

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]

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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], born on [REDACTED] 1926 in Berlin (Germany). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1887 in Mrotschen, District of Wirnitz (Germany, now Mroczka Poland) and died on 16th February 1969 in Sao Paulo (Brazil). [REDACTED], née [REDACTED], was born on [REDACTED] 1887 in Berlin.

The Appellant's father had, together with his brother [REDACTED], a tailor's shop in Berlin. The [REDACTED] family was persecuted by the German National Socialist regime and immigrated to Brazil.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 31st May 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that an insurance company he could not name issued insurance policies he could not specify.
4. The ICHEIC submitted the claims to the MOU Companies and to the German companies [MOU is the acronym for Memorandum of Understanding signed by those companies which have submitted to ICHEIC jurisdiction].
5. In a letter dated 27th July 2001 [REDACTED] informed the Appellant that it had not found any matches in its central register for him or for insurance policies taken out under the name of the Appellant's father's business but that it had found matches for the Appellant's parents.
6. In a (provisional decision) letter dated 3rd November 2003 [REDACTED] informed the Appellant that it now had concluded its research in internal and external archives for a life insurance contract for [REDACTED] and [REDACTED] and summarized the result of this research. [REDACTED] had entries on an index card from its central register showing that the Appellant's parents had applied for life insurance policies with the numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. As to life insurance policies number [REDACTED] and [REDACTED], however, documents from the compensation authority in Berlin revealed that these two policies had been compensated by the "*Entschädigungsamt Berlin*" and that for these two policies [REDACTED] had been paid compensation of in total DM 2,815.45. As to life insurance policies number [REDACTED] and [REDACTED] [REDACTED] stated that there is no proof that contracts were concluded and declined the claims in so far, too (for more details see paragraph 15).
7. In its final decision letter dated 17th November 2004, [REDACTED] informed the Appellant that it still declines the claim as to life insurance policies number [REDACTED] and [REDACTED] because of the compensation awarded by the "*Entschädigungsamt Berlin*". As to life insurance policies number [REDACTED] and [REDACTED] [REDACTED] informed the Appellant that the [REDACTED] ("*[REDACTED]*", [REDACTED]) would offer a humanitarian payment.
8. In a letter dated 25th November 2004 [REDACTED] offered a payment of 2 x US\$ 4,000.00 for policies number [REDACTED] and [REDACTED]. For these two policies the ICHEIC had created another claim number, namely [REDACTED] ([REDACTED] has used only the old number [REDACTED] in its decision letter, but this decision was filed on claim file number [REDACTED]).

9. The Appellant submitted, as far as policies number [REDACTED] and [REDACTED] are concerned, an appeal to the Appeals Office dated 9th December 2004 in which the reasons for the appeal were set out.
10. The Appeals Office received the appeal form on 6th January 2005 and mailed a copy to the Respondent.
11. [REDACTED] responded in a letter dated 19th January 2005 and requested the Appeals Panel for reasons it had set out before to “*reject the appeal submitted with respect to this claim*”.
12. On 21st February 2005 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.
13. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
14. 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 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 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

15. In his claim form dated 31st May 2000 the Appellant claimed the proceeds of an insurance policy his father had taken out with a company the Appellant could not name. The policyholder and insured are indicated as the Appellant’s father and the beneficiary is indicated as the Appellant.
16. With his claim form the Appellant submitted copies of identification papers which prove his identity and the biographical details about his parents.
17. The Appellant sets out the reasons for her appeal as follows: “*Concerning the policies [REDACTED] and [REDACTED] you declined my claim allegedly because they had been considered in a post war compensation procedure. However, I have only received two lump sums of DM 5,000.00 each for missed education opportunities. As these payments have obviously no relation to insurance policies I assume that I have not received any payment for the above claim*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. In its provisional decision letter dated 3rd November 2003 [REDACTED] stated that it had found an entry for the Appellant’s parents in its central register and continued: “*We found out that life insurance contracts with the numbers [REDACTED] and [REDACTED] were*

actually concluded. We have contacted the German State Compensation and Restitution authorities with the request to provide us with information about the life insurances. ... The life insurance contracts with the numbers [REDACTED] and [REDACTED] have indeed been compensated in the course of compensation proceedings by the compensation authority Berlin. a) The documents of the compensation authority (enclosure 2) reveal that Mr [REDACTED] had concluded a life insurance contract with the number [REDACTED] with us, commencing on August 1, 1930 with a sum insured of RM 10,000.00 and an insurance term of 20 years. As of July 31, 1938 no premium payment was made for this contract. According to the information of the representative of Mr [REDACTED], at the beginning of the year 1939 your father cancelled the contract and the surrender value – which amounted to RM 2,670.00 on August 1, 1938 – was paid out to [REDACTED] on January/February 1939. b) Moreover, your parents Mr [REDACTED] and Mrs [REDACTED] concluded a joint life insurance contract with the number [REDACTED] with us (enclosure 3), commencing on March 1, 1932 with a sum insured of RM 20,000.00 and an insurance term of 20 years. Entitled to the benefit was the survivor (assumption). As of February 28, 1939, no premium payment was made for this contract. According to the information of the representative of Mr [REDACTED], at the beginning of the year 1939 your father cancelled the contract and the surrender value – which amounted to RM 4,520.00 on March 1, 1939 – was paid out to Mr [REDACTED] on January/February 1939. Within the framework of the German State compensation procedure, Mr [REDACTED] received a compensation payment in the total amount of DM 2,815.45 (DM1,363.80 plus DM 1,451.65 for ‘old savers compensation’) for the losses from the life insurance contracts A 92746 and A 111605 due to persecution (enclosures 4,5). The purpose of the compensation was to act towards Mr [REDACTED] as if no such loss from the life insurance contracts had occurred. Our intent is – in accordance with the guidelines of the International Commission – to compensate life insurance claims which have remained unsettled so far. However, this does not apply to your parent’s life insurance contracts with the numbers [REDACTED] and [REDACTED] as the surrender values were paid and the policies were compensated in the course of compensation proceedings”.

19. With the provisional decision letter dated 3rd November 2003 [REDACTED] enclosed copies of the following documents:
- a) A name card for [REDACTED] and [REDACTED].
 - b) A calculation sheet dated 22nd August 1957 with a calculation of a compensation payment for the policy number [REDACTED]. The calculated compensation payment was DM 240.60 plus and old savers compensation of DM 420.00.
 - c) A calculation sheet dated 22nd August 1957 with a calculation of a compensation payment for the policy number [REDACTED]. The calculated compensation payment was DM 1,123.20 plus and old savers compensation of DM 680.00.
 - d) A partial decision dated 25th November 1957. It is decided that Mr [REDACTED], residing at Sao Paulo, will receive a compensation payment of DM 1,363.80 for damage in insurance policies. The claim for old savers compensation will be decided at a later stage. The second page gives the reasons for the decision and mentions the two policies number [REDACTED] and [REDACTED].
 - e) A final decision dated 20th August 1960. It is decided that Mr [REDACTED], residing at Sao Paulo is awarded a compensation payment of DM 1,451.65 for damage to the above-mentioned insurance policies number [REDACTED] and [REDACTED]. This payment consists of the old savers compensation and interest.

- f) A copy of a certificate showing that the decision was delivered to Mr [REDACTED]'s solicitors on 23rd August 1960.
20. In its final decision letter dated 17th November 2004 and the response to the Appeal dated 19th January 2005 the Respondent confirms this decision.

THE ISSUES FOR DETERMINATION

21. According to clear wording of the appeals form the subject of the appeal is [REDACTED]' decision made on policy numbers [REDACTED] and [REDACTED] in the final decision letter dated 3rd November 2003 (see paragraph 7). Not subject of the appeal is the decision the [REDACTED] took in its letter dated 25th November 2004 with regard to the other policies (see paragraph 8).
22. There is no doubt that the Appellant's father had several insurance policies with [REDACTED], that the Appellant as heir of her parents 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 policies number [REDACTED] and [REDACTED] are concerned, the Respondent has succeeded in establishing a valid defence 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;
- 17.3.4 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.
23. The Respondent proved that two policies, namely policies number [REDACTED] and [REDACTED], were subject of a compensation proceeding by providing compensation and restitution authority archive evidence in the form of, among others, a partial decision dated 25th November 1957 ("*Teilbescheid*") and a final decision dated 20th August 1960 ("*Bescheid*"), which record that the afore-mentioned policies were the subject of compensation proceedings under BEG law and as a result the Appellant's father received a compensation payment of in total (DM 1,363.80 + DM 1,451.65 =) DM 2,815.45. Since this is the case, the two policies in question undoubtedly were 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 19th day of May 2005

[REDACTED]