

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], submitted a claim form to the ICHEIC process on 21st June 2000. He claimed that his father [REDACTED] was an agent for various insurance companies and had purchased policies prior to the Holocaust with three companies, and one policy was with the Respondent [REDACTED]. The Appellant had been incarcerated in Theresienstadt concentration camp and survived the Holocaust. However, his father was incarcerated at Sachsenhausen concentration camp and died on 25th December 1938. ICHEIC set up claim number [REDACTED].

2. [REDACTED] sent the Appellant a final decision letter on 4th August 2005 stating that it had searched its records for the name of his father mentioned in the claim form. It had also contacted various German State Compensation and Restitution Authorities. It had considered a letter dated 27th March 1933 from the Appellant's father, submitted by the Appellant, proving that [REDACTED] had a general insurance agency in Halle. [REDACTED] concluded as plausible that the Appellant's father as an insurance agent in the city of Halle might have had an insurance policy with [REDACTED] and offered the Appellant the average value sum of US\$4,000 for a policy on the basis that there was no information about the value of the policy.
3. The Appellant submitted an appeal form to the Appeals Office dated 15th August 2005 and confirmed his wish to appeal the offer. The Appellant submitted that the minimum value of the policy was not sufficient because his father was an agent for [REDACTED] from 1919 until his employment was terminated for racial reasons in 1937 or 1938; he also submitted that his father would have insured also the other members of his family, namely his wife [REDACTED], the Appellant's late sister [REDACTED] and the Appellant.
4. 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 of 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] for single Panel Member decision.

The seat of the Appeals Panel is Geneva, Switzerland and this Amended Final Decision is made there.

VALUATION

5. In view of the Appellant's submissions this decision is limited to determining, in accordance with the Valuation Guidelines, the value of the policy which was purchased by [REDACTED]. Under the Agreement (see paragraph 4) the valuation of policies has to be based solely on the Valuation Guidelines which form Annex D of the Agreement. Step 1 of Schedule 2 of the Rules.
6. In cases, in which, as here, the amount of the policy cannot be determined, Section 7.1 of the Valuation Guidelines requires that the offer be based on a multiple of three times (3x) the average value for policies in the respective country as shown in Schedule 3 (Section 7.1 of the Valuation Guidelines).
7. For policies issued in Germany (within the boundaries of 1937) and denominated in German currency, for which the Federal Republic of Germany established programs of compensation after the war under the Bundesentschädigungsgesetz (BEG) or other programmes of compensation or restitution, the company must assess the claim (both the base value and the valuation up to 1969) as if it had been submitted to the BEG, using the same methods of valuation, and apply a multiplier to this value of 8X.
8. According to Schedule 3 of the said Valuation Guidelines the average value of life insurance policies in Germany is Reichsmark 841. Three times RM 841 gives RM 2,523.00. This amount then, following the currency changes prescribed by law in 1948, must be converted from RM into DM by using the converting factor RM 10 = DM 1, which gives the amount of DM 253.30.

That is the value to the end of 1969. To update the values for the end of the year 1969 to the end of the year 2000, pursuant to Step 2 No. 3 of Schedule 2, the 1969 value must be multiplied by 8. Eight times DM 253.30 is DM 2,018.40.

9. For offers made from January 2001 the value must be updated by agreed multipliers as shown in Schedule 2 (Section 2.2 of the Valuation Guidelines). According to Step 3 of Schedule 2 of the said Annex, additions must be made to the value up to the end of 2000 for the subsequent years. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003, 2004 and 2005 by a Memorandum of ICHEIC after consultation with the Foundation and the [REDACTED] as the other parties to the Agreement (2001: 5.4%; 2002: 5.0%; 2003: 4.75%; 2004: 5%; and 2005: 5% according to the month, in which the decision is made, plus two months, i.e. 10/12 of 5%), which 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 2,559.22 for 2005 which results in €1,308.51 on the basis of an exchange rate of DM 1.95583 = €1.00. A conversion of €1,308.51 to US dollars is US \$1,586.55 on the basis of an exchange rate of 1 Euro = 1.21249 US dollars.
10. Notwithstanding the above calculation, however, pursuant to Section 2.3 of the Valuation Guidelines each claimant shall receive in respect of any valid claim on a policy issued in Germany by a German company a minimum payment of at least US\$4,000 if the Claimant was a victim of the Holocaust.
11. [REDACTED] provided the Appellant with documentary evidence of the offer calculations in its final decision letter dated 4th August 2005. The offer made to the Appellant totalling US\$4,000 for an unknown policy by [REDACTED] is in accordance with the Valuation Guidelines.
12. The Appellant has submitted that he should be entitled to a “*maximum*” amount for the policy, not a minimum payment. The Panel has no authority to award higher amounts when the value of a policy is not known. The Valuation Guidelines must be followed, and consequently, no further award can be granted in the circumstances. As far as the Appellant submits that his father would have insured also his mother, sister and himself this is regarded as possible, but not sufficiently plausible. Due consideration has been given to related claim [REDACTED] and the fact that the three insurance policies found were only in the name of [REDACTED], and that there were no policies for other family members. Consequently, it is likely that the Appellant’s father had solely insured his life with [REDACTED] as well. As far as the Appellant has claimed compensation for the wrongful termination of his father’s employment as a result of persecution there is no authority under the Agreement mentioned in paragraph 4 above to order such compensation. The said Agreement covers claims for insurance policies only. That in related claim [REDACTED] another company has made such an offer does not oblige [REDACTED] to make a similar payment nor does it allow the Panel to order a similar compensation.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated: 19th January 2006

[REDACTED]