

## THE APPEALS PANEL

Established under an Agreement dated 16<sup>th</sup> 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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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

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### PRIVILEGED AND CONFIDENTIAL

**APPEAL NUMBER:** [REDACTED]  
**CLAIM NUMBER:** [REDACTED]

### **BETWEEN**

[REDACTED]

**APPELLANT**

AND

[REDACTED]

**RESPONDENT**

### **DECISION**

[REDACTED] 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] 1933 in Berlin (Germany). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1897 in Berlin and died 2<sup>nd</sup> March 1963 in Roubaix (France). [REDACTED] was born on [REDACTED] 1899 in Vilnius (Lithuania) and died on 20<sup>th</sup> November 1990 in Ramat-Gan (Israel).

The Appellant’s father was a self-employed cigarette manufacturer before the German National Socialist regime persecuted him and his family. In 1938 the family fled from Berlin to Brussels and later lived in Roubaix.

The Appellant has two sisters, [REDACTED], née [REDACTED], and [REDACTED], who both live in France.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim form dated 22<sup>nd</sup> January 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claimed that [REDACTED] issued a policy of life insurance to his father.
4. The ICHEIC submitted the claim to the Respondent.
5. [REDACTED] stated in its decision letter dated 10<sup>th</sup> March 2004: *“We were able to find out in the year 1999 that your mother, Mrs [REDACTED] – as mentioned by you in your ICHEIC claims – represented by [REDACTED], lawyer in Berlin, - had already filed a claim with the Entschädigungsamt in Berlin (Berlin Compensation Office) as early as in May 1964 under the German Compensation Laws regarding your father’s policy with [REDACTED].”*
6. The Appellant submitted an appeal and accompanying letter to the Appeals Office dated 23<sup>rd</sup> March 2004. This arrived on 29<sup>th</sup> March 2004. In it the Appellant states: *“This case concerns a mutual life assurance policy which my parents took out between [REDACTED] and my father in the early 1930s, which the insurers do not dispute. In the absence of insurance policies which neither they nor I have, [REDACTED]’s decision is based on assumptions, presumptions and conclusions based on them as to what happened to the policy involved here. For my views on this matter, please see my letter to [REDACTED] of 22<sup>nd</sup> March enclosed.”*
7. The Appeals Office sent a copy of the appeal form to the Respondent on 30<sup>th</sup> March 2004.
8. In a fax sent to the Appeals Office dated 6<sup>th</sup> April 2004 [REDACTED] responded: *“The policy in question – and this is not denied by the claimant - was the subject matter of a proceedings initiated by his mother with Entschädigungsamt Berlin (Berlin Compensation Office) under file No. [REDACTED] [...]. As, however, the ‘Agreement’ of 16<sup>th</sup> October 2002 stipulates in Article 2 Section 1 that a policy is not eligible for compensation if that specific policy was the subject matter of a prior decision by a compensation authority, this claim has to be denied – which we did”.*
9. On [REDACTED] 2004 the Appeals Office informed both parties that the appeal would be decided 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.
10. No request for an oral hearing has been received from either party. The appeal proceeds on a “documents only” basis.
11. The appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16<sup>th</sup> 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.

In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel’s general decision dated 6<sup>th</sup> July 2004 this appeal was assigned to [REDACTED].

The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

## THE CLAIM

12. In the claim form, the Appellant provided the following information relating to the claim for the proceeds of a life insurance policy:
- a) In section three, the Appellant identifies “[REDACTED]” as the insurance company that issued the policy. He asserts that the insurance policy was purchased in Berlin, Germany. In answer to Q 3.3 regarding ‘other information which might support the search’ the Appellant refers to enclosed correspondence.
  - b) In section four, the Appellant states that he can provide further information substantiating his claim. He refers to correspondence enclosed.
  - c) In section five, the policy is identified as a life insurance policy and the number [REDACTED] is provided by the Appellant. The currency is identified as RM, but the insured sum is unknown. With regard to the date of issue the Appellant states that it was probably 1931 and refers to an attachment “K3”. The Appellant asserts that no payment resulting out of the insurance policy has ever been made. It is stated that the premium payments were stopped when they fled from persecution in 1938. The Appellant states that, according to the enclosed correspondence, his mother approached the insurance company about the policy in August 1963.
  - d) In section six, the Appellant identifies [REDACTED] as the policyholder. He also names as other living heirs of the policyholder his two sisters, [REDACTED] née [REDACTED] and [REDACTED].
  - e) In section seven, the Appellant identifies his parents, [REDACTED] and [REDACTED], as the insured persons.
  - f) In section eight, the Appellant identifies the beneficiary as being his mother, [REDACTED] née [REDACTED], who was born on [REDACTED] 1899 and died on 20<sup>th</sup> November 1990.
  - g) In section nine, the Appellant states that his mother participated in a compensation/restitution procedure for this claim under the BEG. The Appellant provides file number [REDACTED]. He states that no payment was received because the proof required by the compensation office could not be produced.
  - h) In section eleven regarding “further information”, the Appellant writes: “*Case references at the compensation office, Berlin. Reg no. [REDACTED], Reg no. [REDACTED] (wife), Reg no. [REDACTED] (son). Enclosure (A) which I enclose herewith shows that my mother applied to the compensation office, Berlin, via her legal assistant, [REDACTED] for compensation for the mutual life assurance policy with her husband. This policy was no. [REDACTED] with [REDACTED] insurance company (Enclosure (B)) [this copy is not in the claim file]. In its letter of 24.05.67 (Enclosure C), the compensation office stated that it was not until exhaustive details could be given of the policy and the proofs in question produced that [REDACTED] would be able to reconstruct this policy. Alternatively, it was suggested amongst other things that statements could be made under oath. I believe one such from my mother should be in the compensation office’s files and in any case that this policy existed. My mother was unable to furnish any further details, for lack of the appropriate documents which were apparently lost as a result of persecution. As a result, under the ruling of Nov. 8<sup>th</sup> 1967, (enclosed as enclosure D), the compensation office dismissed the claim by my mother’s*

agent, Frau [REDACTED], and considered the matter settled. The compensation office had previously asked my mother via Frau [REDACTED] to comment on that office's letter of 24.05.1967 (Enclosure E), but she could not do as she was old and sick.... It was not until much later, after she had died (God bless her) that her children found the documents (A) to (E) in a stack of papers, showing that this mutual policy [REDACTED] in favour of my parents existed with [REDACTED] insurance company and that the compensation office had never made any payment in respect of this. I started corresponding with Herr [REDACTED], special agent of [REDACTED] insurance company, on 16.03.98 and continued this correspondence on the advice of my attorney [REDACTED] (enclosure K1) until my most recent letter from this Herr [REDACTED] on 29.09.98, enclosed as Enclosure K2. I then most recently received the letter of 22.01.99 enclosed, marked (K3). Suddenly, this stated that the life assurance policy in question was issued in 1931. Why did [REDACTED] insurance not inform the compensation office of this at the time?"

13. The following documents were submitted with the claim form:

- a) A letter dated 23<sup>rd</sup> January 2001, sent by the Appellant to the ICHEIC, in which he again states that his parents had a joint policy, number [REDACTED]. He writes: "I assume my father kept paying premiums for as long as he was in Germany, that is until 1938 at least, when we fled Berlin, and, if that was so, the insurers had at least the profits from eight years' premiums paid and the resulting interest until my father died in early March 1963".
- b) Documents regarding the compensation proceeding:
  - (i) A copy of a letter dated 20<sup>th</sup> May 1964 from [REDACTED], the representative of [REDACTED], to the Compensation Authority of Berlin which states: "I enclose the form F on behalf of my client above. When she was here in Berlin, Frau [REDACTED] told me that she and her husband took out a mutual life assurance policy before the Nazi regime arrived. As her husband is dead, my client is the beneficiary under that life assurance policy. [REDACTED] insurance should have the documents showing that such a policy existed. I have a power of attorney from my client to obtain those documents and will of course enter these on the 'F' losses once they are received".
  - (ii) A copy of a letter dated 24<sup>th</sup> May 1967 from the Compensation Authority of Berlin to [REDACTED]. This letter states that no favourable decision can be made since the technical data required is missing. It continues: "As you are aware, from the letter of October 1<sup>st</sup>, 1964, [REDACTED] can only reconstruct policies if the evidence required is presented or exhaustive details given of those policies. If the applicant does not have any further documents on this policy, we would ask you to arrange for her to submit the appropriate statements under oath (herself and the witnesses) indicating the policy data. The details required are as follows: 1. what the sum insured was, 2. when the policy started and when it expired, 3. how much the premiums were, and how they were paid, 4. when the last premium was paid, 5. when the policy was terminated, 6. if any loan was taken out on the policy, and if so, for how much, 7. what the redemption value was and when it was paid".
  - (iii) A copy of a letter dated 4<sup>th</sup> January 1966 from [REDACTED] to the Compensation Authority of Berlin regarding insurance losses 'F'. Frau [REDACTED] informs the Compensation Authority in this letter that she is enclosing a letter from [REDACTED] dated 1<sup>st</sup> October 1964 and requests swift processing of the application.

- (iv) A copy of a “Bescheid” (ruling) sent to [REDACTED] with date 8<sup>th</sup> November 1967 regarding losses pursuant to §§ 127 and following BEG. The victim of persecution is identified as the Appellant’s mother. The ruling states: *“The claims under the Federal law on compensation for victims of National Socialist persecution (BEG) of June 29<sup>th</sup>, 1956 (BGBl. I p. 559/GVBl. p. 764) in conjunction with the law on compensation for victims of National Socialism (BerLEG) of January 10<sup>th</sup>, 1951, as worded on February 21<sup>st</sup>, 1952 (GVBl. p. 116) and laws issued amending the same for compensation for loss of financial advancement [§§ 127-137 BEB] are dismissed”*.
- (v) A copy of a letter from the Compensation Office of Berlin to [REDACTED] stating that its letter of 24<sup>th</sup> May 1967 [the date is unclear] has not been answered.
- (vi) A copy of a response to the above-mentioned letter that was sent by [REDACTED] on 28<sup>th</sup> August 1967 informing the Compensation Office of Berlin that she has reminded her client to respond to the letter of 24<sup>th</sup> May 1967.

## THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. In its decision letter of 10<sup>th</sup> March 2004 the Respondent writes: *“In your case we have been able to find out that – as should be known to you from the correspondence of the years 1998 and 1999 – we do not have any references or records regarding the policy in question; of this, we informed you and your mother as well as the Entschädigungsamt in Berlin (Berlin Compensation Office) as early as in the year 1964. In 1999, however, we were able to assume on the basis of the policy number that the policy may have been taken out in the year 1931. We do not have any further information. The few technical registers that are still available with us and which refer to policies valid in a specific year, neither list the policy in question for the year 1937 nor for the year 1939. This makes it impossible for us – as already explained before - to give further information; it also makes us assume that the policy had been subject to a special provision prior to 1937 or that the policy had already expired without value at that time. As you know, we were also able to find out in the year 1999 that your mother, Mrs [REDACTED] – as mentioned by you in your ICHEIC claims – represented by [REDACTED], lawyer in Berlin, - had already filed a claim with the Entschädigungsamt in Berlin (Berlin Compensation Office) as early as in May 1964 under the German Compensation Laws regarding your father’s policy with [REDACTED] zu Berlin.”*
15. In a letter sent to the Appeals Office dated 6<sup>th</sup> April 2004 the Respondent writes: *“As already explained by us in our letter dated 10<sup>th</sup> March 2004, the technical registers, which give a complete overview of the policies with [REDACTED] valid in the years 1937 and 1939, did not enable us to identify the policies in question. We therefore had to come to the conclusions on the basis of a matter of fact and not on the basis of assumptions that the policies had been the subject matter of certain provisions prior to 1937. Moreover, the policy in question – and this is not denied by the claimant- was the subject matter of a proceedings initiated by his mother with Entschädigungsamt Berlin (Berlin Compensation Office) under file No. [REDACTED]. The Compensation Office denied this claim for material and not only for formal reasons as per its decision dd 8<sup>th</sup> November 1967, after several request to the claimant’s mother to give further details, e.g. in the form of a declaration in lieu of an oath under relaxed standards of proof, had not been answered. Although there was legal advice, the claimant’s mother did not lodge an appeal against the decision. As, however, the ‘Agreement’ of 16<sup>th</sup> October 2002 stipulates in Article 2 Section 1 that a policy is not eligible for compensation if that specific policy was the subject matter*

*of a prior decision by a compensation authority, this claim has to be denied – which we did”.*

## **THE ISSUES FOR DETERMINATION**

16. The main issue for determination in this appeal is whether the Respondent has established a valid defence. There is no doubt that the Appellant’s father had an insurance policy with [REDACTED], that the Appellant as one of the heirs of his parents could be entitled to parts of 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. But, as far as this policy is concerned, the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. Pursuant to Section 17.3 of the Appeal Guidelines the Appellant is not entitled to payment from 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.

17. The Respondent proved that this policy was the subject of a compensation proceeding by providing compensation and restitution authority archive evidence in the form of, among others, a “*Bescheid*” (ruling) dated 8<sup>th</sup> November 1967, which records that the aforementioned policy was the subject of compensation proceedings under BEG law. Since this is the case, the policy in question undoubtedly was covered by a decision of the compensation authority, and the Panel therefore, according to section 2.2.2 Appeal Guidelines, lacks jurisdiction to reopen any claim with regard to such policies.

## **IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 9<sup>th</sup> day of September 2004

For the Appeals Panel

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[REDACTED]