

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], née [REDACTED], was born on [REDACTED] 1931 in Eschwege, Germany. She is the daughter of [REDACTED] who was born on [REDACTED] 1891 in Abterode, Germany and died in November 1965 in New York, USA. [REDACTED] was living in Frankfurt am Main, Germany before he was deported to the Theresienstadt concentration camp in 1942.
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 20th August 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming a dowry or education policy issued to her father for her benefit. She named [REDACTED] as the insurer and stated that the policy was issued in Abterode in approximately 1931. She stated that it was issued in Reichsmark and was due to mature in 1952.

At section 4.1 of the claim form she stated: *“This policy was bought by my father at the time of my birth and was supposed to be paid out to me when I turned 21.”*

At section 9.1 she admitted having participated in a previous compensation proceeding under the BEG in Wiesbaden, Germany.

4. ICHEIC processed the claim form under claim number [REDACTED] and submitted it to the Respondent, together with a copy of [REDACTED]’s asset declarations of 5th January 1940 and 9th February 1942. The latter mentions insurance policies to the value of RM 20,000.00.
5. The Respondent declined the claim on 16th June 2005 stating:

“According to the Agreement a policy cannot be drawn upon as a basis for a renewed payment of compensation if this policy has already been the subject matter of a previous ruling of a German Restitution or Compensation Authority.

As you yourself already mentioned in your claim, the policy for which you are seeking restitution was already the subject matter of a restitution process at the District President’s office in Darmstadt with the reference number [REDACTED].

Our enquiries and searches at the Central State Archive of the State of Hessen in Wiesbaden have confirmed this. The documentation placed at our disposal shows that you, Ms. [REDACTED], received compensation for your father’s policy with the No. [REDACTED] amounting to 82.70 DM in November 1959...

Since your father’s policy was already the subject matter of a restitution process Section 2 § 1 Subsection C of the Agreement is applicable. As your father’s policy has already been compensated a further restitution can unfortunately not be taken into consideration.”

The Respondent attached a copy of the official notification of the decision dated 27th November 1959 with this letter.

6. The Appellant appealed the decision on 19th August 2005 stating:

“There is no legal reason for the refusal to pay the compensatory amount which I am seeking for. The fact that the policy [was] already the subject matter of a restitution process at the District President’s office in Darmstadt does not generally exclude further

claims. The paid compensation sum amounting to 82.70 DM is much less than the policy sum that was paid in and is therefore only an instalment by the insurance. Claims have not been settled yet. With its refusal of payment [REDACTED] does not refer to my personal policy but only to my father's policy. Obviously they did not handle the claims under my personal policy correctly."

7. [REDACTED] responded to the appeal on 4th October 2005 confirming its decision. It stated that the award was in conformity with the regulations and that its low value was the result of the monetary conversion in Germany in 1946. Regarding the Appellant's contention that its decision was in respect of a different policy, it stated:

"...from the documentation we have available from the restitution process on the insurance of Mr. [REDACTED] we know that Ms. [REDACTED] had already filed a claim for an alleged insurance in her name in 1959. After she was informed that there was no indication of an insurance with herself as policy holder, her father contacted us personally and referred to a letter from 1938 concerning the insurance policy [REDACTED], which dealt with the insurance policy [REDACTED] of the deceased policy holder, [REDACTED]. We assume that the policy property was transferred to [REDACTED], since this insurance was dealt with as an insurance of [REDACTED] in a later restitution process. It is possible that Ms. [REDACTED] was the insured person in this contract, since obviously no benefits were due upon the death of the original policy holder, [REDACTED], the same cannot have been the insured person.

From the documentation available to us, we assume that there was only one insurance contract, i.e. that with the number [REDACTED] with [REDACTED] as the policy holder."

[REDACTED] enclosed further documentation relating to the compensation proceeding with this letter. These documents indicate that the policy was valued at RM 475, and that it was compulsorily surrendered to the German Reich on 1st July 1943 and the surrender value of RM 310.90 transferred to the Frankfurt Tax Office on 6th July 1943.

8. On 10 & 20th October 2005 the Appeals Office informed the parties that the appeal would be decided on a "documents only" basis unless it received a request for an oral hearing from either party within 14 days of receipt of the letter. Ms [REDACTED] requested an oral hearing on 7th November 2005.
9. 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.

CONCLUSIONS OF LAW

10. This appeal relates to an insurance policy number [REDACTED] issued to the Appellant's mother, [REDACTED], and later acquired by her father, [REDACTED]. The policy was issued on 1st January 1933 and was due to mature on 1st January 1953. It was surrendered on 1st July 1943 and the surrender value of RM 310.90 transferred to the Frankfurt Tax Office on 6th July 1943.

11. [REDACTED] declined the Appellant's claim for this policy on 16th June 2005, on the ground that it had been the subject of a prior claim for compensation under the BEG. It asserts that Ms. [REDACTED] was awarded DM 82.70 for this policy on 27th November 1959 and that, therefore, it is not eligible for further compensation.
12. Article 17.3.4 of the Appeal Guidelines provides that the Respondent shall have a valid defence where the policy (or policies) in question have been covered by a decision of a German restitution or compensation authority in accordance with section 2(1)(c) of the Agreement.

Section 2(1)(c) states that "a policy or policies will be considered as having been covered by a decision of a German restitution or compensation authority, where the decision covers the same specific policy or policies as those referred to in the claimant's claim form..."
13. In this case the Respondent has provided clear documentary evidence that policy number [REDACTED] was indeed the subject of a German restitution proceeding in 1959. The Appellant was awarded DM 82.70 as compensation for the policy, which was issued to her mother on 1st January 1933.
14. Further, [REDACTED] is satisfied that policy [REDACTED] is the sole subject of this appeal. Although the Appellant referred to her "*personal policy*" in her Appeal Form, she was clearly appealing the Respondent's decision regarding this particular policy. In her Appeal Form she admits receiving DM 82.70 through a restitution process in Darmstadt, but asserts that this was "*much less than the policy sum that was paid in and therefore [is] only an instalment [of] the insurance.*" Moreover, in her claim form she claimed only one policy issued to her father, naming her as the beneficiary.
15. The Respondent has stated that, as a matter of routine, it conducted a search of its records for evidence of a policy issued to the Appellant. A search was also conducted prior to the restitution proceedings in 1959, but no evidence of a contract could be found.
16. [REDACTED] recognises that this outcome may be disappointing for the Appellant given the low compensation received for the policy in 1959. However, the Appeals Panel, like the parties, is bound to apply only the terms of the Agreement in determining appeals. As no further compensation can be awarded for policy [REDACTED] which was covered by a process under the BEG, the appeal must be dismissed.
17. On the basis of the forgoing order, the Arbitrator is satisfied that an oral hearing in this matter would be unwarranted.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed

Dated this 1st day of February 2006.

[REDACTED]

