

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: [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 [REDACTED] (née [REDACTED]) was born on [REDACTED] 1922 in Bischofshausen, Germany. Her father was [REDACTED], born on [REDACTED] 1888 in Bischofshausen, Germany, and died on 20th January 1981 in Miami, United States. Her mother was [REDACTED] (née [REDACTED]), born on [REDACTED] 1898 in Germany and died on 14th December 1968 in New York, United States. They had three daughters, the Appellant, [REDACTED] and [REDACTED]. The Appellant and [REDACTED] have claimed their dowry policies purchased by their father. There is no information about [REDACTED] who has not made a claim. The family resided in

Mainz prior to the Holocaust and the Appellant's father was a butcher who ran his own business. The Appellant's father was imprisoned in Buchenwald on 'Kristallnacht', paid for his release from prison and the concentration camp, and then fled with his family to Luxembourg.

2. The Appellant submitted an undated European Insurance Policy Claim Form to the New York Holocaust Claims Processing Office (HCPO) in 1998. The claim was submitted to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in 2000. The Appellant claimed that her father purchased from [REDACTED] two dowry policies in the sum of 5,000 RM each for herself and her sister [REDACTED]. This claim was processed by ICHEIC under number [REDACTED].
3. The ICHEIC sent the claim to the Respondent, [REDACTED] ([REDACTED]). [REDACTED] declined the Appellant's claims in its final decision letter dated 2nd August 2004 on the basis that it had searched its archives but had found no corresponding record of a contractual relationship with Mr [REDACTED].
4. The Appellant submitted an Appeal Form dated 11th September 2004, which was received by the Appeals Office on 12th November 2004. The Appeals Office sent the Appeal Form to [REDACTED] on 1st December 2004. [REDACTED] in its letter dated 13th December 2004 affirmed its original denial decision.
5. On 16th 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 its letter. No request for an oral hearing has been received from either party. The appeal proceeds on a "documents only" basis.
6. 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.
7. 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].
8. The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

THE CLAIM

9. In the Appellant's European Insurance Policy Claim Form she states in section seven:

"Enclosed is the proof of an existing insurance policy in my name, purchased by my father, [REDACTED]. The name of the insurance company is '[REDACTED]' whose officers are either in Mainz or in Bischofsheim. I left Germany at age 16. You will see by enclosed papers that my father's application was refused."
10. The Appellant submitted the following documents with her claim:
 - a) Unsigned letter dated 17th July 1952 from Mr [REDACTED] to the lawyer Dr [REDACTED] in Germany regarding his compensation claims. He writes:
"In terms of life assurance, you could perhaps contact the [REDACTED]"

insurance company in order to gain the requisite information. It concerns the following: a) a life assurance policy for [REDACTED], for the sum of DM 10,000. b) Two children's, one for [REDACTED] and one for [REDACTED], each for DM 5,000. All insurance policies matured in 1941." He further writes: "...with regards to proof of emigration costs for the journey to Luxembourg as well as the expenses for the release from prison and the concentration camp, all of these documents were stolen from me and I do not hold out much hope for contacting my solicitors from that time, [REDACTED] from Mainz during 1934, and [REDACTED] of Darmstadt for 1938."

b) Letter dated 3rd November 1959 from Dr [REDACTED] to Mr [REDACTED]. The letter states: "The following correspondence has been sent to me once again as a result of my renewed inquiry with the [REDACTED] insurance company: "Subject: Life Assurance Policy No. [REDACTED] [REDACTED]– born [REDACTED] 1888. With regards to the insurance policy for Mr [REDACTED], as referenced above, we no longer have access to any archived documents. The information provided to you regarding the detail of this insurance policy, which was included with our letter dated 17.11.1958, was gathered from our financial inventory cards. These inventory cards do not contain any information regarding the redemption value of the insurance policy. The specified redemption value on the 1.7.193(?) would amount to: RM 5,555.05." (...) We will now need to wait, whilst the insurance company investigates whether it is able to determine the value of the insurance claim on the basis of the evidence that they now have. Further inquiries regarding the two children's policies with [REDACTED] do not appear to have been successful."

c) Letter dated 22nd March 1999 from the New York Holocaust Claims Processing Office (HCPO) to [REDACTED] at [REDACTED] that states: "[REDACTED] was a butcher and his shop '[REDACTED]' was located on Mainzerstrasse in Bischoheim by Mainz. He had purchased a DM 5,000.00 insurance policy for each of his daughters." A reminder letter containing the same information was sent to [REDACTED] on 13th October 1999.

11. In the Appellant's Appeal Form dated 11th September 2004 she wrote her reasons for appealing [REDACTED]'s decision: "Life insurance! It is not what I believe it is what I know. That my father bought 2 RM 5,000 insurances for my sister and myself. No money was ever paid to us. Only my father received a pittance for RM 10,000 and that is it. I have no information. All I do know is what is my due and you are playing with me, hoping that I shall pass away soon and you can steal some more money from a German Jew." Regarding the name of the insurance company that issued the decision the Appellant writes: "We are not sure but believe that our insurance name is [REDACTED]."

THE INVESTIGATION AND DECISION BY [REDACTED]

12. [REDACTED] stated in its decision letter dated 2nd August 2004: "Based on the information provided by you in the claims-form and after our intensive research in all relevant internal and external archives the existence of a life insurance policy taken out by Mr [REDACTED] with [REDACTED] could not be established, even under the 'Relaxed Standards of Proof' of the 'Agreement'."
13. In its letter in response to the appeals process dated 13th December 2004, [REDACTED] states: "The only information related to former activities in Germany in

[REDACTED]'s possession consist of a reduced number of statistical and some technical registers sorted by the policy numbers still available out of [REDACTED]'s former main archive in Berlin, which was destroyed in February 1945. [...] Unfortunately, with respect to the claim at issue, no supporting evidence of a contractual relationship has been either provided by the claimant or found by [REDACTED] or by the ICHEIC. This is the reason why we have to confirm the rejection of this claim at issue, and also the reason for the impossibility to produce to the Panel any document related to the claim at issue, because no such document is available to us. For the same reasons explained above, we respectfully ask the Panel to reject the appeal submitted with respect to this claim, and to confirm [REDACTED]'s previous decision on it."

THE ISSUES FOR DETERMINATION

14. The main issue for determination in this appeal is whether the Appellant has met her burden of proof as set out in the Appeal Guidelines (Annex E of the Agreement), Section 17, which provides that to succeed in an appeal the Appellant must establish, based on the Relaxed Standards of Proof, that it is plausible:
 - 17.2.1 that the claim relates to a life insurance policy in force between 1st January 1920 and 8th May 1945, and issued by or belonging to a specific German company (as defined in Section 14 of the Agreement) and which has become due through death, maturity or surrender;
 - 17.2.2 that the claimant is the person who was entitled to the proceeds of that policy upon the occurrence of the insured event, or is otherwise entitled in accordance with Section 2 (1)(d) of the Agreement and pursuant to the Succession Guidelines (Annex C); and
 - 17.2.3 that either the policy beneficiary or the policyholder or the insured life, who is named in the claim was a Holocaust victim as defined in Section 14 of the Agreement.
15. Where the relevant German company can trace no written record of a policy, the burden upon the Appellant to establish that a policy existed is a heavy one, even when the burden is to establish that the assertion is "plausible" rather than "probable". Where the Appellant is not able to submit any documentary evidence in support of the claim, the Appellant's assertion must have the necessary degree of particularity and authenticity to make it credible in the circumstances of this case that a policy was issued by the company.
16. There is no doubt that the Appellant and her sister, [REDACTED] née [REDACTED], as heirs to their father would be entitled to the proceeds of any life insurance policy and that all family members were Holocaust victims. Dowry policies are considered to be life insurance policies under the ICHEIC rules. The remaining and decisive question is whether the Appellant's father purchased policies for his daughters with [REDACTED].
17. Documentary evidence provided by the Appellant and her sister in the form of letters dating from 1952 to 1959 between the Appellant's father, [REDACTED], and his lawyer Ruth Klein, consistently state that he had purchased two dowry policies with [REDACTED] for the sum of 5,000 RM each. Indeed, in a letter dated 2nd April 1955 from [REDACTED] to [REDACTED], he states, "*In terms of the two child insurance policies of RM 5,000 each, I am positive that these were taken out with the [REDACTED].*"

18. In addition to the dowry policies [REDACTED] claimed his own life insurance policy with [REDACTED] and it was discovered that [REDACTED] [now [REDACTED]] issued a 10,000 RM, duration of 15 years, policy number [REDACTED] to the Appellant's father in 1928 and it was cancelled in 1938. Since there was no record of who received the surrender value of this policy, or for what amount, the BEG proceedings in Mainz issued a decision on 27th September 1960 that the sum of DM 166.75 would be compensated to him. [REDACTED] and [REDACTED] did not find any record concerning the two dowries, and consequently there were no BEG compensation proceedings during the 1960's for both policies.
19. It is not surprising that [REDACTED] has no records of the dowries because during the appeals process it admitted that the main archive in Berlin was destroyed in 1945 (paragraph 13 above). On the relaxed standards of proof, it is plausible the dowry policies were part of the records destroyed as a consequence of the war. There can be no question that there must be sufficient and adequate evidence of a contractual relationship with [REDACTED] (as required by Annex B Part B Relaxed Standards of Proof for Life Insurance Policies). On review of the evidence as a whole, it is concluded that the Appellant has met her burden of proof, with the requisite authenticity and particularity, that her father, [REDACTED], purchased insurance policies for both of his daughters with [REDACTED] for the sum of RM 5,000. The Appellant's father was adamant during the 1950's that he purchased policies with [REDACTED] approximately 30 years previously and this is reflected in letters consisting of documentary evidence. It is plausible when taking into consideration what happened to him and his family during the Holocaust, and the passing of time (he was 64 years of age in 1952), that he was mistaken about the insurance company that issued his own life insurance policy. However, this does not mean that he was mistaken about the insurance company of the two dowry policies for his daughters. The ICHEIC had not been established when the Appellant and her sister [REDACTED] claimed their dowries from [REDACTED]. It is therefore plausible that the Appellant's father continued to mention the unpaid [REDACTED] policies to his daughters until he died at the age of 93 years of age, and this is the basis for their claims with ICHEIC.

VALUATION

20. Pursuant to Section 2.1 of the Valuation Guidelines "*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.*"
21. Applying the BEG method, the value of an RM 5,000.00 policy in the year 2000 was DM 4,000. 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, 2004 and 2005 by a Memorandum of ICHEIC which had consulted with the Foundation and the [REDACTED] as the other parties of the Agreement (2001: 5.4 %; 2002: 5 %; 2003: 4.75 %; 2004: 5%; 2005: 5% according to the month, in which the decision is made, plus two months, i.e. 10/12 of 5%), which leads to the amount of DM 4216.00 for 2001, DM 4426.80 for 2002, DM 4637.07 for 2003, DM 4868.93 for 2004 and DM

5071.83 for 2005 which gives € 2,593.19 on the basis of an exchange rate of DM 1.95583 = € 1.00.

22. 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 for each policy, if he or she is a survivor of the Holocaust, as the Appellant and her sister are in this matter.

IT IS THEREFORE HELD AND DECIDED:

1. The appeal succeeds.
2. [REDACTED] shall pay the sum of US\$ 4,000.00 each to:
 - (a) The Appellant, Mrs [REDACTED] residing at [REDACTED], [REDACTED], Florida [REDACTED], United States; and
 - (b) The Appellant's sister, Mrs [REDACTED] residing at [REDACTED], [REDACTED], Florida, [REDACTED], United States

no later than the last day of the second month following the month of the Decision, which is 31st October 2005.

Dated this 8th day of August 2005

[REDACTED]