

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

Fax: ++ 44 (0) 207 269 7303

Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]
CLAIM NUMBER: Direct claim;
[Cl. No. [REDACTED]]
used in error]

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 [REDACTED] 1913 in Diersburg, Bade (Germany). He is the son of [REDACTED], who was born on [REDACTED] 1883 in Diersburg and died 20th July 1963 in Rheinfelden (Switzerland).
2. The Respondent is [REDACTED] ([REDACTED]).

3. In a letter dated 24th June 2003 the Appellant submitted a direct claim to [REDACTED] for a life insurance policy issued to his father.
4. When the Appellant made his direct claim to [REDACTED] he also submitted two claim forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC). A first claim form submitted to ICHEIC, dated 26th September 2003, seeks the proceeds of a life insurance policy for his maternal uncle [REDACTED], born [REDACTED] 1886 in Malsch (Germany) and died 4th September 1942 in Auschwitz. A second claim form submitted to ICHEIC, dated 3rd December 2003, seeks the proceeds of a life insurance policy for his paternal uncle [REDACTED], born [REDACTED] 1895 in Diersburg and died in New York “*after 1985*”. These two claims were set up as unnamed company claims and have since been merged under claim number [REDACTED].
5. [REDACTED], quoting claim number [REDACTED] but not referring to the claims for policies of the Appellant’s uncles, issued a decision letter dated 4th March 2004 on the direct claim for the Appellant’s father. The decision letter informs the Appellant that his father had taken out an insurance policy with [REDACTED] but had cancelled the policy on 1st December 1932 and the redemption value was paid out. The Appellant was offered of the right to appeal to this Appeal Panel in this letter. Apparently as a consequence of the reference to claim number [REDACTED], the claim relating to the two policies of the Appellant’s uncles was not further processed. The claim for the Appellant’s uncles’ policies is currently being reconsidered by the ICHEIC Claims Team.
6. In a further letter dated 14th June 2004, [REDACTED] reiterates its letter of 4th March 2004 and informs the Appellant about the right to appeal within 120 days of receipt of this letter.
7. The Appellant submitted an appeal to the Appeals Office dated 10th October 2004, which was accompanied by a letter setting out his reasons for the appeal. The appeal form refers to [REDACTED]’s decision letter of 14th June 2004. Therefore, the subject of this appeal is the Appellant’s claim for his father’s policy, and not the two policies of his uncles.
8. The Appeals Office received the appeal form on 18th October 2004 and sent a copy to the Respondent on 4th November 2004. [REDACTED] responded in a letter dated 9th November 2004.
9. On 10th December 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.
10. No request for an oral hearing was made. The appeal proceeded on a “*documents only basis*”.
11. 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 Decision is made there.

THE CLAIM

12. In a letter dated 24th June 2003 to [REDACTED], the Appellant provides his father's date and place of birth and death. He also writes (translation) *"I would like to inform you that my father also had a life assurance policy and I would be very grateful if you could arrange a search for his cancellation index card."*
13. The Appellant submitted a declaration of consent and biographical documentation with his ICHEIC claim forms confirming his and his family members' names and dates of birth. This documentation has been duly considered. The Appellant also submitted a copy of the entries for his family from the book of remembrance for Jewish victims of National Socialism.
14. In a letter dated 3rd June 2004 to [REDACTED], the Appellant writes the following (translation):

"As a member - of Victims of National Socialism – and someone who wrote to your life assurance company, I have now received good news regarding an investigation.

As treasurer of "Solidaritaet" and with reference to the life assurance contract held by my father [REDACTED], please allow me to provide you with the details.

This insurance was indeed cancelled on 01.12.32 and backdated to 01.06.32 and the redemption value of RM 556.81 was made available to him in January 1933. However this cancellation was retracted and the premium payments from 01.06.32 to 31.05.33 were repaid in the form of two payments totalling RM 790.00.

My family left Germany in September of 1933 as a result of racist persecution and have received no payout on this policy to date.

The letter [...] dated 04.03.2004 does not respond to the additional details above and I would therefore request that you handle my application competently."

15. In his reasons for the appeal the Appellant states (translation), *"If the insurance policy that was cancelled on 1st December 1932 was assumed to be backdated to 1st June 1932 then there was no reason to ask for interest until June 1933.*
- It's a matter of fact that the cancelled insurance policy was substituted by an amended policy and was valid in 1933 after the Nazis were elected."*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In a letter dated 30th September 2003 in response to the Appellant's inquiry of 24th June 2003, [REDACTED] writes (translation), *"We have found an entry in the register for Mr [REDACTED]. It is highly likely from content in this record that an insurance contract came into being with this individual. With regard to the subsequent fate of the insurance policy – the possible content of the contract, the sum of the insurance, the duration, premiums paid etc – no further information is available."* [REDACTED] continues to inform the Appellant that further investigations will take place using the index entry as a foundation.

17. In its first decision letter dated 4th March 2004, [REDACTED] informs the Appellant that its investigations are now complete and that it found application number [REDACTED] in Mr [REDACTED]'s name. Further an index card was found which (translation) "*informed us that Mr [REDACTED] took out life assurance policy no. [REDACTED] for an insurance sum of RM 5,000.00. The policy started on 01.12.1924 and had a term of 25 years. Mr [REDACTED] cancelled the insurance policy on 01.12.1932, backdated to 01.06.1932. The redemption value of RM 556.81 was paid in January 1933 [...].*

Due to the fact that the cancellation of your father's insurance policy predates 1932, i.e. before the National Socialists came to power, we know that the cancellation of the policy was not as a result of racist persecution. The fact that the cancellation was backdated to 01.06.1932 also backs this up, in that it can be assumed that the premiums could no longer be paid. Your father had already received an advance payment of RM 790.00 from the insurance policy. As a result of the information gleaned from the index card we must assume that the redemption value, paid out in January 1933, was paid out to your father and that your father received it."

A copy of the following documents was enclosed –

- a) The central register entry for Mr [REDACTED].
 - b) The register index card for insurance policy number [REDACTED]. The named beneficiary is [REDACTED], nee [REDACTED]. The insured sum is 5,000 with annual premium payments of 240 to be paid quarterly at 62.50. The start date is 1st December 1924, maturing in 1949. The back of the index card states that the policy was cancelled on 1st December 1932 and backdated to 1st June 1932. Advance payments of 790.00 were made on the policy with the redemption value being available in 1933. It further states that interest is to be accrued until 1st June 1933.
 - c) Various letters from compensation authorities stating that no files were found in their archives for Mr [REDACTED] or Mr [REDACTED].
18. In a further decision letter dated 14th June 2004 in response to the appeals process, [REDACTED] reiterates its letter of 4th March 2004. [REDACTED] continues to state (translation), "*It has to be taken into account that two advance payments of RM 650.00 and RM 140.00 respectively were paid out on the insurance. Interest accumulated on each of the requested advance payments and this was charged in the form of additional contributions.*

As a result of the above the redemption value was calculated minus the two prepayments, which totalled RM 790.00 plus the additional contributions (interest accumulated) for these. We are not able to say for certain why interest was charged until June of 1933. We assume that a notification period of 6 months had been agreed on the loans.

The redemption value reduced by the sums described above totalled RM 556.81 and was made available in January of 1933. Please see the attached copy of the index card for confirmation of this.

The life assurance policy [REDACTED] was thus concluded correctly and the redemption value was paid out to the rightful receiver. Due to the act that the insurance policy was dissolved before the coming to power of the National Socialists, we must assume that your father did receive the redemption payout. The possibility that the redemption sum could have been paid out into a blocked account does not seem likely in this case."

19. In a letter dated 9th November 2004 in response to the appeal [REDACTED] states, "*we know that Mr [REDACTED] had concluded a life insurance policy [REDACTED] with us, commencing on December 1, 1924 with a sum of 5.000,- and an insurance term of 25 years [...]. As of December 1 1932 the life insurance contract was cancelled. This cancellation*

was accepted retrospective as of June 1, 1932 by our company. During the insurance term Mr [REDACTED] took out two loans in the amount of RM 650,- and RM 140,- The claimant's father had to pay interest in terms of additional premiums for these loans." [REDACTED] continues to reiterate their letter of 14th June 2004.

THE ISSUES FOR DETERMINATION

20. The Appeal Panel has jurisdiction to decide the case. While the claim was made directly with [REDACTED], the company has informed the Appellant about a right to appeal to this Appeal Panel and the Appellant has signed the appeal form provided by the company. Both parties, therefore, have submitted to the Appeal Panel's jurisdiction.
21. There is no doubt that the Appellant's father had insurance policy number [REDACTED] for 5,000 RM issued by [REDACTED], and that the Appellant, as heir of his father, would be entitled to the proceeds of this policy. It is also clear that the Appellant and his father were Holocaust victims. Therefore the Appellant's claim is under the scope of the Agreement dated 16th October 2002.
22. [REDACTED] has the burden pursuant to the agreed relaxed standards to prove an adequate defence. [REDACTED] states that the Appellant's father cancelled policy number [REDACTED] on 1st December 1932 and payment for the policy was backdated to 1st June 1932. The redemption value paid in January 1933 was in the sum of RM 556.81. Prior to 1933 two advance payments in the form of loans had been paid to the Appellant's father on the policy totalling RM 790.00.
23. Nazi persecution in Germany started when they came to power on 30th January 1933. The Appellant's father was paid the policy's redemption value in January 1933, and had received RM 790.00 prior to this date. The Appellant does not dispute the payments, and there is no evidence that the money was paid into blocked accounts. The Appellant, however, states that the cancelled policy was replaced with an amended policy because the cancellation was allegedly retracted. There is no corroborative evidence, anecdotal or otherwise, to support this assertion. The index card is clear documentary evidence and does not support the Appellant's assertions because there is no reference to a new policy or that either [REDACTED] or the Appellant's father retracted the cancellation.
24. On the evidence presented, [REDACTED]'s defence that the policy was paid in 1933 to the Appellant's father when it was duly cancelled in 1932 is plausible. The Appellant's father cancelled the policy before the Nazis came to power. Consequently, the cancellation cannot be attributed to Nazi persecution. If the Appellant's father had not been paid at all in 1933 there would be a justifiable claim. However, the documentary evidence in the form of the register index card does not support this, and the claim must be dismissed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed

Dated this 18th day of May 2005

[REDACTED]