

## 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]

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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

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### PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]  
CLAIM NUMBER: [REDACTED]  
[REDACTED]  
[REDACTED]

### BETWEEN

[REDACTED]  
[REDACTED]  
[REDACTED]

### APPELLANTS

AND

[REDACTED]

### RESPONDENT

### PANEL 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 Appellants are [REDACTED], born on [REDACTED] 1930 in Brno (Czech Republic), [REDACTED], born on [REDACTED] 1951 in Kfar Sabba (Israel) and [REDACTED] born on [REDACTED] 1967 in Brighton (United Kingdom). They are submitting a claim for an insurance policy taken out by [REDACTED], born on [REDACTED] 1869 in

Bratislava (Pressburg) as his grandchildren and great grandchildren respectively. [REDACTED] is [REDACTED]'s brother and, therefore, another living heir of [REDACTED].

In 1938 [REDACTED] and his wife [REDACTED] had fled from the Nazi persecution in Vienna (Austria) to Brno (Czech Republic). On 31 March 1942 they were both deported to the concentration camp Theresienstadt where they perished. [REDACTED] died on 9 October 1942.

2. The Respondent is [REDACTED] (“[REDACTED]”).
3. The Appellants submitted claim forms dated 14 and 18 December and 13 July 2003 respectively to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which they claim the proceeds of an insurance policy number [REDACTED] taken out in the currency of Goldschilling by [REDACTED] from [REDACTED].
4. Together with their claim forms, the Appellant submitted copies of [REDACTED]'s asset declaration dated 14 July 1938. Under paragraph IV 3) of this document, [REDACTED] had listed the insurance policy number [REDACTED] with “[REDACTED]” with the note (“R.K.W. 8,985”) which stands for “Rückkaufwert 8,985 Goldschilling” (surrender value).

The Appellants submitted copies of their passports and other private and official documentation identifying them as the legal heirs of [REDACTED].

Together with his appeal, the Appellant submitted personal record sheets issued by the association “Beit Theresienstadt”, showing that his grandparents were taken to the concentration camp Theresienstadt and that [REDACTED] died there on 09 October 1942.

5. By letter to the Appellant dated 5 January 2005 [REDACTED] wrote that, based on the information from the asset declaration and based on its remaining technical registers from the relevant time, it was able to establish an insurance contract taken out by [REDACTED] with [REDACTED] on 1 February 1928 for the insured sum of 31,250 Feingoldschilling (“FGS”). The agreed maturity date of the contract was 1 February 1946.

[REDACTED] stated that payment of the annual premiums of 2,172 FGS had been discontinued prior to 1937 and asserted that the unpaid/non-contributory sum insured at that time was 6,567 FGS. No further information could be found regarding the insurance contract.

[REDACTED] decided to offer payment of Euro 49,572.31 to the Appellants for the insurance policy; it based its offer on the surrender value of 8,985 FGS as set out in the asset declaration of 14 July 1938.

6. By letters of 14 and 20 April 2005 the Appellant [REDACTED] requested an extension of the 120 days time limit to submit his appeal. He stated that he received [REDACTED]'s decision letter on 11 January 2005 but had not received copies of the documents upon which [REDACTED] had based its decision. After he had requested the documents, by letters of 27 February, 13 March and 4 April 2005 he received on 08 April 2005 five enclosures from [REDACTED]. Those enclosures were computer print outs but were not the copies of the relevant registers he had requested.
7. The Appeals Panel informed the Appellant by letter of 20 April and 5 May 2005, that an extension for submitting an appeal could not be granted and that the deadline for the appeal expired on 11 May 2005.

8. The Appellant [REDACTED] submitted his appeal on 11 May 2005 by fax and the original on 23 May 2005.

He argues that [REDACTED] should have based its calculation not on the surrender value of 8,985 FGS as set out in the asset declaration of 14 July 1938 but on the full sum insured of 31,250 Finegoldschilling because at the time of the conversion of the policy the Holocaust had already commenced. He added that [REDACTED] had neither claimed nor proved that the alleged conversion had been made voluntarily.

The claimant stated that his grandfather had been forced by the Nazi Regime to provide the surrender value of his insurance policy in the asset declaration but he had not actually surrendered the insurance policy or stopped paying the premiums.

The Appellant further stated that he had repeatedly requested from [REDACTED] copies of the documentation evidencing its findings but had only received a response by letter of 8 April 2005 (paragraph 6. above). Together with the letter, [REDACTED] had sent computer screen printouts, which provided the available information regarding [REDACTED] insurance policy. The Appellant claims that the documentation provided by the Appellant did not support its previous statement that premium payments had stopped and that the policy had been converted to an unpaid/non-contributory sum of only 6,567 FGS before 1937.

9. Together with his appeal, the Appellant submitted [REDACTED]'s letter of 8 April 2005 and its enclosures.

In its letter, [REDACTED] had stated that based on the available information, it remained unknown, what dispositions had been made to the policy prior to 1938. Neither could the nature of the dispositions, which altered the scope of the contractual relationship up to the year 1940, be identified.

[REDACTED] confirmed its previous decision to base its calculation of the Appellant's claim on the surrender value of the policy of 8,985 FGS as set out in the asset declaration of 1938.

The copies of [REDACTED]'s computer print-outs representing the information in its original registers show that insurance policy number [REDACTED] was taken out in 1928 with an insured sum of 31,250 FGS, premium payments to the amount of 2,172 FGS, the expiration date of 1 February 1946 and a non-contributory insured sum of 6,567 FGS in 1940. The printout labelled as enclosure 5 by [REDACTED] states the notion "Beitragsfrei ab: 1938" (translates to "non-contributory since 1938").

10. The Appellant submitted a further letter together with two enclosures from [REDACTED] dated 26 April 2005 that had been sent to him before he had submitted his appeal. These documents are copies of [REDACTED]'s original register, which were the basis for the information provided with the computer printouts.

The first of the two copies is headed with "Bestands-Register (prämienbringend)" (translates to "asset register receiving premium payments") and lists the following information: the insured sum of 31,250, in the column for "Summe d.R." (translates to "sum d.R.") the figure 2,172 and in the column for "Netto-Prämie" (translates to "net-premium") the digit 1,821. The second document is headed with "Bestands-Register (prämienfrei)" (translates to "asset register (premium free)"). It lists the insured sum of 5,254 and the year 1938 as the year when the contract became non-contributory.

11. The Appellant [REDACTED] submitted her appeal dated 9 May 2005 to the appeals office on 12 May 2005 stating that she had received [REDACTED]'s decision on 11 January 2005. The Appellant stated that she wished the grounds of appeal given by the Appellant [REDACTED] to be considered as having been raised by her as well.
12. The Appellant [REDACTED] submitted his appeal dated 9 May 2005 to the Appeals Office on 16 May 2005. He also wished the grounds of appeal as submitted by the Appellant [REDACTED] to be considered to be his reasons for the appeal as well.
13. [REDACTED] provided a letter to the Appellant and the Appeals Office dated 3 June 2005, explaining that the note "Summe d.R." – as stated in their register – was an abbreviation for the words "Summe der Raten" (translates to "sum of instalments") therefore of the sum of yearly instalments.
14. With its response to the appeal dated 3 June 2005, [REDACTED] confirmed its previous decision of 5 January 2005 (paragraph 5) to base its offer on the surrender value of 8,985 FGS as stated in [REDACTED]' asset declaration. [REDACTED] states that it had based its decision on the assumption that dispositions must have been made to the insurance contract up to the year 1938 if one compared the scope of the contract at its commencement and its value as stated in the register of 1940, which showed an insured sum of [only] 5,990 Reichsmark (6,567 FGS).
15. In response by letter of 17 June 2005, the Appellant reiterated his previous statement (paragraph 8) that the calculation of his claim should be based on the full sum insured of 31,250 FGS. He states in particular, that his grandfather was in a sound financial situation and had no reason to make any alterations to the terms of his insurance contract, which would have resulted in a reduction of the insured sum and of his investment. Referring to [REDACTED]'s letter of 3 June 2005 (paragraph 12) the Appellant states that, if deductions were to be made at all, any deduction of unpaid premiums necessary for the calculation of his claim should be based on an agreed yearly premium payment of 1,821 FGS instead of the amount of 2,172 FGS because the latter figure constituted the total sum if the annual premium was paid in several instalments.
16. By letter of 4 November 2005, [REDACTED] reiterated its previous statement (paragraph 14) that it assumed that dispositions had been made to the insurance contract in issue up to the year 1938. [REDACTED] listed the paid up sums from the years 1929 until 1937 based on the condition that all premiums had been paid. It this way calculated a paid up value of 21,720 FGS for the year 1937 if annual premium payments of 2,1720 FGS had been paid.
17. By fax of 2 December 2005 and letter of 8 December 2005, the Appellant pointed out, that the asset declaration of 1938 showed the surrender value of 8,985 FGS, which was a much smaller amount than the corresponding paid up value. The surrender value of 8,895 FGS in 1938 could, therefore, not be compared with the paid up value of the year 1937 to conclude that dispositions had been made in respect to the insurance contract prior to 1938.
18. By letter of 1 August 2005, the Appellant requested an oral hearing, but withdrew his request by letter of 31 August 2005. Since no other party requested an oral hearing, the appeal proceeded on a "documents only basis".
19. 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, the Appeal Guidelines.

The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

## CONCLUSIONS OF LAW

20. By submitting his appeal on 11 May 2005, the Appellant [REDACTED] met the 120 days time limit as set out in Section 4 of the Agreement as he received [REDACTED]'s decision of 5 January 2005 on 11 January 2005. The Appellants [REDACTED] and [REDACTED] who submitted their appeals to the Appeals Office on 12 and 16 May 2005 joined [REDACTED]'s appeal (Section 14.3 of the Appeal Guidelines).
21. In substance, the parties disagree on the applicable valuation method of the insurance policy number [REDACTED] taken out by [REDACTED] with [REDACTED].
22. As set out in Section 1.2 the claim must be valued in two phases. The first is the assignment of a base value to a policy depending on the terms of the contract, the history of the payment of premiums and the circumstances of the insured event (death of the insured or maturity of the policy).
23. The Appellants argue that the base value of the contract was the originally agreed insured sum of 31,250 FGS.
24. [REDACTED] argues that the valuation could not be based on the original agreement because the parties later must have changed the conditions of the insurance contract to a paid up status before the year 1938.
25. The Appellants claim that [REDACTED] failed to provide evidence supporting its argument.
26. [REDACTED] relies on Section 3.4 of the Valuation Guidelines, which states that where there is evidence that the policy was formally converted to paid up status before commencement of the Holocaust, the base value equals the paid up value (Section 3.4 first paragraph of the Valuation Guidelines). The Holocaust commenced in Austria in the year 1938 according to Schedule 1 to the Valuation Guidelines.
27. Section 3.4, (second paragraph) states that if the conversion was after commencement of the Holocaust but made voluntarily by the policyholder in writing, the base value equals the paid up value.
28. In its decision letter of 5 January 2005 [REDACTED] had based its offer to the Appellants of Euro 49,572.31 on the surrender value of the insurance policy of 8,985 FGS as set out in [REDACTED]'s asset declaration dated 14 July 1938.

It claimed that premium payments had ceased before the year 1937.

29. Only after requests of the Appellant by letters of 27 February, 13 March and 4 April 2005 did [REDACTED] provide database printouts with its letter of 08 April 2005. The database had been set up based on its remaining original registers.

These documents list the insurance policy number [REDACTED] as originally taken out in 1928 with the insured sum of 31,250 FGS. The documents further show that in the year 1940, the non-contributory insured sum was of the amount of 6,567 FGS. The document

labelled as enclosure 5 by [REDACTED] indicates that the insurance contract was changed into a non-contributory status in 1938. The copies [REDACTED] provided of its original register by letter of 26 April 2005 confirm the information listed on [REDACTED]'s computer printouts.

According to these documents, [REDACTED]'s insurance contract had been converted to a paid up status during or after the year 1938, therefore at a time when the Holocaust had commenced in Austria.

30. Contrary to [REDACTED]'s initial statement in its decision letter of 5<sup>th</sup> January 2005, in the course of the appeals procedure it has not relied on its previous claim that premium payments stopped before the year 1937.

Instead, in its later submissions, in particular by letters of 3 June 2005 and 4 November 2005, [REDACTED] stated that by comparing the initial scope of the insurance policy and its later value represented by the surrender value in 1938 of 8,985 FGS and its paid up value of 6,567 FGS in 1940 it had to assume that changes had been made to the insurance contract before the year 1938. In particular by letter of 4 November 2005, [REDACTED] had calculated the paid up value of the insurance policy based on the original conditions of the contract taken out in 1928. In the year 1937, the paid up value would have amounted to 21,720 FGS based on an annual premium payment of 2,172 FGS, therefore much higher than the recorded values in the asset declaration and in the later documents.

31. Critical to [REDACTED]'s argument is the question of whether a comparison of the hypothetical paid up value of the year 1937 and the surrender value of the policy as set out in the asset declaration of 1938 and/or the paid up value in the year 1940 allows the conclusion that dispositions had been made of the contract prior to the year 1938. The year 1938 is decisive, because it represents the beginning of the Holocaust era in Austria as set out in Schedule 1 to the Valuation Guidelines.
32. The obvious difference between the paid up value based on the original contractual agreement of 21,720 FGS as calculated by [REDACTED] and the other two known figures of the surrender value of 8,985 FGS in 1938 and 6,567 FGS in 1940 shows that the value of the insurance policy was significantly reduced when compared with the initial scope of the agreement in 1928.

However, the available evidence of the two company registers does not show when this change took place. All that is known from the registers is that the contract was changed in the year 1938. The company's records provide no direct basis for concluding that changes, if any, in the scope of the policy occurred before 1938.

[REDACTED], therefore, has not submitted evidence, which allows the conclusion that the contractual conditions were changed before the commencement of the Holocaust.

Furthermore, [REDACTED] has not provided evidence that the conversion was after the commencement of the Holocaust, but had been done voluntarily by the policyholder and in writing

33. The base value of the insurance contract therefore has to be based on the original insured sum of 31,250 FGS. According to Section 3.3.2 (paragraph 1), premium payments need to be deducted for up to two years if payments stopped after the start of the Holocaust.

The available records for the insurance contract show, that the contract changed in 1938 and was converted into a paid up status in 1940; it follows that after that the originally contracted premiums had not been paid. The insured event of [REDACTED] death

occurred in 1942 (Section 3.1 of the Valuation Guidelines). Accordingly, two yearly premium payments have to be deducted from the insured sum.

34. The Appellant argued that deductions should be based on yearly premiums of 1,821 FGS instead of 2,172 FGS. He stated that the second figure was higher because that was the amount due if payments were made in instalments.
35. The submissions of the Appellant are plausible. [REDACTED]'s register shows in the column headed with "net-premium" the figure 1,821 and in the column headed with "sum of instalments" the digit 2,172. The wording of the column with the figure 2,172 shows this is the premium sum due in case of at least two instalments. It is therefore plausible that the agreed yearly premium for [REDACTED] contract was of 1,821 FGS while the figure 2,171 refers to the sum due if the yearly premium payments were made in several instalments. [REDACTED] has not contradicted the Appellants submission that the Appellant's grandfather had not paid his premiums in several instalments.

It is, therefore, decided that two annual premiums of 1,821 FGS must be deducted from the insured sum to calculate the base value as set out in Section 1.2 of the Valuation Guidelines. As a result, the base value of the insurance policy number [REDACTED] amounts to 27,608 FGS.

36. According to Section 1.3 of the Valuation Guidelines, the second phase in the valuation of the insurance claim is the application of appropriate multipliers to the base value to produce the current value of the claim. Section 6.2 and Schedule 2 of the Valuation Guidelines provides for a two-step method.

a) The base value has to be multiplied with the multiplier of the year when the insured event took place:

$$27,608 \times 61.6 = 1,700,652.80 \text{ Schilling (step 1)}$$

b) Additions have to be made to reflect interest on the value since the year 2000, which amounts to 5.4% for 2001, 5% for 2002, 4.75% for 2003, 5% for 2004, 5% for 2005 and 5% for 2006. In addition interest for two further months has to be added for the time after the month when the decision was made:

- 2001: 1,792,488.00
- 2002: 1,882,112.40
- 2003: 1,971,512.70
- 2004: 2,070,088.30
- 2005: 2,173,592.70
- 2006: 2,209,819.20 (interest for four months added=36,226.54)

In the year 2002, the Schilling currency was converted into Euro by a factor of 13.7603:1.

Accordingly, the current value of the policy amounts to 160,593.82 Euro.

**THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:**

[REDACTED] is directed to pay Euro 160,593.81 in equal shares of Euro 53,531.27 to the Appellants [REDACTED] and [REDACTED] and equal shares of Euro 26,765,64 each to the Appellant [REDACTED] and his brother [REDACTED].

Dated this 1<sup>st</sup> day of February 2006

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[REDACTED]