

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], née [REDACTED], born on [REDACTED] 1928 in Frankfurt am Main (Germany). She is the daughter of Dr. [REDACTED] and [REDACTED], née [REDACTED]. Dr. [REDACTED], a physician, was born on [REDACTED] 1885 in Mannheim (Germany) and died on 4th March 1961 in Haifa (Israel). Dr. [REDACTED] and [REDACTED] had three children. The [REDACTED] family left Germany in 1934 to escape from persecution by the National Socialist Regime.
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim dated 23rd May 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that a company she could not name issued a policy of life insurance.
4. The ICHEIC forwarded the “unnamed” claim form to the Member companies and German companies.
5. [REDACTED] found an entry in its central register and informed the Appellant in a letter dated 14th November 2001.
6. In a further letter dated 25th April 2003 [REDACTED] offered a payment of US\$ 8,000 (US\$ 4,000 each) for two life insurance contracts of the Appellant’s father.
7. The Appellant submitted an appeal to the Appeals Office dated 26th June 2003, which arrived on 14th August 2003. It was accompanied by an attachment setting out the reasons for the appeal, namely that the Appellant did not accept the Respondent’s valuation.
8. The Appeals Office mailed a copy to the Respondent on 26th August 2004.
9. [REDACTED] responded in a letter dated 17th 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 19th 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. Responding to this letter the Appellant informed the Appeals Office in a letter dated 20th September 2003 “*I just want to make clear, ... that I do not want to be involved in any costs appealing to the Panel. Please confirm in writing that I have no costs*”.
12. After having received this letter on 23rd September 2003 the Appeals Office informed the Appellant that there will be no costs for the parties if the Appeals Panel orders an oral hearing by conference telephone call.
13. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
14. 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

15. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
 - a) The Appellant does not identify the insurance company but states that the policy was purchased in Frankfurt am Main in Germany. In addition, she answers question 3.3 of the claim form that her father “*worked in the Red Cross and Jewish hospitals in Frankfurt*”.

- b) In response to question 5 regarding details of the policy the Appellant writes, “do not know” and, consequently, provides no specific policy details.
 - c) In section 6 she identifies her father [REDACTED], born 8th July 1885, as the policyholder.
 - d) In section 7 she identifies her father as the insured.
 - e) In section 8 she identifies herself as the “named beneficiary”. In section 6, 7 and 8 she names Mrs [REDACTED] as a living heir of the insured and the beneficiary.
 - f) In response to question 9 concerning compensation, the Appellant writes, “I don’t know” and states that she receives a pension from Germany and that “in, I think, 1957 or 1958 I got a lump sum of 400 DM only.”
 - g) In answer to question 11 concerning “further information” the Appellant writes, “recently there was an Exhibition of Jewish pupils at my father’s gymnasium the Friedrich Gymnasium in Frankfurt a/m 1906. I enclose 1 copy of a memorial service which was held in March 1963”.
16. In a letter to [REDACTED] dated 10th April 2003 the Appellant writes: “I can not accept the way you worked out the sum of \$8000 compensation. As you have the number of the policies there must be some documentation and prove how much my father Dr [REDACTED] paid into the insurance fund. I noticed that the serial number of the policies is [REDACTED] which you claim was taken out in 1925, the [REDACTED] must then have been taken out earlier!! I can not accept that you lost some of the papers and ask you, please look deeper into the matter above”.
17. On the appeal form received by the Appeals Office on 14th August 2003 the Appellant writes, “I do not accept your valuation. Please review the valuation to a higher amount and justify how you came to the valuation of 8000 dollars. I will not accept any reduction”. She attaches a copy of the letter to [REDACTED] mentioned above (paragraph 16) “explaining why I do not accept the offer of 8000 dollars”.
18. In a letter addressed to the Respondent, submitted with the Appeal Form, the Appellant writes, “As you have the number of the policies there must be some documentation and prove how much my father Dr [REDACTED] paid into the policies found. I noticed that the serial numbers of the policies is [REDACTED], which you claim was taken out in 1925, the [REDACTED] must have been taken out earlier. I cannot accept that you lost some of the papers and ask you, please look deeper into the matter above”.
19. In a letter to the Appeals Office dated 28th July 2003, received by the Appeals Office on 3rd September 2003, the Appellant writes “unfortunately I have not got any documents of my father’s policy as he and my brother died many years ago and they looked after the affairs”.
20. It is to be noted that the claim, which originally was an unnamed claim, resulted in answers from two other insurance companies. With respect to [REDACTED] a new claim file no. [REDACTED] was created. A provisional decision letter dated 12th April 2001 of the other company [REDACTED] was put in the present claim file no. [REDACTED]; this decision letter, according to the file, was not appealed. [REDACTED]’s decision letter dated 25th April 2003 dealing with the [REDACTED] policies is the only subject of this appeal.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

21. [REDACTED] found an entry for Dr. [REDACTED] in its central register and a copy of this entry was enclosed with the final decision letter. In this final decision letter to the Appellant dated 25th April 2003 [REDACTED] states, “*The entry does not contain details on the applied insurance coverage, in particular the sum insured, the amount of premium or the projected insurance term. Its sole purpose was to find the corresponding file in our archive, which is arranged in numerical order. The entry therefore only contains – apart from the personal data of the applicant – the application number [REDACTED]*”.

[REDACTED] also states “*furthermore we have found a letter of our company dated December 11, 1933 which contains policy numbers [REDACTED] and additionally a second policy number [REDACTED]. Therefore we know for sure that Dr [REDACTED] had concluded life insurance contracts with the numbers [REDACTED] and [REDACTED] with [REDACTED]. Unfortunately no corresponding files exist. However, on account of the fact that during the war a substantial part of our files was destroyed, this is not unusual. Since no files exist we have no information whatsoever on the possible terms of the contracts. Concerning life insurance number [REDACTED] we only know that the inception date was probably April 1, 1925. Therefore, we have searched two other registers of that time, which have remained intact. The first one is a register set up in 1941 containing all life insurance contracts including the corresponding technical data, which were in effect at that time. The register was set up in order to prevent the loss of contract details during the war. This register does not contain an entry for Dr [REDACTED]. Thus a contract was not in effect anymore in 1941. The other one is a so-called reserve register containing all life insurance contracts which were not settled by us, e.g. if the beneficiary could not be found or payment could not be made for other reasons. The setting up of such a register is required by law in order to establish reserves for subsequent payment. This register does not contain an entry for the numbers entered in the central register either. This means that no reserve was established for these policies. Therefore we assume that no claim remained unsettled*”.

Finally, [REDACTED] states in the decision letter dated 25th April 2003 “*the life insurance contracts [REDACTED] and [REDACTED] of Dr [REDACTED] had been regarded in the course of compensation proceedings by the compensation authority Wiesbaden. Within the framework of the German State compensation procedure, no compensation payment had been awarded to Dr [REDACTED] since the compensation authority had no information about the subject terms of the insurance contracts. Therefore, the decision of January 31, 1961 was subject to amendment by the compensation authority in case that the technical data of the insurance contracts [REDACTED] and [REDACTED] will have been proved or substantiated. However, the technical data to these insurance contracts could not be proven at any time. In consideration of the fact that your father died shortly after the decision of the compensation authority he was probably no longer in the position to produce the technical data to the insurance contracts. Therefore a decision concerning a compensation for these insurance policies could never be reached. We assume in your particular case we have paid the insurance benefit. This is supported by the above-mentioned letter of our company in which we told Dr [REDACTED] what value his insurance policies would have in case of releasing the insurance contracts. However we are not sure whether the insurance benefit was paid to the beneficiary but seized by authorities of the Nazi regime*”. [REDACTED] added with respect to the US\$ 4,000 offered for each of the two policies: “*We have now decided to offer you a fund benefit on humanitarian grounds. In doing so we wish to express, that the mere possibility of a payment to a person or an institution other than the beneficiary is reason enough to pay the benefit*”.

22. Submitted with the final decision letter of 25th April 2003 was a copy of the ruling of the compensation authorities of Wiesbaden, dated 31st January 1961. In this ruling policy number [REDACTED] and [REDACTED] are referenced and the English translation states, *“this decision should be widened to include [REDACTED] policy numbers [REDACTED] and [REDACTED] if convincing or credible evidence of the contract terms can be provided”*.
23. In addition to this ruling, a copy of a letter dated 11th December 1933 from [REDACTED] to Dr. [REDACTED] was submitted by the Respondent, which states, *“if both your insurance policies are redeemed, you should have approximately RM 1700 available”*.
24. Further documentation the Respondent with respect to the Appeals process submitted is:
- a) A letter from the compensation authorities of Wiesbaden dated 20 January 1958 to [REDACTED] concerning Dr [REDACTED]’s application for compensation. This letter references policy [REDACTED] and states, *“in accordance with §182 paragraphs 1 and 2 of this act, please inform us whether you have received any compensation claims or reached any agreements...If possible, please provide a reconstruction of the movements on the account.”*
 - b) A letter from [REDACTED] to the compensation authorities of Wiesbaden dated 3rd March 1958 referencing policy number [REDACTED], which states, *“we have tried to reconstruct the movements on the account, but despite all our efforts this has not been possible...”* It is stated that the policy was taken out on “1.4.1925” and provides the date of birth of the insured, Dr [REDACTED].

THE ISSUES FOR DETERMINATION

25. The only issue for determination is, whether the offer made by [REDACTED] is in line with the Valuation Guidelines (Annex D of 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]). There is no doubt that the Appellant’s father had insurance policies with [REDACTED] (policies number [REDACTED] and [REDACTED]), that the Appellant as named beneficiary is entitled to the proceeds of these policies and that all family members were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement.
26. As far as policies number [REDACTED] and [REDACTED] are concerned the Respondent submitted documents to the effect that the two policies were dealt with in a compensation proceeding. However, a final decision on these two policies was never taken. It was only decided, that *“this decision should be widened to include [REDACTED] policy numbers [REDACTED] and [REDACTED] if convincing or credible evidence of the contract terms can be provided”* (“Bescheid” (decision) of the Restitution Authority Wiesbaden dated 31st January 1961).
27. Against this background and the possibility that insurance benefits were not paid to the beneficiary but seized by authorities of the National Socialist regime the Respondent offered a payment of US\$ 4,000 for the two policies which is in line with the above named Agreement.

VALUATION

28. Under the Tripartite Agreement (see para. 14 above) the valuation of policies has to be based solely on the Valuation Guidelines, which form Annex D of the said Agreement. For policies issued in Germany (within the boundaries of 1937) and denominated in German currency, for which the Federal Republic of Germany established programs of compensation after the war under the Bundesentschädigungsgesetz (BEG) or other programmes of compensation or restitution, the company must assess the claim (both the base value and the valuation up to 1969) as if it had been submitted to the BEG, using the same methods of valuation, and apply a multiplier to this value of 8X.
29. In cases, where, as is the case here, policies existed but the amount of the policy cannot be determined, section 7.1 of the Valuation Guidelines requires that an offer must be made and the offer be based on a multiple of three times (3x) the average value for policies in the respective country as shown in Schedule 3 (section 7.1 of the Valuation Guidelines).
30. According to Schedule 3 of the said Valuation Guidelines the average value of life insurance policies in Germany is Reichsmark 841. Three times RM 841 gives RM 2,523.00. This amount then, following the currency changes prescribed by law in 1948, has to be converted from RM into DM by using the converting factor RM 10 = DM 1, which gives the amount of DM 253.30. That is the value to the end of 1969. In order to update this value by end 1969 to the value by end 2000, pursuant to Step 2 number 3 of Schedule 2 the 1969 value has to be multiplied by 8. Eight times DM 253.30 is DM 2,018.40.
31. For offers made from January 2001 the value has to be updated by agreed multipliers as shown in Schedule 2 (section 2.2 of the Valuation Guidelines). According to Step 3 of Schedule 2 of the said Annex additions must be made to the value up to the end of 2000 for the subsequent years. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC which had been consulted with the Foundation and the [REDACTED] as the other parties of the Agreement (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 % according to the month, in which the decision is made, plus two months, i.e. 6/12 of 4.75 %), which leads to the amount of DM 2,119.32 for 2001, DM 2,233.76328 for 2002 and DM 2,286.8151579 for 2003, which gives € 1.169,23 on the basis of an exchange rate of DM 1.95583 = € 1.00.
32. Nevertheless and irrespective of the above calculation, pursuant to section 2.3 of the Valuation Guidelines each claimant shall receive in respect of any valid claim on a policy issued in Germany by a German company at least a minimum payment of US\$ 4,000 (per policy), if he is himself a survivor of the Holocaust, as the Appellant is in this case.
33. The Appeals Panel concludes that for the reasons set out above the offer made by the Respondent (2 x US\$ 4,000) is correct.

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