

**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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**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] 1928 in Siersleben, Germany. She is daughter of her late mother [REDACTED], née [REDACTED], who was the sole heir of the Appellant's grandparents [REDACTED], who was born on [REDACTED] 1871 in Prague, Czechoslovakia and died in 1942 in Dortmund, Germany, and [REDACTED] (née [REDACTED]), who was born on [REDACTED] 1877 and died in Theresienstadt in approximately 1942-1943.
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant is represented in this appeal by [REDACTED].
4. The Appellant submitted a claim form to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming a life insurance policy issued to her grandfather by the Respondent. The ICHEIC processed the claim form under claim number [REDACTED] and submitted it to [REDACTED].
5. [REDACTED] declined the claim on 25<sup>th</sup> April 2005 on the basis that the policy had been the subject of a previous compensation proceeding under the German Compensation Law (BRüG).
6. The Appellant's representative submitted an Appeal Form dated 2<sup>nd</sup> May 2005 to the Appeals Office. She asserted that, contrary to the finding of [REDACTED], the policy now in question had at no time been the subject of a compensation procedure.
7. [REDACTED] responded to the appeal on 19<sup>th</sup> September 2005 reiterating the reasons for its decision and attaching copies of BEG compensation documentation.
8. On 14<sup>th</sup> October 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 receipt of the letter.
9. No request for an oral hearing has been received from either party. The appeal proceeds on a "*documents only*" basis. On 10<sup>th</sup> January 2005 the Appellant's representative presented additional arguments and stated that no oral hearing was requested.
10. 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**

11. The Appellant submitted a claim form dated 5<sup>th</sup> May 2000 to the ICHEIC claiming a life insurance policy issued to her grandfather, [REDACTED], by [REDACTED]. She named her grandfather as the insured person, and her grandmother [REDACTED] as the beneficiary.

- a) At section 3, she stated that the policy was purchased in Dortmund, Germany from the Klein agency;
- b) At section 5, the Appellant indicated that the policy was denominated in Reichsmarks and was for the insured sum of RM 20,000.00 due to mature in 1941.
- c) At section 9 the Appellant stated that she had previously claimed compensation in accordance with the BRüG.

12. The Appellant submitted the following documents, among others, with her claim form:

- a) A decision of the restitution authority in Münster dated 19<sup>th</sup> December 1958 awarding her mother, Mrs [REDACTED] (née [REDACTED]) DM 91.01 for the confiscation of a policy with [REDACTED] valued at RM 336.20 on 14<sup>th</sup> October 1942;
- b) A list of [REDACTED]'s assets dated 20<sup>th</sup> December 1938, which refers to an insurance policy with [REDACTED] valued at RM 9,000.
- c) [REDACTED]'s asset declarations dated 11<sup>th</sup> December 1939 and 31<sup>st</sup> January 1942, which mention insurance to the value of RM 10,000.
- d) A security order dated 5<sup>th</sup> January 1939 from the Münster Tax Office to [REDACTED], which refers to a life insurance policy with [REDACTED].
- e) A letter dated 20<sup>th</sup> December 1939 from [REDACTED] to [REDACTED] regarding policy number [REDACTED]. This states that payments shall only be made into his blocked account with the Deutsche Bank, pursuant to the security order of 30<sup>th</sup> October 1939.

13. The Appellant's representative submitted an Appeal Form dated 2<sup>nd</sup> May 2005 The Appeal Form was received on 11<sup>th</sup> August 2005. In an attached letter she states (translation):

*“Contrary to the understanding demonstrated by the [REDACTED] insurers, the subject of this action for compensation was not the action life insurance policy. The actual life insurance policy was a policy taken out for the sum of RM 20,000, which fell payable in 1941. This was noted in the application form. It is therefore not possible that this policy was seized on the 14.10.1942. On the contrary, the actual policy was at no point the subject of a claim for compensation....”*

14. On 10<sup>th</sup> January 2005, the Appellant's representative specified:

*“Regarding the forwarded documents, it is not obvious to what extent the [award] of RM 336,20 related to the life insurance policy with [REDACTED] Insurance claimed on 5<sup>th</sup> May 2000. To our client's knowledge, her grandparents had a number of life insurances, some of which were with [REDACTED] Insurance.*

*Our client does not know to what extent compensation for life insurance with [REDACTED] Insurance was paid. Payment cannot be ascertained from the forwarded documents.*

*The forwarded settlement proposal of 20<sup>th</sup> May 1965 Dortmund regional court did not cover the life insurance in any way. Contrary to the statement of [REDACTED] Insurance, it cannot be assumed that the life insurance of our client's grandfather was ever paid out or compensated.”*

## THE RESPONDENT'S INVESTIGATION AND DECISION

15. [REDACTED] declined the claim on 25<sup>th</sup> April 2005 stating:

*“We refer to the inquiry of your client, Mrs [REDACTED], regarding the life insurance policy [REDACTED] taken out with [REDACTED]. [...]*

*According to the “Agreement” (Article 2), policies are not eligible for additional compensation if these specific policies were covered by a prior decision of a German restitution or compensation authority. [...]*

*The German authorities have now informed us that your client’s mother, Mrs [REDACTED], had filed a claim for compensation with Oberfinanzdirektion Münster (Münster Finance Head Office) under the German Compensation Law (BRüG) relating to a [REDACTED] policy taken out by Mr [REDACTED]. This office has also confirmed that the [REDACTED] policy at issue was also the subject matter of a decision rendered on 19<sup>th</sup> December 1958 under file No [REDACTED] within the scope of the compensation proceeding. A total compensation of 91.01 DEM relating to the policy at issue plus another credit balance was awarded to the claimant. You sent a copy of this decision together with the ICHEIC claims-form of 22<sup>nd</sup> August 2000.*

16. On 19<sup>th</sup> September 2005, in response to the appeal [REDACTED] stated:

*“The issue raised by the client’s lawyer regarding the existence of a life insurance policy and/or a further life insurance policy for Mr [REDACTED] amounting to 20,000.00 Reich marks which was to fall due in the year 1941, had been the subject-matter of several compensation proceedings in the past and did not lead to further findings in these proceedings.*

*Mrs [REDACTED], née [REDACTED], filed a first claim for compensation under the German compensation law (Bundesrückerstattungsgesetz) relating to a life insurance policy of Mr [REDACTED]. By a decision of the Restitution Senate of the Dortmund District Court (Wiedergutmachungskammer des Landgerichts Dortmund) of 2<sup>nd</sup> July 1954 – file No. [REDACTED]– she was then awarded a compensation for the surrender value of 336.20 Reich marks relating to the [REDACTED] life insurance policy of Mr [REDACTED]. The compensation amount of DEM 91.01 (incl. A further deposit) was stipulated in a partial decision of the Head Finance Office in Münster (Oberfinanzdirektion Münster) of 19<sup>th</sup> December 1958 – based on the a/m decision....*

*Represented by her lawyer Dr [REDACTED], Mrs [REDACTED] filed a claim within the scope of another compensation proceeding – file [REDACTED] relating to “a confiscation of a [REDACTED] life insurance policy with the sum insured of 20,000.00 Reich marks”. In a composition of 20<sup>th</sup> May 1965, the Restitution Senate of the Dortmund District Court (Wiedergutmachungskammer beim Landgericht Dortmund) denied, i.a. the claims relating to an alleged life insurance policy with a sum insured of 20,000.00 Reich marks – for not being verifiable....*

*Represented again by Dr [REDACTED], lawyer, Mrs [REDACTED] claimed compensation for a [REDACTED] life insurance policy and this “with the sum insured of 20,000.00 Reich marks” under the German compensation laws (Bundesentschädigungsgesetz) in the proceeding relating to her father with the Restitution Office in Dortmund (Wiedergutmachungsamt in Dortmund) under file No [REDACTED]. In his letter dd 19<sup>th</sup> June 1956, Mrs [REDACTED]’s lawyer explained, i.a.: “Although Mr [REDACTED] had meanwhile reached the age laid down in the policy, no payment was made to him; Mr [REDACTED] deceased on 14<sup>th</sup> March*

1942.” In his letter dd 23<sup>rd</sup> November 1961, Dr [REDACTED] confirmed again that no payment had been made to the policyholder, but that the sum insured had probably been paid to the relevant Tax Office and that, as such, the case at issue was a “Rückerstattungsfall”. The claim for compensation under the German compensation laws was, subsequently, withdrawn as the surrender value paid out to the Head Finance Office in Münster on 14<sup>th</sup> October 1942 – as explained above – had already been compensated under the rules of compensation (Bundesrückerstattungsgesetz). Also in the scope of this proceeding, no evidence of the existence of a life insurance policy taken out by Mr [REDACTED] for a sum insured of 20,000.00 Reich marks could be established [...].

*As the [REDACTED] life insurance policy of Mr [REDACTED] had been compensated under the German compensation laws and as this policy had been the subject matter of several compensation proceedings without further findings relating to the compensation amount or the existence of a possible second life insurance policy of Mr [REDACTED], we respectfully ask the Panel to reject the appeal submitted with respect to this claim, and to confirm [REDACTED]’s previous decision on it.”*

17. [REDACTED] submitted the following additional documents, among others, with the letter:

- a) The decision of the Dortmund Compensation Authority dated 2<sup>nd</sup> July 1954 which refers to a life insurance policy issued to [REDACTED] with a surrender value of RM 336.20. The decision states that the redemption value was confiscated on 14<sup>th</sup> October 1942.
- b) A letter dated 19<sup>th</sup> June 1959 from attorney Dr [REDACTED] to the Dortmund Compensation Office which states: “Mr [REDACTED] held a life insurance policy with the [REDACTED]. The sum of the insurance was RM 20,000. The requisite premium payments had already been made in full. Mr [REDACTED] was owed an outstanding payment from the insurance company, although he had already reached the age at which the policy was to fall due as stipulated in the contract.”
- c) A letter dated 21<sup>st</sup> April 1961 from Mrs [REDACTED]’s representative, Dr. [REDACTED], to the Dortmund Compensation Office. This letter states that the claimant intends to claim compensation for the loss of an insurance policy held with [REDACTED] for the value of RM 20,000.00.
- d) A letter dated 18<sup>th</sup> October 1961 from [REDACTED] to the Dortmund Compensation Office stating it has been unable to find any information in relation to the above-mentioned policy.
- e) A letter dated 23<sup>rd</sup> November 1961 from [REDACTED] to the Dortmund Compensation Office which states: “As far as my client is able to recall, the insurance contract held with the [REDACTED] was taken out with the district manager, a Mr Klein, sometime during 1924 to 1926. The insurance policy was supposed to fall payable during the 70<sup>th</sup> year of the insured party’s life, meaning it would have matured in 1941. The premium payments were met in full, with the final payment being made around two to three years before the insured’s 70<sup>th</sup> year was complete. No loans were taken out on the policy. In 1941 it was already illegal for Jews to receive financial payments, which meant that no payment took place. No transfer had been effected either. The applicant submitted an inquiry to the insurance company following the end of the war, whereupon she was told that a payment had been made to an “unknown party”. It is possible that the insurance

*sum was paid in to the relevant tax office as a result of the Nürnberg laws, in which case this would be a matter for a restitution action.”*

- f) A letter dated 13<sup>th</sup> February 1962 from the Office of Compensation to [REDACTED], which states that on 9<sup>th</sup> February 1962 Dr [REDACTED] retracted the claim for compensation for the life insurance policy as compensation had already been paid out.
- g) A settlement proposal of the Dortmund Compensation Authority dated 20<sup>th</sup> May 1965, which provides that the Applicant shall rescind all additional claims for compensation in return for a payment of DM 45,000 for claims brought under the BRüG.
- h) A statement of the Compensation Authority dated 21<sup>st</sup> May 1965 referring to the policy with the surrender value of RM 336.20.

## **THE ISSUE FOR DETERMINATION**

18. The issue for determination in this appeal relates to whether the Respondent has established a valid defence. [REDACTED] declined the Appellant’s claim on the basis that any policies that had been issued to her grandfather had been the subject of restitution procedures during the 1950s and 1960s. Pursuant to section 17.3 of the Appeal Guidelines (Annex E to the Agreement) the Respondent has a valid defence where it is established in accordance with the Relaxed Standards of Proof that:

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.

19. In this case there is no doubt that a contractual relationship existed between the Appellant’s grandfather and [REDACTED]. Mr [REDACTED]’s asset declarations, as well as his letter to [REDACTED] dated 20<sup>th</sup> December 1939 and the security order of 5<sup>th</sup> January 1939 are all evidence that he held a life insurance policy with [REDACTED]. Indeed, the Appellant’s mother Mrs [REDACTED] was awarded compensation in 1958 for the surrender value of a policy held with [REDACTED] on 14<sup>th</sup> October 1942.

20. During the course of this appeal, however, the Appellant has argued that her grandfather held a second policy with [REDACTED], valued at RM 20,000.00. Her representative asserted that this policy was not covered by the restitution procedures of the 1950s and 1960s and was therefore eligible for payment within the scope of the Agreement.

21. However, on reviewing the evidence, [REDACTED] does not accept that the existence of a second policy has been sufficiently established. First, [REDACTED] was unable to find any evidence of a policy valued RM 20,000.00, as was stated in its letter to the Compensation Authority dated 18<sup>th</sup> October 1961. Although this is not conclusive evidence against the existence of the policy (as it was acknowledged that its archives were damaged during the war) it is one factor to be taken into account. In the one register that was complete from 1942 – 1945, evidence of the policy could not be found.

22. Secondly, there is nothing on the evidence to suggest that a further policy of this value was issued. The grandfather’s letters dated 11<sup>th</sup> December 1939 and 31<sup>st</sup> January 1942 do not allow the conclusion that there had been several policies. The same is true for

the asset declaration of 20<sup>th</sup> December 1938, which speaks more in favour of just one policy, and the security order of 5<sup>th</sup> January 1939, which explicitly uses the singular when referencing the [REDACTED] policy.

23. In addition, the grandfather's letter to the Respondent dated 20<sup>th</sup> December 1939 refers to only one policy with the policy number [REDACTED]. All this is rather clear evidence in support of the contention that Mr [REDACTED] held only one policy. Had another policy been in existence, it is highly likely that this would have been included and covered in his letters or declarations and by the terms of the various security orders.
24. In any case, [REDACTED] holds that that any policies that were issued were covered by the restitution procedures of the 1950s and 1960s. On appeal, [REDACTED] submitted correspondence indicating that the Appellant's mother sought compensation for a policy issued by the Respondent for RM 20,000.00. All claims were then withdrawn on 9<sup>th</sup> February 1962, as is detailed in the Compensation Authority's letter to [REDACTED] dated 13<sup>th</sup> February 1962. On 20<sup>th</sup> May 1965, the Court furthermore issued a settlement proposal rescinding all prior claims for compensation in return for a final payment of DM 45,000.00 the Appellant's mother, Mrs [REDACTED].
25. This is convincing evidence that the Appellant's mother sought compensation for the policy at the heart of this appeal. Regardless of whether a policy for RM 20,000.00 was actually issued by [REDACTED], the claim was the subject of previous compensation procedures within the scope of the Agreement. It is therefore ineligible for compensation under section 17.3.4 of the Appeal Guidelines. Accordingly, the appeal must be dismissed.

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

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[REDACTED]