

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] (nee [REDACTED]), was born on [REDACTED] 1936 in Fulda, Germany and presently resides in Italy. The Appellant is the daughter of [REDACTED] who was born on [REDACTED] 1911 in Holzhausen, Germany. The Appellant’s father survived the Holocaust and emigrated to South Africa in 1938 to escape Nazi persecution and died on 6th January 1968 in Southern Rhodesia (today Zimbabwe).
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant claims her father’s insurance taken out from an unknown insurer in her ICHEIC Claim Form dated 26th August 2002. ICHEIC set up Claim file number [REDACTED] and sent the claim to participating German insurance companies.

4. [REDACTED] found a name card for Appellant's father with the application number A [REDACTED]. Since it did not find any policy documentation or corresponding file for the application number, but could not exclude that a contract actually came into force, [REDACTED] contacted external German compensation and restitution authorities. It was discovered by [REDACTED] that the Appellant's father had been compensated for the policy in 1959 by the German compensation authority in Kassel and sum of DM 4,946.68 had been paid to him. Consequently, [REDACTED] denied the claim in its letter dated 14th June 2005.
5. The Appellant submitted an appeal form dated 5th September 2005 to the Appeals Office and states that there was no proof that her father received any compensation in full and final settlement of the policy. She understood that her father was not satisfied with the compensation awarded to him at the time of his death and that the payment was incomplete.
6. [REDACTED] responded to the Appellant's appeal in its letter dated 17th October 2005 and repeated its reasons for denial on the basis that the BEG had previously compensated the claim.
7. On 2nd November 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 CLAIM

9. The Appellant states in a letter dated 5th September 2005 accompanying her appeal form:
 1. *I have received the letter from [REDACTED], but I do not agree with them!*
 1. *There is no documentation to state that my father Mr. [REDACTED] ever accepted any payment as full and final settlement. My personal understanding is that he was still not satisfied with any compensation awarded him at the time of his death.*
 2. *Even though your claim is that Mr. [REDACTED] was paid out in full, his name still appeared in the journal as unpaid claims. It is my belief that whatever you paid out was incomplete, and that there is still outstanding value on this policy or even another one you have not brought to light.[...]."*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

10. [REDACTED] submitted a letter dated 1st April 1958 from [REDACTED] to the Compensation Authority in Kassel that provides the following information:

Insurance company: [REDACTED]
 Policy no.: [REDACTED]

Policyholder: [REDACTED]
Date of Issuance: 01.01.1935
Date of Maturity: 01.01.1950
Sum insured: RM 50,000.00
The policy was surrendered in 1938.
The last premium was paid on 31st December 1937.

11. [REDACTED] also submitted a Decision dated 21st May 1959 from the Compensation Authority in Kassel. The document states that [REDACTED] was awarded a compensation payment in the amount of DM 4,946.68 for the loss of [REDACTED] life insurance policy no. [REDACTED] pursuant to the BEG.

THE ISSUES FOR DETERMINATION

12. The existence of the insurance policy [REDACTED] between [REDACTED] and the Appellant's father is not in dispute. It is noted that the BEG Decision states that the policy number was [REDACTED], however, [REDACTED] has submitted it to be [REDACTED]. The Arbiter considers this to be a typographical error by either the Kassel Compensation Authority or [REDACTED] due to the poor quality of the name card register which makes the application number very difficult to decipher. Nevertheless, the details regarding the policy's sum insured, date of issue, policyholder and duration are the same, and so there is no reason to consider it plausible that there are two policies with [REDACTED].
13. 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).
14. In this matter there is no doubt that the Appellant's father was a Holocaust victim and that the Appellant would be entitled to the proceeds of any insurance policies as either named beneficiary or as heir.
15. Taking into account the evidence presented, it is determined that policy number [REDACTED] was claimed by the Appellant's father in 1958. A decision by the Kassel Compensation Authority dated 21st May 1959 awarded payment of RM 4,946.68 to the Appellant's father. The documentation as a whole is plausible evidence that the

Appellant's father was compensated by "*a German restitution or compensation authority*" as specified in Section 17.3.4 of the Agreement. [REDACTED] has succeeded in establishing a valid defence.

IT IS THEREFORE HELD AND DECIDED:

The appeal in Claim number [REDACTED] is dismissed.

Dated: 10th January 2006

[REDACTED]