

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]

THE APPEALS OFFICE, PO BOX 18230, LONDON EC1N 2XA, UNITED KINGDOM

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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] ([REDACTED]) [REDACTED] (née [REDACTED], formerly [REDACTED]) was born on [REDACTED] 1923 in Chemnitz, Germany. She is the daughter-in-law of [REDACTED] who was born on [REDACTED] 1876 in Germany and died on the 4th of April 1949 in Baltimore. He was formerly the owner of a chemist shop in Germany.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form to the International Commission on Holocaust Era Insurance Claims (ICHEIC) dated 16th August 2003 claiming a life insurance policy issued to her father-in-law, [REDACTED], by an unnamed company. She was unable to identify the insured person or beneficiary, or provide any policy details.

The ICHEIC processed the claim and submitted it to the Respondent, among other companies, for investigation.

4. On 2nd August 2005 the Respondent made an offer to the Appellant of USD 8,000 for the claim stating (translation):

“We have inspected our archives and managed to learn that your father-in-law took out life insurance policy number [REDACTED] with our company, on a date which can no longer be determined, and policy number [REDACTED], in 1930.

Unfortunately, we only have a few documents from that time and, consequently, we were not able, either on the basis of documents presented by you, or by means of our documents or external archives, to identify the original agreed value of policy number [REDACTED]. For this reason – and in conformity with the “Valuation Guidelines” of the “Agreement” – we have applied the average value of insurance policies in Germany during the period from 1933 through 1945 for our calculations. The value of the policy in today’s terms was calculated using this average value of insured amounts, along with established multipliers.

...

In the case of policy number [REDACTED], this was a policy that was taken out on 01 October 1930, with a maturity date of 01 October 1951. Our documents provided no information about any payout of the insured amount or any recipients thereof.

However, the “Agreement” now stipulates that each applicant shall receive a minimum payment amounting to US \$4,000.00 for each unpaid and not otherwise compensated policy, if he survived the Holocaust as a victim himself.

Due to the fact that the calculated value in today’s terms of the policy number [REDACTED] of Mr. [REDACTED] is less than the minimum indemnification amount, we are happy to be able to offer you an indemnification value amounting to US \$4,000.00 for this policy.”

The Respondent included calculation sheets detailing its valuation of each policy in Reichsmarks with this letter.

5. The Appellant appealed this offer on 10th August 2005 stating (translation):

“Ref: [REDACTED]

I assume here that the Gold Mark was the currency used, since this, like all the other data on the file card, was entered by hand and Reichsmark has been crossed out. The settlement by [REDACTED] would have to be changed to reflect that.

Ref: [REDACTED]

I do not accept the flat compensation amount for this insurance policy! Dr. [REDACTED] was a very wealthy man. His average annual income was approx. RM 30,000.00, not

counting rental income. A German clerical-grade official at that time had an annual income of around RM 3,400.00, meaning that my father-in-law's income was far above the average and must, accordingly, be taken into account."

6. [REDACTED] responded to the appeal on 6th September 2005 stating:

"We have no historic insurance file in reference to policies no. [REDACTED] and [REDACTED] of Mr. [REDACTED] or other documents from the time, only a note in our client data base stating that Mr. [REDACTED] was our customer, a list showing that policy no. [REDACTED] was handed out on October 03, 1930 and a card with technical data for insurance policy [REDACTED]... .

We have calculated the compensation amount for policy [REDACTED] in Reichsmark and in Goldmark, since also to us it is not clear which currency was relevant for the policy. In both cases the minimum compensation is higher than the calculated value of the policy."

[REDACTED] enclosed copies of the following documents with this letter:

- The file card for [REDACTED] listing policies [REDACTED] and [REDACTED];
- An extract from its policyholder records;
- The file card for policy number [REDACTED]; and
- Valuation sheets for the two policies, including its calculations for policy [REDACTED] in Gold Marks.

7. On 6th October 2005 the Appeals Office informed both parties that the appeal would be on a "documents only" basis, unless it received a request from either party for an oral hearing within 14 days.

8. No request was received so the appeal proceeds on a "documents only" basis.

9. On 25th October 2005 the Appeals Office requested that the Respondent explain its calculations, in particular why it deducted sums for unpaid premiums and the basis upon which it calculated the old savings compensation.

10. The Respondent replied on 1st November 2005 stating in regards to policy number [REDACTED]:

"Since we don't know whether the sum insured was Reichsmark or Goldmark we filled in two valuation sheets. In Reichsmark we came to a current value of the policy of EUR 1,011.05. In Goldmark we came to a current value of the policy of EUR 1,722.81. We assume that premiums were paid until 1939. For policies in Goldmark the maximum reduction for unpaid premiums is 5 yearly premiums. Old savings compensation is calculated according to the "Tabelle für die Ermittlung der Höhe der Altsparanlage aus Lebensversicherungsverträgen" [table for the calculation of old savings compensation for life insurance contracts] which we received from the [REDACTED]."

A copy of the table was attached to the letter.

11. 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 Panel Decision is made there.

CONCLUSIONS OF LAW

12. Since the existence of the policies and the Appellant's entitlement to bring this appeal is not in doubt, the sole issue for determination relates to whether the Respondent's offer of USD 8,000.00 on 2nd August 2005 was correct.
13. Pursuant to section 4(3) of the Agreement, an appeal regarding the valuation of a policy is limited to a determination on whether the Valuation Guidelines have been correctly applied. The Appeals Panel, like the parties, is bound to apply only these Guidelines in making its decision.
14. The calculation for each of the two policies is set out below.

VALUATION

[REDACTED]

15. Pursuant to sections 1.2 and 1.3 of the Valuation Guidelines, the valuation of a claim involves two phases: first, the assignment of a base value to a policy; followed by the application of appropriate multipliers to produce the policy's current value.
16. As the Respondent stated in its letters dated 2nd August and 6th September 2005, no information was known about policy number [REDACTED]. Therefore, the calculation could only be based on the average value of policies issued in Germany during the period, as specified in Schedule 3 of the Valuation Guidelines: RM 841.00.
17. Pursuant to section 7.1 of the Valuation Guidelines, a multiplier of 3 was applied to the average value to calculate the base value. This resulted in a base value of RM 2,523.00.
18. In accordance with the BEG (section 2.1 of the Valuation Guidelines) the base value was then divided by 10 to convert the value into Deutsch Marks resulting in a value of DM 252.30.
19. A multiple of 8 was applied to calculate the value of the policy up until the end of the year 2000: DM 2,018.40.
20. Pursuant to section 2.2, interest should have then been added at the following rates to calculate the value of the policy up until October 2005 (being the month two months after the offer was made). The interest rates for 2001 and 2002 have been agreed under the Valuation Guidelines, and have been fixed for 2003, 2004, 2005 and 2006 by ICHEIC Memoranda (2001: 5.4%; 2002: 5%; 2003: 4.75%; 2004: 5%; 2005: 5%; 2006: 5%). 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; DM 2,456.85 for 2004 and DM 2,559.25 up until October 2005.
21. This value, when converted into Euro at an exchange rate of 1 Euro = 1.95583 DM, results in a final value of Euro 1,308.52.

22. As this value is less than the minimum offer prescribed for survivors of the Holocaust under section 2.3 of the Valuation Guidelines, an offer of USD 4,000 should have been offered for this policy.
23. The calculations set out in paragraphs 20 & 21 are different to the Respondent's calculation of interest in its calculation sheet of 2nd August 2005. However, both result in a final minimum offer for the Appellant of USD 4,000. Therefore, despite the discrepancy, the Respondent's final offer of USD 4,000 for policy [REDACTED] must be affirmed as consistent with the Valuation Guidelines.

Policy [REDACTED]

24. [REDACTED] provided two calculation sheets for policy number [REDACTED], calculating the policy in both Reichsmarks and Gold Marks. For both calculations, the policy's base value was RM 3,100.00 applying the conversion rate of 1 GM = 1 RM pursuant to the Reichsgesetz of 1935.
25. Pursuant to the BEG (section 2.1 of the Valuation Guidelines) deductions were made first for unpaid premiums. In calculating the value of the policy in RM, the Respondent deducted 12 annual premiums at RM 199.70, as it assumed that premiums were unpaid from the time the policyholder immigrated to the US. However, premiums should only have been deducted from 1940 until the date of the insured event (the policyholder's death in 1949). Accordingly, only RM 1,997.00 should have been deducted, rather than RM 2,396.40, resulting in a reduced base value of RM 1,103.00.
26. Old savings compensation should then have been added pursuant to the BEG (section 2.1 of the Valuation Guidelines). The Respondent calculated the old savings compensation in accordance with the table enclosed with its letter of 1st November 2005. Its calculations were correct but it omitted to add 4% interest to the final amount. Therefore, RM 2,187.36 should have been added to the base value for old savings compensation, resulting in a subtotal of RM 3,290.36.
27. This value of RM 3,290.36 should then have been converted into Deutsche Marks using the conversion rate of 10 RM = 1 DM resulting in the sum of DM 329.04.
28. Pursuant to the BEG, the policy's value up until the end of the year 2000 is then calculated by applying a multiplier of 8 resulting in DM 2,632.29.
29. Interest for the period January 2001 – October 2005 should then have been calculated applying the interest rates set out in paragraph 20, resulting in DM 2,774.43 for 2001; DM 2,913.15 for 2002; DM 3,051.52 for 2003; DM 3,204.10 for 2004 and DM 3,337.60 up until October 2005.
30. When converted into Euro applying the conversion rate specified in paragraph 21, this results in a value of Euro 1,706.49.
31. As this value is less than the minimum offer prescribed for survivors of the Holocaust under section 2.3 of the Valuation Guidelines, USD 4,000.00 should have been offered for this policy when valued in Reichsmarks.
32. Again, despite the Respondent's error in deducting too many unpaid premiums and omitting to add interest to the old savings compensation, its final offer of USD 4,000 was consistent with the Valuation Guidelines.

33. A slightly higher offer resulted from the calculation of the policy in Gold Marks, as the Respondent deducted a maximum of 5 annual premiums from the base value. However, as these calculations still resulted in an offer lower than the minimum prescribed for survivors under the Guidelines, this did not affect the Respondent's final offer of USD 4,000.00. Therefore, regardless of whether the policy was denominated in RM or GM, a total offer of USD 4,000.00 should have been made for policy [REDACTED].
34. It is concluded, therefore, that the Respondent's offers for policies [REDACTED] and [REDACTED] were in accordance with the Valuation Guidelines. As the Appeals Panel is bound to apply only the Valuation Guidelines in calculating the value of the policies, the Respondent's calculations must be affirmed as correct. The appeal is dismissed.

IT IS THEREFORE HELD AND DECIDED

The appeal is dismissed.

Dated this 13th day of February 2006

[REDACTED]