

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]. He was born on [REDACTED] 1971 in Chadera, Israel.
2. The Respondent is [REDACTED] ([REDACTED]).
3. During 2003 the Appellant submitted 11 claim forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming insurance policies issued to the following family members:
 - i) [REDACTED] who was born in 1893, possibly in Hamburg.
 - ii) [REDACTED] who was born in 1889 possibly in Bonn.
 - iii) [REDACTED] (date and place of birth unknown).

- iv) His great grandmother [REDACTED] ([REDACTED]) who was born [REDACTED] 1890 in Deutsch-Piekar, and died in June 1942 in Auschwitz.
- v) [REDACTED] who was born in Frankfurt am Main.
- vi) His great grandfather's cousin [REDACTED] ([REDACTED]) who was born on [REDACTED] 1881 in Frankfurt, and died 3rd December 1942 in Auschwitz.
- vii) [REDACTED] who was born in 1891 in Hamburg, Germany.
- viii) His great grandfather's cousin [REDACTED] who was born on [REDACTED] 1891 in Frankfurt and died on 17th May 1944 in Theresienstadt.
- ix) His great grandfather [REDACTED] who was born on [REDACTED] 1882 in Tarnowitz, Germany, and died possibly during June 1942 in Auschwitz.

The Appellant was unable to name the issuing insurance company / companies on the claim forms or provide any policy details. Regarding his relationship to [REDACTED] and [REDACTED] he wrote "*family members*".

- 4. These claims were merged by the ICHEIC during processing under claim number [REDACTED]. This claim was circulated by ICHEIC for investigation by the MOU companies.
- 5. On 24th February 2005, [REDACTED] wrote to the Appellant stating that it had found evidence of a single policy issued to [REDACTED] in its archives. It stated that the policy was issued on 15th December 1932 for the insured sum of RM 150,000.00 and was due to mature in 20 years. The Respondent stated that the named beneficiary under the contract was the company [REDACTED], located in Berlin, but that the policy was redeemed in 1939. It was unable to state to whom the redemption value was paid.

Provisionally, [REDACTED] stated that there might be a right to compensation, but that it required further information in order to complete its research. It requested information and evidence as to:

- a) Mr [REDACTED]' date and place of birth;
 - b) The Appellant's relationship to [REDACTED];
 - c) The legal successor to the company [REDACTED], and, if Mr [REDACTED] was the sole proprietor, the name of his heir;
 - d) Whether any claims for compensation regarding the policy had been made.
- 6. The Appellant responded to the Respondent's query on 1st March 2005 stating that the [REDACTED] Coffee Company was founded by his great great grandfather in 1837 and managed by [REDACTED] and [REDACTED]. He believed this was the first claim for compensation as [REDACTED] had to flee Germany for the UK in 1938. To the best of his knowledge, neither [REDACTED] nor [REDACTED] had any children.
 - 7. On 20th April 2005, the Appellant wrote to the Respondent reiterating that he was certain that [REDACTED] and [REDACTED] did not receive any money for the insurance. He stated:

"After 1933 the family was forced to have a Nazi partner in order to maintain the business.... According to what I know, both brothers ran away from Germany during 1938, so I'm sure the claim was never paid to either of them (may be to the Nazi Partner?). After they ran away from Germany, the business was managed by the Nazi manager. All income went to him (and the Nazi authorities). I don't know who is the legal successor of the company, all I can tell you is that it [belonged] to the [REDACTED] family. I don't know who is/are the legal heir(s) of the policyholder. As far as I know they were not married."

- 8. On 16th May 2005 [REDACTED] declined the claim stating:

“As we informed you on February 24 the policy stipulated by Mr. [REDACTED] with [REDACTED] ([REDACTED])...was surrendered in 1939. Beneficiary of this policy was the Company [REDACTED] in Berlin. We presume that a payment of the surrender value was effected to this company, which at that time according to your information that Mr [REDACTED] left Germany in 1938 – was under management of a different person or authority.

As we could find out, Mr. [REDACTED] made an application to the Restitution Authorities (Entschädigungsamt Berlin, file Nr. [REDACTED]), in 1958 but he did not include in his claim any request for a refund related to his life insurance. As a consequence the life insurance was not considered for the decision of the restitution authorities. We presume that he was aware of the fact that he had no rights from the Life Insurance taken out in 1932 with [REDACTED] ([REDACTED]) in favour of the company [REDACTED].

According to the rules of the Agreement (Section 2 (1) mentioned in our letter of February 24, a claim concerning a life insurance policy is eligible for compensation if the life insurance policy was not paid or was confiscated. As the beneficiary was the company [REDACTED] we presume that the surrender was requested by this company and that the payment was properly done in its favour.

In addition the rules of the Agreement provide that the claimant in order to be eligible for compensation must be

- *the policy beneficiary or*
- *the policyholder/insured or his heir and*
- *a Holocaust victim.*

As the policy and you do not fulfil any of the above requirements your claim must be denied.”

9. The Appellant submitted an Appeal Form appealing this decision dated 27th June 2005. In an attached letter dated 29th May 2005 he outlined his reasons for appeal stating:

“The [REDACTED] Coffee Company ([REDACTED]) was established in 1837; it was established by my ancestors and was owned by the family. Two brothers who have managed the business were [REDACTED] & [REDACTED], [REDACTED] died in 1953 in Hamburg and [REDACTED] died in Italy (1976).

The story behind my claim is that to the best of my knowledge, a claim was never made to get this money (before or after the war), as [REDACTED] had to run away from Germany during 1938 (the Gestapo was looking for him) he moved to the UK. I would like to remind that the name and policy details were published by [REDACTED] as an unclaimed policy and that along the way they kept asking me for details about this policy.

Moreover, from their letters I realized that they are not 100 percent certain that the sum was indeed paid to any one, and it is was paid to someone, I would like to know the name of that person and I'm sure he was not a legal beneficiary of the policy. The Insurance Company ([REDACTED]) claims that the insurance sum was paid during 1939 – (but they are not 100 Per cent certain) this is impossible as none of the legal beneficiaries was present in Germany at that time.

Therefore I can only assume that [REDACTED] preferred to cooperate with the Nazi government who took over the business at that time, and was the one to receive (not legally) the insurance payment.

[REDACTED] also claim that [REDACTED] did not [make] an application to the restitution authorities, and therefore assume he had no right to claim the insurance policy, while I claim that this could be due to many other reasons, for example the fact that he was pretty old when he made this claim and that often it is impossible to fight a giant like [REDACTED].

The sum as I have calculated is equal to ~\$800,000 (current value) and I'm expecting that [REDACTED] will acknowledge their mistake, will apologize to me as the sole beneficiary of this policy, and will pay according to what was agreed 70 years ago."

10. The Respondent responded to the appeal on 14th September 2005 reiterating that it rejected the claim because:
 - i. the Appellant had been unable to provide any details or evidence of his relationship to Mr [REDACTED]; and
 - ii. it assumed that the redemption value had been paid out regularly to the "aryanised" beneficiary company in 1939 in accordance with the insurance contract.
11. In a letter dated 26th October 2005 the Appellant highlighted that [REDACTED] and [REDACTED] were his grandfather's cousins and that the [REDACTED] recognised him as the sole beneficiary for another policy issued to [REDACTED].
12. In a letter to the Appeals Office dated 4th November 2005, [REDACTED] further advised that it the company was still in existence in 1964, and received RM 121,500 in compensation for the compulsory payment of the Jewish Capital Levy during the Nazi era. Mr [REDACTED] was reinstated with a 22% capital share following the restitution procedure, but omitted to bring any claim for compensation for the life insurance policy.
13. In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel's general decision in July 2004, this appeal was assigned to [REDACTED].

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.

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

CONCLUSIONS OF LAW

14. Pursuant to section 17 of the Appeal Guidelines (Annex E to the Agreement), an 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 the Glossary to this 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. In this case it is clear that the Respondent issued a policy to Mr [REDACTED] in 1932, which was subsequently surrendered in 1939 and that he was a Holocaust victim within the scope of the Agreement.
 16. The key issue for determination relates to whether the Appellant is an heir who is entitled to bring this claim within the framework of the Agreement. Where this is accepted, a second question arises as to whether the Respondent has established a valid defense, pursuant to section 17.3.2 of the Appeal Guidelines, in arguing that the redemption value was validly paid out to the beneficiary company in 1939 in accordance with the terms of the insurance contract.
 17. The Panel Member concludes that the Appellant has been unable to establish sufficient standing to bring this claim. Initially, the Appellant did not provide any documentary evidence of his family relationship to Mr [REDACTED], or sufficiently persuasive anecdotal evidence to discharge his burden of proof in this regard. Indeed, during the course of the appeal the Appellant was able to state only that the brothers [REDACTED] & [REDACTED] were "*family members*" who left no children. He later stated during the appeal that they were his grandfather's cousins.
 18. The Panel Member recognises the difficulties inherent in establishing family relationships in cases where there are few family records and is prepared to accept the representation of the Appellant setting forth his grandfather's and his relationships to the insureds. Based upon this representation, however, it would appear that the necessary burden of proof has not been sufficiently discharged, as the family relationship between the Appellant and the insureds is too remote under the Succession Guidelines (Annex C to the Agreement). While the Panel Member appreciates that the [REDACTED] may have recognized the Appellant as the legitimate heir in another claim, the issue has been raised in this matter and the Panel is bound to render its decisions based solely upon the Agreement by which both the Panel and the parties to the arbitration are bound.
 19. Accordingly, it is not necessary to consider the second defense raised by the Respondent. The appeal, therefore, must be dismissed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 13th day of January 2006

[REDACTED]