

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 on [REDACTED] 1921 in Neustadt an der Weinstrasse, Germany. The Appellant is the son of [REDACTED] who was born on [REDACTED] 1885 and [REDACTED], née [REDACTED], who was born on [REDACTED] 1887. The Appellant’s parents were sent to an unknown concentration camp during the Holocaust and were killed on unknown dates.
2. The Respondent is [REDACTED] ([REDACTED]).

3. The Appellant claims insurance taken out from [REDACTED] in his ICHEIC Forms dated 7th March and 4th April 2000. ICHEIC set up Claim file number [REDACTED].
4. [REDACTED] found documentation confirming that the Appellant's father had purchased policy number [REDACTED] with the insurance company [REDACTED]. [REDACTED] was a predecessor company of [REDACTED] that [REDACTED] had taken over. [REDACTED] found a letter written by [REDACTED] dated 23rd May 1962 written in response to BEG compensation proceedings at Neustadt that the policy had been re-purchased on 1st February 1932. A BEG decision dated 6th June 1962 verified the denial of the claim for compensation. [REDACTED] stated that the claim was denied on the basis that the policy was paid out prior to the deemed date of Nazi persecution in Germany. These details were provided to the Appellant in a final decision letter dated 7th July 2005 in which the Appellant was given an opportunity to appeal.
5. The Appellant submitted an appeal form dated 4th September 2005 to the Appeals Office and states: *"My father worked for [REDACTED] Life Insurance from 1933 until he was dismissed because he was Jewish."*
6. [REDACTED] responded to the Appellant's appeal in its letter dated 14th September 2005 and repeated its reasons for denial.
7. On 7th December 2005 the Appeals Office informed the Appellant and [REDACTED] 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. No request for an oral hearing has been received from either party. The appeal proceeds on a *"documents only"* basis.
8. 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.

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 ISSUE FOR DETERMINATION

9. The existence of the Appellant's fathers' insurance policy [REDACTED] is not in dispute. The main issue for determination in this appeal is whether [REDACTED] has established a proper defence as set out in the Appeal Guidelines (Annex E of the Agreement), Section 17, which provides that to succeed in an appeal when the Claimant has satisfied the existence of policies the German company must establish, based on the Relaxed Standards of Proof, that the Claimant is not entitled to any payment if:
 - 17.3.1 the policy was cancelled before the insured event occurred and before the beginning of the Holocaust in the relevant country, in accordance with Section 7.5.1 of the Valuation Guidelines; or
 - 17.3.2 the insurance policy in question was fully paid as required by the insurance contract. However, where it appears that the policy was paid or surrendered into a blocked account the provisions of Section 5 of the Valuation Guidelines shall apply; or

- 17.3.3 another person other than the Claimant, who has submitted a claim, has a higher entitlement to the proceeds of the policy in accordance with Section 2(1)(d) of the Agreement or the Succession Guidelines; or
- 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).
10. In this matter there is no doubt that the Appellant and his father are Holocaust victims and that the Appellant would be entitled to the proceeds of any insurance policies as either named beneficiary or as heir.
11. Taking into account the evidence presented, it is determined that policy number [REDACTED] was re-purchased on 1st February 1932. A decision by the Neustadt Compensation Authority dated 6th June 1962 confirmed this and the BEG claim was denied. Thus, the documentation as a whole is plausible evidence that “*a German restitution or compensation authority*” considered the matter as specified in Section 17.3.4 of the Agreement which, standing alone, satisfies the burden of the Respondent to establish that the Claimant is not entitled to any further payment. Moreover, the Panel must enforce the agreed ICHEIC Valuation Guidelines that state in Schedule 1 that the deemed date for the start of Nazi persecution in Germany was 1933. The policy in question was paid out in 1932, prior to the deemed date for the start of the Holocaust era which supports the conclusion that it was paid out to the owner of the policy and was not paid into a blocked account.
12. Based on the above considerations, the Arbitrator concludes that the Respondent has succeeded in establishing a valid defence to the claim.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated: 8th February 2006

[REDACTED]