

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], née [REDACTED], was born on [REDACTED] 1951 in Placerville, USA.
She claims the proceeds of an insurance policy taken out by her father [REDACTED] (previously [REDACTED]; also [REDACTED], [REDACTED]) who was born in Hamburg-Harburg, Germany on [REDACTED] 1905 and died in Los Angeles, USA on 12th May 1968. The policyholder’s parents were ([REDACTED]) [REDACTED] and [REDACTED], née [REDACTED]. The Appellant’s grandfather ([REDACTED])

[REDACTED] was born in Hamburg, Germany on [REDACTED] 1864; her grandmother [REDACTED] was born in Jodekrant, Russia on [REDACTED] 1871.

During the claims process, the Appellant also named the following members of the [REDACTED] family: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] or [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

2. The Respondent is [REDACTED].
3. With her claim form dated 24th February 2000, the Appellant stated that her family had owned the second largest fishery in Hamburg, Germany but that all ships were bombed and destroyed during the war. Her family had taken out business and large home and property insurance.
4. In its provisional decision letter dated 17th May 2001 [REDACTED] stated that it had searched its central register based on the data provided by the Appellant

The Respondent explained that the central register contains every application ever received for an insurance policy with [REDACTED], or one of the companies it subsequently purchased. [REDACTED] confirmed that the central register remained intact and was not destroyed during World War Two. [REDACTED] concluded:

“We regret no entries exist for the business or for your family with exception to Mr [REDACTED]. For this reason, we know that no life insurance contract for these family members or under the name of the business existed with us.

Our central register does contain an entry for Mr [REDACTED] with a slightly different date of birth from the one you have provided. There again it would be very helpful if you could forward additional information [...]. This means that Mr [REDACTED] had applied for life insurance coverage with [REDACTED].”

[REDACTED] explained that - based on the application number - it searched its archives and two other registers as well as the reserve register. Unfortunately, it had been unable to locate the corresponding file. [REDACTED] concluded: *“The documents we have researched reveal no evidence for the existence of an open claim. Please rest assured that despite this fact, we will continue our research.”*

5. In its decision letter dated 5th February 2004 [REDACTED] stated that it had searched again and confirmed that it was unable to locate life insurance policies apart from an entry for [REDACTED]. [REDACTED] confirmed that it was unable to locate the corresponding file: it had no information about the terms of the contract. However, it assumed that the policy was paid out in 1943 as there is a cross on the name card indicating the policyholder’s death in 1943. [REDACTED] concluded:

“We know that in your particular case we have paid the insurance benefit. However, as we have nothing else to reconstruct the terms and the fate of the policy it is possible that the insurance benefit was not paid to the beneficiary but seized by authorities of the Nazi regime. [...] We have now decided to offer you a fund benefit on humanitarian grounds. In doing so, we wish to express that the mere possibility of a payment to a person or an institution other than the beneficiary is reason enough to pay.”

[REDACTED] calculated a compensation payment of EUR 1,216.29 for policy no. [REDACTED]. Since this sum is below the minimum amount as set out in Section 2.3 of the Valuation Guidelines the Respondent made an offer of US\$ 3,000. The Appellant accepted this offer for policy no. [REDACTED].

6. With its final decision letter dated 8th June 2005 [REDACTED] referred to a policy taken out by the Appellant's uncle [REDACTED]: *"We would like to come back to our previous correspondence, especially our letter dated May 17, 2001 in which we stated that we did not find an entry in our central register for you uncle Mr [REDACTED]."*

In the course of the regular audit checking procedure that was agreed upon with the ICHEIC and the auditors in additionally acquired electronical databases we have henceforth found proof for a contractual relationship between Mr [REDACTED] and our company. We assume that this policy was taken out by your uncle as the year of birth and the place of residence coincide with the data you provided in your Claim Form.

The match was detected in our research and in the course of the audit procedure with regard to the file archives. This is due to the fact that under a certain category of records, the so-called ASS contracts with usually a very small sum insured, no register cards were created in a few exceptional cases. The file themselves carry a stamp mentioning this fact ("ASS-Kartenkontrolle nicht zu ermitteln" = ASS card control cannot be found).

In order to ascertain that no case is missed, we have in retrospect recorded all these files electronically. We have searched this newly established database for all persons that were named in the ICHEIC procedure. Fortunately, we found a match for Mr [REDACTED].

We regret that initially we provided you with a different result regarding Mr [REDACTED] as our records showed no match at that stage of the proceeding.

The documents show that Mr [REDACTED] had concluded the life insurance ASS [REDACTED] with us commencing on May 1, 1933 with an insurance term of 22 years and a sum insured of 1290.- RM [...]. In 1955 the sum insured was paid out to Mr [REDACTED] [...]. Our intent is – in accordance with the guidelines of the International Commission – to compensate life insurance claims, which have remained unsettled so far. However, his does not apply to the life insurance contract of Mr [REDACTED] as the insurance benefits were paid out accordingly."

Together with its letter, [REDACTED] submitted copies of the following documents:

- (i) The application for an insurance contract of [REDACTED] number [REDACTED].
 - (ii) The insurance policy number [REDACTED] for [REDACTED] showing that the insured sum was due on 1st May 1955.
 - (iii) Two documents dated 20th and 23rd May 1955 from the accounting department approving payment to [REDACTED] for the insurance contract number [REDACTED].
7. The Appellant submitted her appeal to the ICHEIC dated 15th June 2005.
 8. In response to the Appeal [REDACTED] sent a letter dated August 30, 2005 confirming its decision and asking the Appeals Panel to reject the appeal accordingly.
 9. 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

10. The Appellant has accepted [REDACTED]' offer for policy no. [REDACTED] of [REDACTED] (above, paragraph 5). That policy, therefore, is not the subject of this appeal.

11. In regard to insurance policies for those family members for whom [REDACTED] could not find an insurance contract, the main issue for determination is whether the Appellant has met her burden of proof as set out in the Appeal Guidelines (Annex E of the Agreement), section 17, which provides that to succeed in an appeal the 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.

12. Where the relevant German company can trace no written record of a policy, the burden upon the Appellant to establish that a policy existed is a heavy one, even when the burden is limited to establishing that the assertion is "plausible" rather than "probable". Where the Appellant is not able to submit any documentary evidence in support of the claim, the Appellant's assertion must have the necessary degree of particularity and authenticity to make it credible in the circumstances of this case that a policy was issued by the company. The Appellant did not provide any evidence for the existence of further life insurance policies. The Appellant has, therefore, not met her burden of proof and has not provided a sufficient basis upon which the Appeals Panel might conclude that it was [REDACTED], which issued further policies to the Appellant's relatives.

13. Furthermore, it must be taken into account that [REDACTED] was not able to find the names of the Appellant's relatives in its registers [REDACTED] asserts that its central register contains every application ever received for an insurance policy between 1923 and 1976 and, unlike many other policy records from that time, this register remained intact and was not destroyed during the Second World War. Since [REDACTED], in conformity with ICHEIC procedures, was declared audit compliant there is no reason to believe that there was an application made or policy issued for Appellant's named relatives.

14. [REDACTED]'s decision to decline payment for an insurance policy of the Appellant's uncle [REDACTED] was also correct.

Section 17.3. and 17.3.2 of the Appeal Guidelines provide that there is no claim for payment if the insurance policy in question was fully paid as required by the insurance contract.

[REDACTED] has provided documentation showing that insurance policy number [REDACTED] of her uncle [REDACTED] had been paid out in May 1955 as set out in the

insurance contract (documents as listed under 6. (iii) above). There is no indication that the amount paid out was incorrect, since the insurance contract had originally been taken out in RM in 1933 and had eventually been paid out in DM as a result of the currency transfers at the time.

[REDACTED]' decision to decline further payment was, therefore, correct and must be affirmed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 11th day of January 2006

[REDACTED]