

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 [REDACTED] was born in Camden, USA on [REDACTED] 1956. He has two brothers, [REDACTED] and [REDACTED], whom he claims to represent in this appeal. His grandfather was [REDACTED] who was born in Berlin, Germany on [REDACTED] 1882 and died in Voorhees (Cherry Hill), USA on 17th December 1976. His grandmother [REDACTED], née [REDACTED], was born in Gleiwitz, Germany on [REDACTED] 1890 (date and place of death unknown).
2. The Respondent is [REDACTED] as the successor company to [REDACTED].
3. The Appellant submitted a claim form dated 2nd June 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming a life insurance policy issued to his grandfather [REDACTED] by an unnamed company.
4. The ICHEIC processed the claim under claim number [REDACTED] and submitted it, among other companies, to the Respondent.
5. In its decision letter dated 28th September 2004, [REDACTED] wrote to the Appellant (in German) offering him US \$6,000.00 for two policies of unknown value issued to his grandfather by [REDACTED]. It based its offer on a copy of a letter from [REDACTED] to the Tax Office Berlin Schöneberg, which the Appellant had submitted as evidence.
6. The Appellant then requested an English translation of the decision letter and asked for further clarification as to the basis for the decision.
7. [REDACTED] responded to the Appellant via email on 20th January 2005, providing him with a translated version of the decision letter. This email contained a new offer of Euro 8,973.00 for the policies in question. [REDACTED] stated that, based on the evidence, it was willing to assume that the two policies had a combined value of RM 17,800.
8. The Appellant submitted an Appeal Form dated 13th April 2005 appealing this offer. The Appeals Office received the Appellant's Appeal Form, together with a letter stating his reasons for appeal on 21st April 2005.
9. [REDACTED] responded to the appeal on 20th June 2005. On reviewing the evidence on the basis of a better readable copy presented by the Appellant it conceded that, in fact, five (not only two) policies may have been issued to the Appellant's grandfather. As the value of these policies is unknown, this would result in a combined offer of US \$15,000 (a minimum payment of US \$3000 for each policy). However, [REDACTED] did not extend a formal offer to the Appellant, but rather indicated that it would await instructions from the Appeals Panel on to how to proceed.
10. On 6th July 2005, the Appeals Office informed the 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.
11. No request for an oral hearing was received from either party. The appeal proceeded on a "*documents only*" basis.
12. The Appellant on 17th July 2005 answered the Respondent's letter of 20th June 2005 stating that it was indeed possible that 5 policies were issued to [REDACTED]; in addition he submitted that these policies were probably worth much more than RM 17,800.00 if his grandfather, as proven by the document, was able to take out a security against the policies for that value.

13. [REDACTED] responded on 29th July 2005 stating that it remained of the view that the evidence did not establish that each policy was worth RM 17,800. Therefore, a minimum payment of US \$3000 could only be calculated for each policy.
14. The Appellant on 23rd September 2005 reiterated that the value of the policies must have been higher than RM 17,800.
15. Since [REDACTED] had not made a formal offer to the Appellant the Appeals Office, at the direction of [REDACTED], wrote to the parties on 12th October 2005 requesting that [REDACTED] should advise within 14 days whether it was prepared to make a new offer to the Appellant; the letter provisionally advised the parties that it appeared plausible that five policies of unknown value were issued to the Appellant's grandfather. The Appellant was requested to advise within a further 14 days whether he would be prepared to accept this offer should it be made.
16. On 26th October 2005 the Respondent made a formal offer to the Appellant of US \$15,000 for the five policies (US \$3000 for each policy) based on the average value of policies issued during the period, under Schedule 3 of the Valuation Guidelines.
17. In a letter dated 25th November 2005 the Appellant confirmed that he was declining the Respondent's revised offer of 26th October 2005 and wished to continue with the appeal.
18. The Respondent confirmed its offer in a letter dated 9th December 2005.
19. 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

20. The Appellant submitted an ICHEIC claim form dated 2nd June 2003 claiming a life insurance policy issued to his grandfather [REDACTED] by an unnamed company. He named his grandfather as the policyholder and the insured person, and his grandmother [REDACTED] as the beneficiary.
21. In January 2004, the Appellant forwarded a photocopy of a letter regarding his grandfather to the Appeals Office. The letter, dated 2nd December 1937, was an internal memo from the Tax Office Berlin Schöneberg enclosing a copy of a letter from [REDACTED] dated 2nd November 1937.

The letter from [REDACTED] was only partly legible but stated (translated):

"Re: [REDACTED] a [illegible] (J) [REDACTED]."

[illegible] the declaration of will sent to us we noted in our files that Mr [REDACTED] mortgaged the proceeds of the above-mentioned insurance policies to the value of RM 17,800 – for outstanding tax payments. We request that you hand over the insurance policies for a short time so that we can update our notes. Please pay the fee of RM 4.50 with the enclosed payment card.”

22. In response to the Respondent’s offer of 26th November 2004, the Appellant sent a letter to [REDACTED] (undated) requesting an English translation of the decision letter. He stated:

“I would like some clarification of the following points before making a final decision and signing any of the documents you sent me:

1. *You state that you were unable to find any documentation of insurance policies for my grandfather, [REDACTED]. On the other hand, you suggest that he may have had 2 policies. On what basis did you arrive at that conclusion? The document I submitted to the ICHEIC...refers to policy number [REDACTED]. Were you able to find any information to match this policy number? What leads you to believe that there may be a second policy?*
2. *The attached document...includes a reference that suggests that the value of the policy may have been 17,800 RM. Although you refer to the same policy number included in this document, you state that you could not find any information on the value of the policy. I would be grateful if you would explain why the value of the policy is not, as stated on the document, 17,800 RM.”*

23. On 13th April 2005 the Appellant submitted an Appeal Form stating:

“Ms. [REDACTED] of [REDACTED] initially informed me that based on her research, two policies existed at [REDACTED]” in the name of my grandfather, [REDACTED]. Ms [REDACTED] cited the material I submitted (a copy of which is enclosed) as proof for the existence of one of the policies, but she did not provide any documentation concerning the second policy. Ms. [REDACTED] claimed that she could not find any documentation of either policy, and therefore offered the minimum allowable compensation for each of the policies, e.g. US \$3000.

“In my response to Ms. [REDACTED], I asked why she did not use the amount written on the document I submitted (17,800 RM) as the basis for compensation for at least one of the policies. Based on my inquiry, in January 2005, Ms. [REDACTED] revised the offered compensation to US \$8,973.20 (calculated based on 17,800 RM). She also informed me that this represented total compensation for both policies.

“I am appealing this revised offer based on the following questions:

“If no documentation exists, on what basis did Ms. [REDACTED] determine that two insurance policies existed in my grandfather’s name?

“If in fact two policies existed, why is the revised compensation offer based only on the assumed value of one of the policies, e.g. 17,800 RM? At a minimum, based on Ms. [REDACTED] initial offer, the compensation should be at least US \$11,973.20 (US \$8,973.20 plus the minimum US \$3,000 for the second policy).”

The Appellant submitted with his Appeal Form photographs of the two letters from [REDACTED] and the Tax Office Berlin Schöneberg. From these copies, better readable than the previous ones, it could be ascertained that the letter from [REDACTED] to the Tax

Office Schöneberg was dated 2nd November 1937 and contained the title: “*Re [REDACTED] a, b, [illegible] d (J) [REDACTED].*”

24. On 17th July 2005, the Appellant wrote to the Appeals Office a second time stating:

“After initially suggesting that there may have been only 2 policies, [REDACTED] now appears willing to suggest that there may have been as many as 5 policies. This is very possible since the [REDACTED] household consisted of 5 people in 1937, ie [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] (my mother).

It also appears that the document I submitted was an agreement by my grandfather to borrow against these insurance policies. My experience is that typically, people are only able to borrow against the equity in an insurance policy. It would therefore seem that the policies against which my grandfather was requesting to borrow would have been worth much more than RM 17,800.”

25. The Appellant reiterated this view in his letter to the Appeals Office dated 22nd September 2005 and confirmed his wish to continue with the appeal in a letter dated 25th November 2005 stating:

“I found the old document (apparently a security against future tax obligations) earlier this year while cleaning my mother’s house after she died. ... My grandfather apparently carried this document with him every day from December 1937 until his death in December 1976. I am convinced that he carried this document for almost 40 years because he believed that the insurance policies were worth more than \$225 each – adjusting \$3000 by the US inflation rate over the last 68 years. [...]

I also believe that the five insurance policies had to be worth much more than the 17,800 RM listed on the document, in order for him to have borrowed that amount against the policies.”

THE RESPONDENT’S INVESTIGATION AND DECISION

26. On 26th November 2004, [REDACTED] sent its decision letter to the Appellant informing him (in German) that it had been unable to find any record of a contract of insurance with his grandfather. It went on to state:

“The ‘Agreement’ stipulates that [the] ‘Eased Rules of Evidence’ are applicable to prove the existence of an agreement. We assume that back then two insurance policies existed at [REDACTED]. This assumption is based on the copy of the letter from the [REDACTED] and the ‘Finanzamt Schöneberg’, which you enclosed in the application form.

Unfortunately neither the documents you gave us, nor our own records, nor external archives enabled us to determine the value of these policies. For these cases the ‘Valuation Guidelines’ of the ‘Agreement’ say to take the average value of the sum insured in Germany between 1933 to 1945. Proceeding with this average value of the sum insured the value of the [policy] today is calculated with the help of... defined multipliers. Considering all this we determined a value of 1,261.16 EUR for each of the policies. [...]

However, the ‘Agreement’ also stipulates that every entitled applicant receives for every unpaid policy that has not been honoured in any other form, a minimum amount of US-Dollar 4,000.00 [if he or she] survived as a victim of the Holocaust, if not a minimum amount of 3,000.00 US-Dollar.

Since the calculated current value of the policy is below the minimum compensation amount, we are happy to inform you that we can offer you a compensation amount of overall US-Dollar 6,000.00.”

27. In response to the Appellant’s request, [REDACTED] provided him with an English translation of its decision letter on 20th January 2005. At the end of the email it stated:

“The copies of the letter from [REDACTED] and from the letter of the “Finanzamt Schöneberg” of December 2nd 1937 are not very clear and therefore difficult to read. From the wording of the documents we assumed that there were 2 insurance policies. We would be grateful, if you could send us better copies or maybe even the originals...Possibly we could gain further knowledge through them.

In the copies you sent us we weren’t able to find any evidence that the policies were really worth 17.800 RM, since it is only mentioned that a mortgage over this amount exists. Nevertheless we want to assume based on the “Eased Rules of Evidence” that these two policies together were worth 17.800 RM. This assumption results in an overall compensation of 8,973.00 EUR.”

28. [REDACTED] confirmed its offer of EUR 8,973.20 for two policies of unknown value on 26th January 2005.

29. [REDACTED] responded to the appeal on 20th June 2005 providing a background to the claim. It stated:

“In our email dated 20.1.2005 we provided Mr [REDACTED] with a new offer, which was calculated using the insurance sum of RM 17,800 for both insurance policies. [...]

Mr [REDACTED] is still not satisfied with our offer. He is of the opinion that the sum of RM 17,800 is not the total of two insurance policies, but that an additional offer must also be provided for the remaining contract / contracts. He also believes that the value of the offer should probably be higher. [...]

As you can see...we were only able to identify a policy number from the letter sent by [REDACTED]. We have only assumed that more than one contractual agreement must have existed as a result of the formulation of the letter. The copy that you have now sent to us is marked with the subject “[REDACTED] a, b, c, d (J) [REDACTED]”.

We are no longer able to ascertain how the allocation of the insurance numbers took place, because we do not have the corresponding files. Upon examination of the copy now supplied to us it is conceivable that Mr [REDACTED] had actually taken out 5 policies with [REDACTED]. A minimum compensation sum of \$3,000 per contract would be payable because we are unable to ascertain the actual value of each policy. The compensation would be increased by \$15,000. We do not wish to act prematurely in terms of the compensation process, and have therefore sent no offer as yet. Please inform us in brief as to whether we should make a new offer to Mr [REDACTED].

The sum of RM 17,800 refers clearly to all of the policies together, meaning that this sum cannot be cited for any individual contractual agreement or for every contract.”

30. [REDACTED] reiterated this position in its letter to the Appeals Office dated 29th July 2005.

31. On 26th October 2005, [REDACTED] made a formal offer to the Appellant of US \$15,000 for the five policies of unknown value (US \$3,000 for each policy). It confirmed this offer in its letter dated 9th December 2005.

THE ISSUES FOR DETERMINATION

32. The appeal is regarded as timely filed since the Appellant has got the translation of the decision letter only in January 2005.
33. In the present case, there is no doubt that the Appellant's grandfather was a Holocaust victim, and that the Appellant, as one of his heirs, is entitled to bring this claim. [REDACTED] has finally accepted, based on the Appellant's evidence, that its predecessor [REDACTED] issued policies to [REDACTED]. Therefore, the sole issue for determination relates to the number of policies issued to [REDACTED] and their relative value.
34. Initially, the Respondent was willing to accept only that two policies may have been issued to [REDACTED] based on [REDACTED]'s letter to the Tax Office Berlin Schöneberg dated 2nd November 1937. Because this letter was only partly legible, [REDACTED] based its offer on the value of two policies of unknown value pursuant to the Valuation Guidelines. It later revised this offer by basing its calculations on a combined value of RM 17,800, which was the value of the security mentioned in the letter.
35. When during the course of the appeal a more legible copy of this letter was submitted, in which the heading "*RE [REDACTED] a, b, c, d (J) [REDACTED]*" could be deciphered, [REDACTED] finally concluded that, in fact, as many as five policies may have been issued to [REDACTED]. Accordingly, it offered the Appellant US \$15,000 (US \$3,000 for each policy) based on the average value prescribed for policies of unknown value under the Valuation Guidelines.
36. The Appellant accepts that five policies may have been issued to his grandfather. However, he has challenged the Respondent's valuation of the offer on the basis that the value of the policies must have exceeded RM 17,800 to enable his grandfather to have taken out a security for this amount against the policies.
37. It is the Panel Member's view that it is plausible that [REDACTED] issued five policies of insurance to the Appellant's grandfather, based on the phrasing of the letter to the Tax Office. However, as there is nothing on the evidence to suggest the value of the policies, the valuation can only be based on the average value for policies of unknown value prescribed under Schedule 3 of the Valuation Guidelines. As indicated already in the Appeals Panel's letter dated 12th October 2005, [REDACTED]'s starting point of "unknown values" for these five policies, leading to five times the minimum value of 3,000 €, appears to be plausible. The old documents signify that an amount of RM 17,800 in connection with the policies mentioned in the subject of the letter was to serve as a security for future tax obligations of [REDACTED]. This amount explicitly is related not to one policy but to policies; therefore, the amount does not seem to represent the value of one policy nor can it be understood as signifying that each of the five policies had a value of 17,800. As the Appellant asserts, it is not improbable that the sum of all five policy sums exceeded the amount which was to serve as a security for taxes in 1937. However, in the absence of any further detail as to policy sums this assumption is not enough to base the valuation on different figures; the values of the five policies are unknown in the sense of the Valuation Guidelines. The relevant calculations are set out below.

VALUATION

- 38.** Pursuant to section 7.1 of the Valuation Guidelines (Annex D to the Agreement) where the value of the policy cannot be determined, the offer shall be based on a multiple of three times the average value for policies issued in the respective country (in this case Germany).
- 39.** Pursuant to Schedule 3, the average value of policies issued in Germany in 1938 was RM 841. Once a multiplier of 3 is applied, this results in a base value of RM 2,523 for each policy.
- 40.** In accordance with section 2.1, this value is then converted into Deutsche Mark by dividing by 10: DM 252.30. The value of each policy by the end of the year 2000 is then calculated by applying a multiplier of 8, resulting in a total value of DM 2,018.40.
- 41.** Interest is then 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 2,127.39 for 2001; DM 2,233.76 for 2002; DM 2,339.86 for 2003; and DM 2,456.85 for 2004; DM 2,579.69 up until December 2005.
- 42.** This value when converted into Euro at a rate of 1 Euro = 1.95583 DM results in Euro 1,318.97.
- 43.** As this value is less than the minimum amount prescribed for valid claims under section 2.3 of the Valuation Guidelines, the Appellant and his co-heirs are entitled to a minimum payment of US \$3,000.00 for each policy: US \$15,000.00.
- 44.** Therefore, it is determined that [REDACTED]'s offer of 26th October 2005 was calculated in accordance with the Valuation Guidelines. [REDACTED] has to pay the offered amount of US\$ 15,000 to the Appellant and his brothers [REDACTED] and [REDACTED]. As [REDACTED]'s calculation is in line with the Valuation Guidelines, the appeal must be dismissed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 4th day of January 2006.

[REDACTED]