that my father’s claim was rejected because ‘it could not be proved’ that my father or Mr. [REDACTED], to whom ‘my father has (sic) assigned the insurance contract [REDACTED] had not received the surrender value’*”.
19. There is no doubt that the Appellant’s father had several insurance policies with [REDACTED], including specifically the ones affected by the appeal, that the Appellant as heir of his parents and beneficiary of the policies 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 dated 16th October 2002.
20. However, the Respondent succeeds in establishing a valid defence in accordance with the Agreement. According to section 17.3 of the Appeal Guidelines (Annex E) 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.
21. The Respondent has met his burden of proof in this regard. There is written evidence that on 9th March 1953 the Landgericht Cologne – Wiedergutmachungskammer - has issued a decision on claims the Appellant’s father had made in connection with insurance policies [REDACTED] and [REDACTED] ([REDACTED]), which are the subject of the appeal. This decision was neither appealed by the Appellant’s father nor was any application made for review by the Board of Review – Restitution Law – in Herford. Thus, this decision became binding in law after 22nd June 1953.
22. Thus, pursuant to section 2 (1) (c) of the Agreement the policies have to be considered as having been covered by a decision of a German restitution or compensation authority, as the decision covers the same specific policies as those to which reference is made in the Appellant’s claim form.

No exceptions as listed in the above named section of the Agreement apply because there was 1) no rejection because of lack of jurisdiction of German restitution or compensation authorities, 2) no rejection due to the fact that the claim was made by a person not entitled to claim, 3) no rejection because of the claim was not timely filed and, 4) no rejection because documentary evidence that would have led to a decision in favour of the Appellant was previously unavailable but subsequently became available. In such a case the Panel, according to the provisions of the Agreement, lacks jurisdiction and may not consider whether the restitution decision covering the policies in question is correct or, as the Appellant claims, is disputable.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 10th day of February 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member