

**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]

---

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] was born on [REDACTED] 1936 in Breslau, Germany. He is the son of [REDACTED] (née [REDACTED]) who died on 28<sup>th</sup> December 1988. He brings this appeal on behalf of himself and his siblings: [REDACTED], [REDACTED] and [REDACTED] who currently reside in Germany, and Mrs [REDACTED] (née [REDACTED]) who resides in Ontario, Canada.
2. The Appellant named [REDACTED] as his representative.
3. The Respondent is [REDACTED] ([REDACTED]).
4. The Appellant submitted a claim form dated 24<sup>th</sup> May 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming a life insurance (annuity) policy issued to his mother's uncle and aunt, [REDACTED] and [REDACTED]. Dr [REDACTED] was born in Tremessen, Germany on [REDACTED] 1874, persecuted as a Jew in Berlin and died in the Mauthausen concentration camp on 16<sup>th</sup> September 1942. [REDACTED] (née [REDACTED]) was born in Holzminden, Germany on [REDACTED] 1874. She was not regarded as Jewish at the time of persecution; in later court proceedings (see also below para. 16) there were arguments whether she was Jewish too and succeeded in hiding this origin. During her last years she suffered from bad health; her death on 2<sup>nd</sup> September 1942 in Berlin was explained as a result of the imprisonment of her husband.
5. The ICHEIC processed the claim form under claim number [REDACTED] and submitted it to the Respondent.
6. [REDACTED] declined the claim on 30<sup>th</sup> July 2004 stating that it had paid what it had to pay in annuities during the life time of the [REDACTED] couple and that a property loss was not caused through persecution by the National Socialist regime.
7. The Appellant wrote to the Appeals Office on 29<sup>th</sup> November 2004 requesting an appeal. On 9<sup>th</sup> December 2005, the Appeals Office wrote to the Appellant's representative requesting that the prescribed Appeal Form be submitted. The Appellant submitted an Appeal Form dated 27<sup>th</sup> December 2004, referring to his letter of 29<sup>th</sup> November 2004 as his grounds of appeal.
8. [REDACTED] responded to the appeal in a letter dated 9<sup>th</sup> February 2005 requesting that the appeal be dismissed and its decision be confirmed.
9. On 25<sup>th</sup> May 2005, the Appeals Office sent a letter to the Appellant's representative to clarify whether the [REDACTED]s had ever received the annuity payments of RM 1000 per month under the life insurance contract.
10. The Appellant's representative responded in a letter dated 27<sup>th</sup> June 2005 stating that her client was no longer sure if or when the monthly annuity payments were made. However, she stated that even if they were made, the [REDACTED]s would not have had enjoyment of this money as access to their assets was blocked from 13<sup>th</sup> December 1940.
11. [REDACTED] responded on 5<sup>th</sup> July 2005 confirming its decision.
12. On 16<sup>th</sup> February 2005 the Appeals Office informed both parties that the appeal would be decided on a "*documents only*" basis unless it received a request for an oral hearing from either party within 14 days of receipt of the letter. The Appeals Office received a request for an oral hearing from the Appellant's representative on 10<sup>th</sup> March 2005. An oral hearing was conducted via telephone conference in German on 25<sup>th</sup> August 2005. The participants

were Panel Member [REDACTED], the Appellant, Mr [REDACTED] and Mr [REDACTED] from [REDACTED], and Ms [REDACTED] from the Appeals Office; the Appellant's representative had decided not to take part.

13. The Panel Member requested that further documentation be submitted. The Respondent submitted these documents on 25<sup>th</sup> August 2005. The Appellant's documents were received on 8<sup>th</sup> September 2005.
14. At the direction of the Panel Member, a request for further information was sent to the parties on 20<sup>th</sup> September 2005. The Appellant's representative responded via fax on 11<sup>th</sup> October and the Appellant submitted further documentation on 17<sup>th</sup> October 2005. [REDACTED] responded to these submissions on 28<sup>th</sup> October 2005.
15. 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 of 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 Decision is made there.

## THE CLAIM

16. The Appellant submitted an ICHEIC claim form dated 24<sup>th</sup> May 2000 claiming a life insurance (annuity) policy issued to his great-aunt and uncle by [REDACTED]. He named [REDACTED] and [REDACTED] as the policyholders and insured persons, and himself and his siblings as the beneficiaries. By way of explanation he wrote: "*We are the children of [REDACTED], née [REDACTED], the niece of [REDACTED], nee [REDACTED].*"

The Appellant stated in section 5 that the annuity policy number [REDACTED] was issued in Berlin on 19<sup>th</sup> June 1940 for the insured sum of RM 109, 428.70. He stated that payments of RM 1000 were made "*[in] 1942 from January until May*" but that they stopped after June 1942 when Dr. [REDACTED] was arrested. He indicated that the payments were made into a blocked account.

At section nine, he stated that no one has participated in any compensation/restitution procedure "*because a restitution process was in progress.*"

At section eleven he wrote: "*Dr [REDACTED], born [REDACTED] 1874, was a Jew, and his wife [REDACTED] née [REDACTED], born [REDACTED] 1874, was of Jewish descent. Both suffered serious racist persecution during the Nazi tyranny. Their early deaths were the result of the persecution of the Jews. [...] [REDACTED] bought the [[REDACTED]'s] house at Prinzregentenstraße 53, on the corner of Wexstraße in Berlin on 25<sup>th</sup> July 1940, as is recorded in the land register of Berlin-Wilmersdorf volume [REDACTED]. RM 109,428.70 was offset against the purchase price as a one-off premium for a pension scheme. The [REDACTED]s intended this sale to avert the possibility of confiscation and to secure their future with a pension contract. The pension scheme in question was [REDACTED], which was taken out for both of them in 1940. They acted in the assumption that they would enjoy greater security through this pension contract than if the property had remained in their possession. Dr [REDACTED] was arrested by the Gestapo in June 1942 and taken to the Mauthausen concentration camp on 15<sup>th</sup> September*"

1942. He died there of a brain haemorrhage on 16<sup>th</sup> September 1942. Mrs [REDACTED] died on 2<sup>nd</sup> September 1942. An attached certificate from her family doctor confirms that Mrs [REDACTED] died as a result of the emotional stress. In a restitution procedure that our mother, [REDACTED] née [REDACTED], carried out as heir in 1954, the restitution of the property was dismissed. Our mother lacked the financial resources to conduct further procedures. Our mother, Mrs [REDACTED], died on 28<sup>th</sup> December 1988.”

17. The Appellant submitted biographical documentation with his claim form, including correspondence relating to the sale of the house in Prinzregentstraße.
18. Following [REDACTED]’s rejection of his claim on 30<sup>th</sup> July 2004, the Appellant’s representative submitted a letter dated 29<sup>th</sup> November 2004 stating: *“Contrary to the opinion of [REDACTED] insurance, the married couple [REDACTED] did not receive any benefits from the pension insurance fund which they applied for on 19.06.1942. On 13.12.1940, the [REDACTED]’s assets were confiscated by issuance of a lien (Ref. [REDACTED]). Dr. [REDACTED] was Jewish, his wife [REDACTED] was of Jewish descent. On this basis, they were both persecuted on racial grounds by the National Socialist regime. [...] Contrary to the [REDACTED]’s statement, the insured persons / beneficiaries of the policy certainly were victims of the Holocaust, and the loss of assets occurred exclusively through persecution by organs of the National Socialist regime in Germany. [...] Exclusively on the grounds of persecution, the [REDACTED]s decided to transfer their real estate to [REDACTED] insurance company on 24.09.1940 in return for a life annuity insurance policy. As set out above, the life annuity insurance application for RM 1000.00 per month was only made in June 1942; however the [REDACTED]s both died in September 1942. They therefore did not derive benefit from either the equivalent value of the sold house or the monthly pension of RM 1000.00. Thus, it certainly was a Holocaust victim’s policy in line with the ICHEIC Agreement, a policy which was cancelled by the Nazi regime and was not indemnified.”*
19. Ms [REDACTED] enclosed a number of attachments with this letter including:
  - a) A copy of a letter from the Tax Office Berlin-Charlottenburg to Dr. [REDACTED] dated 28<sup>th</sup> August 1940 stating that the security that had been ordered on 5<sup>th</sup> July 1939 had been increased to RM 32, 200.
  - b) A copy of the ‘Sicherheitsbescheid’ dated 31<sup>st</sup> October 1940 from the Tax Office Berlin-Charlottenburg informing that RM 32 000.00 were blocked as security for giving up his residence [“Reichsfluchtsteuer”].
  - c) A letter from Dr. [REDACTED] to the Tax Office Berlin-Charlottenburg dated 7<sup>th</sup> December 1940 stating: *“My rented apartment property in Berlin-Wilmersdorf, Prinzregentenstr. 53, corner of Wexstr. 22 has been sold to [REDACTED] ... with effect from 01.10.1940. The nominal value accorded to me, currently unpaid, consists of a life-long pension of RM 1000.00 per month, and of a RM 26,600 covered bond....The pension insurance is irrevocable.”* The letter also states that RM 32, 249.53 of the [REDACTED]’s assets have been blocked.
20. The Appellant signed an Appeal Form dated 27<sup>th</sup> December 2004, which was received by the Appeals Office on 10<sup>th</sup> January 2005.
21. In reply to the Appeal Office’s request for further information, the Appellant’s Representative submitted the following on 27<sup>th</sup> June 2005: *“After speaking with our client, it can be no longer clearly stated whether the payments were made by [REDACTED] to the [REDACTED]’s account during the period January to September 1942. However, it is clear that the [REDACTED]s had at no time enjoyment of these payments. It is of note that*

*the [REDACTED]'s assets had been blocked on 13<sup>th</sup> December 1940 by a 'Sicherungsvermerk'...as a consequence of this it was no longer possible for the married couple [REDACTED] to access their assets – including their bank account – from this time. Even if the payments were made into the married couple [REDACTED]'s account, they could not be accessed in any case in the year 1942."*

22. In the oral hearing on 25<sup>th</sup> August 2005 the Appellant reiterated his belief that the monthly annuity payments had not been made, but that even if they were, these would have been paid into a blocked account.
23. The Appellant's representative submitted the following additional documents that were requested at the oral hearing:
  - a) A letter from Walter Maass (lawyer) to his colleague Dr. Walter Menzel dated 4<sup>th</sup> June 1943 which i.a. states: *"Until now I had not known of the pension at all. I was first told about it in the meeting in the office of the attorney Dr. Radtke. By whom was the pension paid? Who received the payments during the lifetime of the testator?"*
  - b) An order from the Foreign Exchange Office dated 11<sup>th</sup> September 1942 stating that the 'Sicherungsanordnung' of 13<sup>th</sup> December 1940 is lifted in regards to [REDACTED] (now deceased) but continues with respect to Dr. [REDACTED]. A 'Freibetrag' of zero RM was ordered to have effect from 1<sup>st</sup> October 1942 [that means that the account was blocked in full].
  - c) A letter from [REDACTED] dated 29<sup>st</sup> May 1951 stating that it had lost all records of the annuity contract, except those relating to the purchase contract and a note from the insurance agent.
24. On 20<sup>th</sup> September 2005, on behalf of the Panel Member a letter was sent to the parties advising them of certain provisional findings and requesting further information. It said that it appeared plausible on the basis of the Respondent's receipt of transfer from the Deutsche Bank, that a pension payment of RM 1000 had been paid into the account of Mrs [REDACTED] on 1<sup>st</sup> September 1942, and that the way in which the receipt was written suggested that this was not the first time the annuity had been paid. Referring to the 'Sicherheitsbescheid' of 31<sup>st</sup> October 1940 and to the 'Sicherungsanordnung' of 13<sup>th</sup> December 1940 the Appellant was requested to state:
  - a) Whether he could produce the 'Sicherungsanordnung' dated 13<sup>th</sup> December 1940;
  - b) Whether he was aware of the relationship between the 'Sicherungsanordnung' and the 'Sicherheitsbescheid';
  - c) Whether the 'Sicherungsanordnung' of 13<sup>th</sup> December 1940 was lifted after the death of Dr. [REDACTED] on 16<sup>th</sup> September 1942; and
  - d) Whether the 'Freibetrag' of zero RM remained in force after [REDACTED]'s death.

The Respondent was requested to comment on the contention that the annuity payments may have been paid into a 'blocked account'.

25. The Appellant's representative responded in a letter dated 6<sup>th</sup> October 2005 stating that her client had no record of the security decree dated 13<sup>th</sup> December 1940, but that its existence was proved by the Directive of the Chief Tax Officer for Berlin dated 11<sup>th</sup> September 1942.

This was also evidence that the Security Decree had not been lifted regarding [REDACTED] at that date.

Regarding the differences or similarities between the 'Sicherungsanordnung' and the 'Sicherheitsbescheid' dated 31<sup>st</sup> October 1942 she stated: "...this appears to be irrelevant in the present case. The fact is that both the Security Decree and the Security Ruling did exist and the married couple, the [REDACTED]s, were no longer allowed free access to their assets. The same applies to the question of how long after [REDACTED]'s death the Security Decree of 13<sup>th</sup> December 1940 that had been applied to him was lifted [...and] to the question of how long the cleared amount remained fixed at "O" Reichsmarks. First of all, based on the document presented by [REDACTED]/Deutsche Bank, one must assume that the payment of RM 1,000.00 on 1 September 1942 was a one-off payment. If this had been a matter of regular payments, there would not have been only one document. On the contrary, [REDACTED] would have been able to produce evidence of regular payments, that that has not occurred at any point. Nevertheless, even if one were to assume that [REDACTED] had made regular payments, it must be stressed that the married couple, the [REDACTED]s, at no time had free access to this payment of RM 1,000.00. On the one hand, the assets were confiscated in accordance with the Security Decree and the Security Ruling, and on the other, all historical accounts confirm that, from the year 1938, Jewish citizens no longer were able to dispose of their own assets in any form...The assets were always confiscated and the bank accounts were always blocked. This is also proved by the [REDACTED] couple's old deposit account statements, which our client possesses. They are all stamped with a seal indicating that they had been blocked. Thus, one may assume with a probability bordering on certainty that, on the one hand, [REDACTED] Insurance did not make any regular payments and that even if it had paid out a regular pension / annuity, such payment would have gone to an account of the [REDACTED] couple that was blocked...this consequently at least substantiates that the [REDACTED] couple at no point in time received the agreed equivalent value for their house from [REDACTED] in the form of a life annuity."

26. On 17<sup>th</sup> October 2005 the Appellant forwarded to the Appeals Office a letter from the Deutsche Bank dated 14<sup>th</sup> October 2005 stating that the bank could find no evidence of a relationship with the [REDACTED]s. However, it went on to provide a historical account of the persecution subjected to Jews and also their non-Jewish spouses during this time, stating that during the course of 1938 all Jewish bank accounts were blocked.

## **THE INVESTIGATION AND DECISION BY THE RESPONDENT**

27. In its decision letter dated 30<sup>th</sup> July 2004 [REDACTED] set out the following: "... As we can mainly take from the case files regarding the restitution proceeding initiated by your client and his co-heirs in Berlin in the year 1950 under file No. [REDACTED] ([REDACTED]), Dr [REDACTED] had taken out the life annuity policy in question on 19<sup>th</sup> June 1940 in his own and his wife's, [REDACTED], favour. Against the payment of a unique premium of 109,428.70 Reich marks a monthly annuity payment of 1,000.00 Reich marks was agreed, starting immediately, to be paid until the death of the surviving spouse. The clauses which were agreed upon for certain family reasons did, moreover, not contain any obligation to reimburse premiums. As can be further taken from the comprehensive correspondence and the statements laid down in the decision by the 80<sup>th</sup> Civil Division of the Berlin District Court of 4<sup>th</sup> November 1952 and the decision of the 3<sup>rd</sup> Civil Court of Appeal of the Berlin Superior Court of Justice of 30<sup>th</sup> April 1954, the payments from this life annuity insurance policy were duly made by [REDACTED], e.g. as agreed up to the death of Mrs [REDACTED]; the last payment was made in September 1942 to her account with the branch office of Deutsche Bank in Berlin, Savignyplatz 6. The courts dealing with this subject have, moreover, claimed that the [REDACTED] payments have been made to the

*eligible persons direct, as in the then proceedings the question of the confiscation of property had been raised and even was a top issue regarding the restitution of a real estate. For the sake of completeness we wish to point out that our parallel investigations, mainly with Oberfinanzdirektion Berlin (Berlin Regional Finance Office) and the Compensation Offices in Berlin, Bremen and Essen did not produce any further findings. Though we have been able to find out that your client and his co-heirs had initiated two further compensation proceedings with the Berlin Compensation Office, we have been informed in a letter dd 13<sup>th</sup> July 2004 by the Landesamt zur Regelung Offener Vermögensfragen in Berlin (Berlin State Office for the Settlement of Pending Property Issues), which meanwhile keeps the relevant records, that the files regarding proceedings with file Nos. [REDACTED] and [REDACTED] have, unfortunately, been destroyed and are, thus, no longer available for a further evaluation.”*

28. [REDACTED] enclosed the following with its decision letter:

- a) A copy of the decision of the Berlin regional court (Landgericht) dated 4<sup>th</sup> November 1952 declining the application of the Appellant’s mother, [REDACTED], and his brother, [REDACTED] for restitution of property of the house at Prinzregentenstraße.
- b) A copy of the decision by the appeal court in Berlin (Kammergericht) dated 30<sup>th</sup> April 1954 upholding the finding of the lower court. The payment of the life annuity was discussed during the course of these proceedings. [REDACTED] and [REDACTED] argued that the monthly pension was not paid after the arrest of Dr. [REDACTED] in June 1942, while [REDACTED] maintained that it was paid regularly from 1<sup>st</sup> August 1940.

29. [REDACTED] responded to the appeal on 9<sup>th</sup> February 2005 stating: *“As already explained in our letter dd 30<sup>th</sup> July 2004, the policy at issue had not been confiscated by the German authorities in the period prior to 1945. Contrary to the renewed allegations made by the claimant and appellant this issue was the subject-matter of detailed explanations in the compensation proceeding under file No. [REDACTED] ([REDACTED]) and, in the end, this fact was – as explained by us – reaffirmed by the Berlin District Court in the year 1954. As the present case is based on facts ascertained in a court decision, the requirement of the eligibility of a claim as laid down in Article 2 (1) e of the ‘Agreement’ of 16<sup>th</sup> October 2002 are, thus, not complied with. 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 decision on it.”*

30. On 25<sup>th</sup> August 2005 [REDACTED] submitted the following documents to the Appeals Office:

- a) A letter from the lawyer H. Franke to the Berlin Compensation Authority dated 21<sup>st</sup> July 1952 which states in reference to the annuity policy: *“I attach a copy of the payment order to the Deutsche Bank bearing a stamp that indicates that the transfer has been processed. It can be clearly seen from this attachment that the agreed pension of RM 1,000 per month was still being paid in the month of the wife [REDACTED]’s death. In this context it becomes clear that it is meaningless to question how many pension payments were made.”*
- b) A statement from [REDACTED]’s insurance agent Mr. Otto E. Jauer dated 9<sup>th</sup> February 1950 describing how the pension contract was made.
- c) The payment order from the Deutsche Bank dated 1st September 1942. The order states that RM 1,000.00, as *“Rente p. 1.9.1942”* [that is: annuity for 1<sup>st</sup> September

1942], is to be paid into the blocked account of Mrs [REDACTED] for policy number [REDACTED]. The document has stamps about execution of the order.

31. On 28<sup>th</sup> October 2005, the Respondent provided the following response to the Appellant's submissions of 6<sup>th</sup> and 17<sup>th</sup> October 2002: *"As documented in the records submitted it can be assumed that the application for a life annuity policy against one single payment was filed on 19<sup>th</sup> June 1940. This life annuity policy was issued by [REDACTED] with the number [REDACTED]. As, due to the circumstances, only a copy of the last annuity payment of 1<sup>st</sup> September 1942 is available, the question is whether it can be assumed that the monthly annuity payments were started in 1940. For this reason we have analysed the register data which refer to insurance policies still valid in March 1945. Doing so, we have been able to establish that contractual relationships with numbers between [REDACTED] and [REDACTED] assigned for internal registration commenced on 1<sup>st</sup> August 1940. [...] In our opinion the a/m facts give conclusive evidence that policy no. [REDACTED] was taken out with the commencement on 1<sup>st</sup> August 1940; as such, the payment of the monthly annuity payment of 1,000.00 Reich marks/month was started. As regards the then status of 'a blocked account with limited access' our information is that this was created under the 'Gesetz ueber die Devisenbewirtschaftung' (Foreign Exchange Control Act) dd 12<sup>th</sup> December 1938. Under this act, each holder of such an account was obliged to consolidate all bank accounts into one account only, known as 'blocked account with limited access'. The account holder was allowed to withdraw monthly sums to cover regular payments. There was also an allowance for the maintenance of a living."*

#### **THE ISSUES FOR DETERMINATION**

32. The Respondent's assertion that the claim was covered by previous compensation proceedings is not founded. The two proceedings brought forward by the Appellant's mother and brother [REDACTED] and [REDACTED] during the 1950s related to a claim for restitution of the [REDACTED]'s rental property in Prinzregentenstraße, for which the life annuity policy was part payment. The annuity policy was not the subject of the procedure, although it was discussed. Therefore, the Appeals Panel has jurisdiction to hear this appeal.
33. Pursuant to section 2, a claim will only be eligible for compensation where:
- a) The claim relates to a life insurance policy in force between 1<sup>st</sup> January 1920 and 8<sup>th</sup> May 1945; and
  - b) The insurance policy was not paid or not fully paid as required by the insurance contract or was confiscated by the German National Socialist regime; and
  - c) The claimant is entitled to bring the claim; and
  - d) The policyholder or the insured person or the beneficiary is a Holocaust victim as defined in section 14 of the Agreement.
34. There is no doubt that the Appellant is entitled to bring this claim on behalf of himself and his siblings. He has provided evidence that he is the son of the late [REDACTED] (née [REDACTED]) who was the niece of [REDACTED] and [REDACTED] (née [REDACTED]). During the restitution proceedings of the 1950s [REDACTED] produced a certificate of inheritance proving her entitlement as Mrs [REDACTED]'s heir.
35. The claim relates to an insurance policy that was in force during the Holocaust era. [REDACTED] accepts that it concluded a contract for insurance with [REDACTED] on 19<sup>th</sup> June 1940. Under the terms of the contract, the [REDACTED]s were to receive a



monthly pension of RM 1,000.00 up until their deaths. This was in return for a one-off premium payment of RM 109,428.00 which was part of the price for the house in Prinzregentenstrasse. There was no provision in the contract for the reimbursement of premiums on the death of Mrs [REDACTED].

36. It is not disputed that [REDACTED] and [REDACTED] were Holocaust victims for the purposes of the Agreement. Dr. [REDACTED] died in Mauthausen concentration camp in September 1942. Further, both spouses suffered persecution during the early 1940s; the dispute whether Mrs [REDACTED] was of Jewish origin or not is irrelevant for this appeal.
37. The sole issue in this appeal relates to whether the policy was unpaid or not properly paid during the Holocaust era. During the course of the claims and appeals processes the Appellant made a number of differing statements as to if or when payments were made. On the claims form he stated that payments were made from January until June 1942 and stopped after the arrest of Dr. [REDACTED]. On appeal, however, the Appellant stated that he could no longer be sure that payments were made, but that if they had been, these proceeds would have been deposited into a blocked account.
38. [REDACTED], during the restitution procedures of the 1950s and on appeal, maintained consistently that payments had been made regularly from 1<sup>st</sup> August 1940. It submitted a copy of the transfer receipt as evidence that a payment of RM 1000 had been made into [REDACTED]'s account at the Deutsche Bank on 1<sup>st</sup> September 1942.
39. There is some evidence that might suggest that payments were not regularly made. For instance, there is a letter from [REDACTED] dated 7<sup>th</sup> December 1940, which refers to payments not being made by that date. There is also a letter from Walter Maass (the executor of the [REDACTED]'s estate) dated 4<sup>th</sup> June 1943 which states that he only became aware of the pension recently.
40. However, on balance, it is the opinion of the Panel Member that it is probable that [REDACTED] paid the annuity payments regularly in accordance with the insurance contract. The transfer order is clear evidence that [REDACTED] made a pension payment to [REDACTED]'s account on September 1<sup>st</sup> 1942, and the way in which the order is drafted ("Rente p. 1.9.1942") suggests that this was not a first or unique payment.
41. Secondly, there is nothing on file to suggest that payments were not made. In deciding to sell their rental property in Prinzregentenstraße the [REDACTED]s forewent an income payment of RM1,500.00 per month. Had they not received payments prior to September 1942, it is likely that they would have made some kind of attempt to obtain payment. There is nothing on file to suggest such applications were made.
42. Thirdly, if the payments were not regularly made it is likely that the claimants would have raised this issue in their petition for restitution of the house in 1952 and 1954 as a main and possibly decisive issue. The fact that such submissions were not made suggests that at that time the then claimants had no arguments against the Respondent having discharged its obligations in accordance with the insurance contract.
43. Lastly, [REDACTED] has given evidence on appeal that its records show that contract numbers [REDACTED] to [REDACTED] were due to commence on 1<sup>st</sup> August 1940. In the absence of positive evidence to the contrary, there is no reason to doubt that policy number [REDACTED] did not commence also on that date. It is acknowledged that [REDACTED] has not been able to provide evidence of payments made between August 1940 and August 1942. However, given the passage of time and extent to which records were destroyed during World War II, this is not surprising and, what is more, no evidence that only the September 1942 payment was made.

44. In the end, however, the question whether from the beginning of the insurance until the death of the surviving spouse all or only one payment were made is not too important. The really important point remains that any payments that were made were in all probability deposited into a blocked account. Although the extent to which the 'Sicherheitsbescheid' of 31<sup>st</sup> October 1940 limited the [REDACTED]s' access to their accounts is not completely clear (it required that just RM 32,000 were blocked as a security) it seems that all the [REDACTED]s' accounts were blocked. [REDACTED] referred to his assets being blocked in his letter to the Tax Office Berlin-Charlottenburg on 7<sup>th</sup> December 1940. Further, the transfer receipt submitted by the Respondent bore the note: "*beschränkt verfügbares Sicherungskonto*" [limited access account]. The order of 11<sup>th</sup> September 1942 lifted the Sicherungsanordnung of December 1940 in relation to the late Mrs [REDACTED], but ordered that it continue in respect of [REDACTED]; further, a 'Freibetrag' of zero RM was to take effect from 1<sup>st</sup> October 1942, meaning that Dr. [REDACTED] was to have no access to the account. Knowing what happened with the accounts of Jews, it is regarded as plausibly established that this zero 'Freibetrag' was in force also earlier. Accordingly, any payments made by [REDACTED] during this time were made on a blocked account for which under the terms of the Agreement (sect. 2, 7) compensation has to be paid. Therefore, the appeal succeeds in principle.

## **VALUATION**

45. Pursuant to sections 1.2 and 1.3 of the Valuation Guidelines, Annex E to the Agreement, the valuation of policies involves two phases: the assignment of a base value to the policy, followed by the application of appropriate multipliers to bring the policy up to current value.

46. In this case the base value is to be calculated by reference to the total number of payments to be made during the duration of the annuity policy, that is between 1<sup>st</sup> August 1940 and September 1942, the month when the [REDACTED]s deceased; since in the insurance contract there was no provision about reimbursement of premiums or a part thereof in case of death the payments to be made are the only base for calculating the compensation). This results in a total value of RM 26,000 (26 payments of RM 1,000 per month).

47. The base value is first to be divided by 10 to convert the value, following the German currency reform after the war, into Deutsche Mark: DM 2,600. It then has to be multiplied by the factor 8 to calculate the value of the policy up until the end of the year 2000: DM 20,800 (section 2.1).

48. Interest has then to be applied to bring the policy up to current value. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003, 2004, 2005 and 2006 by Memorandum of the ICHEIC (2001: 5.4%; 2002: 5%; 2003: 4.75%; 2004: 5%; 2005: 5% and 2006: 5% up until two months after the offer is made). A calculation on this basis leads to the amount of DM 21,923.20 for 2001; DM 23,019.36 for 2002; DM 24,112.78 for 2003; and DM 25,318.42 for 2004; DM for 26,584.34 for 2005 and DM 26,805.88 up until February 2006.

49. This value when converted into Euro at conversion rate of 1 DM = 1.95583 Euro results in a total value of Euro 13,705.63.

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

1. The appeal succeeds.

2. [REDACTED] is directed to pay Euro 13,705.63.

The proceeds of this award are to be divided in equal parts amongst the community of heirs: [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] (née [REDACTED]).

Dated this 9<sup>th</sup> day of December 2005

---

[REDACTED]