

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], who was born on [REDACTED] 1916 in Frielendorf, Hessen (Germany). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1964 in Frielendorf and did not survive the Holocaust. He was deported and died presumably in 1942 or 1943; [REDACTED] was born on [REDACTED] 1874 in Abterode (Germany) and died in November 1922 in Frielendorf. [REDACTED] had eight children. One of them was [REDACTED], who was born on [REDACTED] 1897 and was deported to Kiev and died in 1943.
2. The Respondent is [REDACTED] as the legal successor to [REDACTED].

3. The Appellant submitted two Claim Forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC) and one “*European Insurance Policy Claim Form*” to the Holocaust Claims Processing Office (HCPO). In these Forms he claims the proceeds of life insurance policies but identifies no insurance company by name. Appellant just indicated that all the policies were purchased in Eschwege or Frankfurt am Main (Germany).
 - a) In a Claim Form dated 8th June 2000 Appellant claimed the proceeds of an unspecified life insurance policy, stating that the policyholder and insured was his father [REDACTED] and that he was the beneficiary. This claim was assigned Claim Number [REDACTED]. It appears that this claim was also assigned number [REDACTED] and that these numbers have been replaced by number [REDACTED] and have been treated as replica files of claim number [REDACTED].
 - b) In a Claim Form dated 7th August 2000 he claimed the proceeds of an unspecified life insurance policy, stating that the policyholder and insured was his brother [REDACTED] and that he, the Appellant, was the beneficiary. This claim was assigned Claim Number [REDACTED].
 - c) In a “*European Insurance Policy Claim Form*” he claimed the proceeds of an insurance policy for a business run by his father [REDACTED] and his brother [REDACTED] named “[REDACTED] & Soehne” stating that the beneficiary were his brother’s [REDACTED] wife [REDACTED] and his son [REDACTED], who were killed in Vilna. This claim was allocated at the HCPO Claim Number [REDACTED] and at the ICHEIC Claim Number [REDACTED].
4. The ICHEIC submitted the claims numbered [REDACTED] to the [REDACTED]-companies.
5. In a letter dated 29th April 2003 [REDACTED] informed the Appellant that it had found documents concerning his claims. These were a statistics card for policy No. [REDACTED] referring to [REDACTED] and name and statistics cards referring to [REDACTED]. [REDACTED] further informed him that as far as policies of [REDACTED] are concerned there would be a separate offer from [REDACTED], the [REDACTED], as “*this policy is subject to the assumption of payments into a blocked account*”. As far as policies of [REDACTED] were concerned the Appellant was informed that this policy was paid out on 11th September 1929 to the person entitled and “*hence, no more claims can be made under this policy*”.
6. The Appellant submitted an appeal dated 12th June 2003, which the Appeals Office received on 11th September 2003. Only the policy held by [REDACTED] is the subject of this appeal.
7. On 16th September 2003 the Appeals Office forwarded a copy of the appeal to the Respondent.
8. [REDACTED] responded in a letter dated 8th October 2003 in which it confirmed its decision and provided copies of all documents relating to the claim.
9. On 22nd October 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.

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 relating to the claim for the proceeds of a life insurance policy held by his father [REDACTED]:

- a) In the Claim Form dated 8th June 2000 [REDACTED], the Appellant’s father, born on 5th August 1864, was named as the policyholder and insured person, with the Appellant being the named beneficiary.
- b) In answer to question 9 (“*Have you or anybody else participated in any compensation/ restitution procedure for this claim ?*”) he states “*Deutsche Wiedergutmachung*”.
- c) In answer to question 11 relating to ‘further information’ the Claimant writes, “*I remember that my father always worked and called banks in Eschwege bec. Kassel. I know that my brother [REDACTED] worked at the slaughterhouse in Kiev before being killed at Babi Yar*”.
- d) The European Insurance Policy Claim Form states that the business owned by the insured was “[REDACTED] und Soehne”.
- e) In this form the insured persons are identified as [REDACTED] and [REDACTED]. The Appellant is identified as the beneficiary.
- f) In answer to ‘additional information’ in question 4 the Appellant writes, “*the beneficiaries of my brother [REDACTED] were his wife [REDACTED] and son [REDACTED], all killed by the Nazis in Vilna, Poland.*”
- g) In answer to question 6 regarding ‘basis for the claim on the policy (ies) listed above’, the Claimant writes, “*my father and brother always dealt with insurance companies, names are not known to me anymore*”.
- h) In answer to question 7 relating to ‘basis of belief that a policy was not paid’, the Claimant writes, “*my father [REDACTED] , my brother [REDACTED] dealt with Insurance companies*”

12. The Claimant submitted a statement with the Appeal Form in which he “*appeals the decision denying the claim for Mr [REDACTED]’s life insurance policy, based on the explanation I was given that Mr [REDACTED]’s life insurance was redeemed in 1929*”. The Claimant continues, “*my father, Mr [REDACTED], had eight children, of which three*

were minor sons in 1929. Mr [REDACTED] owned a house and a successful meat business in Frielendorf, owned stocks and bonds and held a sizeable life insurance policy. It is inconceivable that he would have cancelled his insurance policy. In fact, the brothers were all living at home and were in business together with Mr [REDACTED] and would have discussed something as important as the termination of a life insurance policy with his family. We were never compensated for the stocks and bonds or the life insurance policy. It is my contention that the Nazis stole the funds from the policy and that the date of 1929 as a cancellation date is fraudulent and that the stocks and bonds were stolen by the Nazis as well. I also urge you to review additional records to determine if there was another insurance policy owned by my father, which would be worthy of consideration as well”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

13. In a letter dated 29th April 2003, [REDACTED] confirmed that it had found the following documents:

- a) Name card ‘[REDACTED]’ for Mr [REDACTED] policy No. [REDACTED], respectively [REDACTED].
According to [REDACTED] life insurance [REDACTED] and [REDACTED] were included in the upgrade certificate [REDACTED]. This meant that [REDACTED] comprises the aforementioned life insurance policies. This card is marked with the words “ausgezahlt am 11.9.1929” (paid out on 11th September 1929). Only this policy is the subject of the appeal.

Further documents mentioned in this letter, which, however, are not relevant to this appeal, are:

- b) Name card ‘[REDACTED]’ for Mr [REDACTED] policy No. [REDACTED].
- c) Statistics card for policy No. [REDACTED]
According to [REDACTED] the documents found relating to policy No. [REDACTED] of [REDACTED] [REDACTED] stipulated that the insured sum was RM 10,000 with an annual premium of RM 372. The policy commenced on 1st October 1924 and would have had duration of 25 years. The final maturity of the insurance contract would have been 1st October 1949. The policy was redeemed as per 10th March 1939 as the notation ‘R.10.3.39’ proves. ‘R’ stands for ‘Rückkauf’ and means surrender. This policy is not subject of the appeal since this has been dealt with by the [REDACTED], with an offer made which the Appellant accepted.

14. In a letter dated 8th October 2003 in response to the Appeals process [REDACTED] writes, “the name card considers the notation ‘ausgezahlt am 11.9.1929’, which proves that the policy was paid out on 11.09.1929. According to the ICHEIC’s guidelines for evidence which we follow in our decisions, all kind of documents are to be classified as sufficient proving or indicating that policies were paid out or expired as long as they are credible. The fact that the policy was paid out on 11.09.1929 is indicated on the name card and credible. According to the date of birth, first name and last name, day and month are correct, there are just differences in the year of birth. Consequently we assumed that the

person we have found on the name card is the father of the Claimant. Considering the long time passed and the termination of the legal and practical retention time no further documents exist in respect of the insurance policy no. [REDACTED] and [REDACTED]/[REDACTED] so that there is no indication of how high the sum insured was, nor of the history of the policy, except that the policy was paid out to the person entitled and no more claims are valid on this policy”.

THE ISSUES FOR DETERMINATION

15. The facts set out above reflect that the Appellant’s father had at least the insurance policy with [REDACTED], which is the subject of this appeal, that the Appellant as heir of his father would be entitled to the proceeds of this policy and that his father was a Holocaust victim. Therefore, the claim of the appellant in general is under the scope of the Agreement dated 16th October 2002.
16. However, the Respondent succeeded in establishing a valid defence in accordance with the Agreement. According to Section 17.3 of the Appeal Guidelines the claimant is not entitled to payment from the Foundation funds if 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 (17.3.1).
17. The Respondent has met his burden of proof in this regard. There is written evidence that the surrender value was paid out on 11th September 1929. The name card contains the notation ‘ausgezahlt am 11.09.1929’ (paid out on 11th September 1929). This proves that the policy was paid out in 1929, a time before the Holocaust started in Germany.
18. The Panel also concludes that this card is credible. Even if there is a deviation in the year of birth – according to the Appellant’s statement his father was born in 1864, whereas according to the name card [REDACTED] was born in 1863 - all other details (surname, name, day and month of birth) match.
19. The Appellant does not successfully challenge this evidence. Appellant does state that in 1929 [REDACTED] had eight children, including three minor sons, and that he was wealthy which would suggest that there was no apparent problem which would have warranted the cancellation of the life insurance. These assumptions alone, however, are insufficient to overcome the written evidence provided.
20. Finally, there are no grounds for believing that the date of 1929 as a cancellation date is fraudulent. Even if the Respondent is not able to give further details on the amount paid out, the account on which this payment was made and further circumstances of the surrender of this contract this cannot be regarded as an indication that there has been any manipulation. The long time that has passed and the termination of the legal and practical retention time explains why no further documents are available showing the history of this insurance policy.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 22nd day of January 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member