

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

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] ([REDACTED]) [REDACTED], née [REDACTED], born on [REDACTED] 1917 in Breslau (Germany, now Wrocław, Poland). She is the daughter of [REDACTED]. [REDACTED] was born on [REDACTED] 1874 in Germany (probably Breslau) and died on 17th February 1944 in the concentration camp of Theresienstadt. [REDACTED] was a businessman and owned the “*Gebrüder [REDACTED] Pumpen Fabrik*” ([REDACTED] Bros. Pump Factory). He had three

children, [REDACTED] ([REDACTED]), born on [REDACTED] 1907, [REDACTED], née [REDACTED], born on [REDACTED] 1914, and [REDACTED] ([REDACTED]) [REDACTED], née [REDACTED], born on [REDACTED] 1917, the Appellant. According to the Appellant's statements in her claim form, she is the only heir.

2. The Respondent is [REDACTED] as successor of "[REDACTED]" (that was in turn succeeded by "[REDACTED]").
3. The Appellant submitted a claim form dated 15th March 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that a company she could not name issued policies of life insurance.
4. The ICHEIC submitted the claim to the [REDACTED] companies and German companies.
5. [REDACTED] informed the Appellant in its decision letter dated 5th August 2003 that it had found four life insurance policies and a dowry insurance taken out by the Appellant's father, that there had been a compensation procedure for three of the four life insurance policies and the dowry insurance, which was redeemed in 1938, the year when the Appellant married, and that the fourth life insurance policy was also redeemed in 1930. [REDACTED] concluded: "*We are confident that you will understand our decision not to submit an offer under the given circumstances for your father, Mr. [REDACTED], or for you*".
6. The Appellant submitted an appeal to the Appeals Office dated 28th November 2003, which was accompanied by an attachment setting out the reasons for the appeal.
7. The Appeals Office received the appeal form on 15th January 2004 and mailed a copy to the Respondent on 29th January 2004.
8. [REDACTED] responded in a letter dated 17th February 2004, in which it repeated its reasons for dismissing the claim and provided further documentary evidence.
9. Independent from the appeals process the competent ICHEIC body awarded the Appellant a humanitarian payment of US\$ 1,000.
10. On 8th March 2004 the Appeals Office informed both parties that the appeal will 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.
11. No request for an oral hearing has been received from either party. 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 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 6th 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

13. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in her claim form:
- a) In section three she indicates that the name of the company that issued the policy is unknown to her. She asserts that the policy was purchased in Breslau.
 - b) In section five she indicates that the policy was a 'life insurance policy' issued in Deutschmarks.
 - c) In section six she identifies the policyholder as [REDACTED], her father, who was born on [REDACTED] 1874 in Germany. He perished in Theresienstadt on 17th February 1944. She states that he was the owner of "Gebrüder [REDACTED]", a pump factory.
 - d) In section seven the insured person is identified as the Appellant's father.
 - e) The beneficiary is unknown.
 - f) In section nine regarding compensation the Appellant writes, "\$1000 for restitution of university studies. Can't remember what organization".
14. In a statement setting out her reasons of appeal dated 28th November 2003 the Appellant writes, "I am writing to appeal your decision dated August 5, 2003 that indicates that I am not entitled to any benefits on my claim on my father, [REDACTED]'s insurance. You indicated that a claim had been filed on behalf of his heirs, [REDACTED], [REDACTED] and myself [REDACTED]. You also indicated that benefits had been paid on this claim. I never received any benefits on this claim. If anything was sent it was sent to my brother [REDACTED] on my behalf, however I was never notified of it or received any benefits due to me. Please check to whom any payment was made and reconsider my claim for benefits. As I said, I was never notified of a payout or received any benefits".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. In its decision letter dated 5th August 2003 the Respondent writes: "The German authorities have now confirmed that the heirs of Mr. [REDACTED], namely your brother, Mr. [REDACTED] (formerly: [REDACTED]), your sister, [REDACTED], née [REDACTED] and yourself, Mrs [REDACTED] (formerly: [REDACTED]) [REDACTED], née [REDACTED], had filed a claim under the German Compensation Laws regarding the following policy numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The "Amt für Wiedergutmachung in Saarburg, Rheinland-Pfalz" (the compensation authority in Saarburg, Rhineland-Palatia) has confirmed that the above mentioned policy numbers were subject matter of the decision by the "Bezirksamt für Wiedergutmachung Neustadt/Weinstrasse" (the district authority for compensation Neustadt/Weinstrasse) dated 30th April 1965 (this should read 27th April 1965

– 30th April 1965 was the date on which the decision was sent out) *in the compensation proceeding according to Mr. [REDACTED] under file-number [REDACTED]; [REDACTED]. The amount of compensation for the above mentioned policies about 2,727.81 Deutsche Mark has already been paid to the heirs of Mr. [REDACTED]*”.

16. [REDACTED] made further comments in its letter dated 17th February 2004, in which it states: “...*the Federal Republic of Germany paid as a compensation payment according the BEG the amount of DM 3,837.00 (relating to [REDACTED] policies DM 2727.81) to Mr. [REDACTED] (formerly [REDACTED]), Mrs. [REDACTED], née [REDACTED], and Mrs. [REDACTED] (formerly [REDACTED]) [REDACTED], née [REDACTED], as the heirs of Mr. [REDACTED]. For compensation according to the BEG the Agreement in Section 2. states: A claim concerning a life insurance policy is eligible for compensation, if (...) (c) The policy (or policies) in question was not covered by a decision of a German restitution or compensation authority. (...). Therefore, the claim of Mrs. [REDACTED] concerning the policies [REDACTED], [REDACTED], [REDACTED] and [REDACTED] is not eligible for compensation in the ICHEIC process because these policies are covered by a decision of a German compensation authority*”.
17. The Appellant submitted, among further documentation, copies of the following documents:
- a) A copy of the “*Feststellungsbescheid*” (ruling) from the compensation authority of Neustadt/Weinstrasse, dated 27th April 1965. This decision lists policy numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. With regard to policy number [REDACTED], which is quoted as being a dowry policy, it is stated [translation] “*according to a statement by the insurance company, the normal term of this insurance was reached by the marriage of the insured daughter in 1938. Thus, no prejudice was caused to the contractual relationship within the meaning of § 127 BEG, so no entitlement to compensation exists.*” For policy number [REDACTED] compensation of DM 2,091.52 was awarded; for policy number [REDACTED] compensation of DM 281.72 was awarded and for policy number [REDACTED] compensation of DM 354.57 was awarded.
- b) A copy of a letter dated 12th January 1965 from [REDACTED] to the compensation authority clarifying the policies taken out by Mr [REDACTED]. Reference is made to policy number [REDACTED], which came from insurance policy [REDACTED]. On this matter [REDACTED] writes: “*We no longer have any documents with regard to these insurance contracts...on the basis of similar insurance policies for which we still have documents, all we can tell you is that revaluation policies always came into force on 14.2.1924. These policies were basically non-contributory and the non-contributory amounts assured were generally small. The policies matured on the death of the insured, at the latest on 14.2 of the year following the 85th birthday of the insured. It is no longer possible to ascertain here when policy [REDACTED] was terminated*”. Policy numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED] are also listed in this letter and the following information is given on each specific policy:

“*Insurance policy* [REDACTED]

Tariff

: III K

Commencement of policy : I.II.1924
Maturity of policy : I.II.1944
Insured sum : RM 20,000
Annual premium tariff : RM 1,163.60

The contract was repurchased in 1938.

Insurance policy [REDACTED]

Tariff : IV h
Commencement of policy : 1.5.1926
Maturity of policy : 1.5.1939
Insured Sum : 3,000
Annual premium tariff : 261.80

The insurance policy was terminated in 1938 because of the marriage of the jointly insured daughter. A loss caused by persecution would only have occurred here if it could be proved that the insurance pay-out at the time was not made to the rightful claimant, but was confiscated by the German Reich.

Insurance policy [REDACTED]

Tariff : IV h
Commencement date of policy : 1.5.1926
Maturity date of policy: : 1.5.1942
Insured Sum : RM 3,000
Annual tariff premium : RM 213,90

The insurance policy was terminated in 1939 because it was surrendered.

Insurance policy [REDACTED]

Tariff : III k
Commencement date of policy : 1.3.1930
Maturity of policy : 1.3.1945
Insured Sum : RM 4,200
Annual tariff premium : RM 328.40

The insurance policy was also terminated in 1939 because it was surrendered”.

- c) A copy of a letter dated 9th April 1965 from [REDACTED] to the compensation authority calculating the amount of compensation for policy numbers [REDACTED], [REDACTED] and [REDACTED].

18. Finally, [REDACTED] denied the claim regarding policy number [REDACTED] asserting that this policy, which comprises [REDACTED], was paid out on 8th May 1930. As evidence of this the Respondent submitted a copy of the name card, which contains the remark “ausgez. 8.5.1930” (paid out on 8th May 1930).

THE ISSUES FOR DETERMINATION

19. There is no doubt that the Appellant’s father had several insurance policies with “[REDACTED]”, that the Appellant as one out of three heirs of her father 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 within the scope of the Agreement. But, as far as policy [REDACTED] and policies [REDACTED], [REDACTED], [REDACTED] and [REDACTED] are concerned, the Respondent has succeeded in establishing valid defences in accordance with the Agreement. According to Section 17.3 of the Appeal Guidelines the Appellant is not entitled to payment from Foundation funds if;

17.3.2 the insurance policy in question was fully paid as required by the insurance contract. However, where it appears that the policy was paid or surrendered into a blocked account the provisions of section 5 of the Valuation Guidelines shall apply; and

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.

As to policy [REDACTED] [REDACTED] proved that this policy was paid on 8th May 1930 as the index card with the remark “*ausgez. 8.5.30*” (paid on 8th May 1930) shows. There is no indication that this payment could have been made into a blocked account, because the payment was made more than 2 years before the beginning of the Holocaust in Germany.

As to the other four policies, [REDACTED] proved that they have been covered by a decision of a German restitution and compensation authority. It is to be noted that the Appellant states in her reasons for appeal that she “*never received any benefits on this claim*”. Her additional statement that “*if anything was sent it was sent to my brother [REDACTED] on my behalf, however I was never notified of it or received any benefits due to me*” is refuted by the ruling dated 27th April 1965. The caption of this ruling shows that the heirs of [REDACTED] were represented by the Appellant (“*An die Erben nach [REDACTED] ... z.Hd. der Miterbin [REDACTED] geb [REDACTED]*” - “*To the heirs of [REDACTED] ... to the attention of [REDACTED], née [REDACTED]*”), who was represented by the lawyer and notary Dr. [REDACTED] in Wiesbaden. The ruling was delivered on receipt by mail to Dr. [REDACTED] (“*Zugestellt durch die Post mit Empfangsbekennntnis*”). In the absence of evidence to the contrary, it must be assumed that the proceeds of the judgement were paid out in a manner consistent with the compensation authority’s ruling. No such evidence, save the Appellant’s uncorroborated assertion, was offered. Accordingly, for purposes of this proceeding, the assumption must be made that the Appellant received what the compensation authority ordered her to receive.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 27th day of August 2004

For the Appeals Panel

[REDACTED]