

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 NUMBERS: [REDACTED],
[REDACTED], [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] 1928 in Wiesbaden, Germany. She is the daughter of [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1890 in Rosniva, Poland, and died in 1973 in Israel. [REDACTED], née [REDACTED], was born on [REDACTED] 1896 in Krzywubrody, Poland, and died on 24th June 1960 in Haifa, Israel.
2. The Respondent is [REDACTED], as successor company to [REDACTED].
3. The Appellant submitted a claim form dated 23rd December 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming insurance policies issued to her father by “[REDACTED]” and “[REDACTED]” in Germany.

She named her sisters [REDACTED] and [REDACTED] of Haifa, Israel, as other living heirs.

The Appellant submitted the following documents in support of her claim:

- a) A copy of life insurance policy number [REDACTED] issued to [REDACTED] by [REDACTED] on 15th February 1923. It had an insured sum of 250,000 Marks and was due to mature on 1st March 1953.
 - b) A copy of life insurance policy number [REDACTED] issued to [REDACTED] by [REDACTED] on 7th December 1922. It had an insured sum of 500,000 Marks and was due to mature on 1st December 1962.
 - c) A copy of life insurance policy number [REDACTED] issued to [REDACTED] by [REDACTED] on 14th February 1924. It had an insured sum of 5,000 Gold Marks and was due to mature on 1st March 1949.
 - d) An amendment to policy number [REDACTED] indicating that the policy was increased by 250 Gold Marks on 16th November 1925; and
 - e) A premium receipt confirming that a premium payment of 60.40 Marks was paid for policy number [REDACTED] in January 1925.
 - f) A copy of life insurance policy number [REDACTED] issued to [REDACTED] by [REDACTED] on 7th July 1927. It had an insured sum of 5,000 Gold Marks and was due to mature on 7th July 1957.
4. The ICHEIC processed the claim under claim numbers [REDACTED], [REDACTED] and [REDACTED] and submitted it to the Respondent for investigation.
 5. The Respondent wrote to the Appellant declining the claim on 3rd August 2005 stating:

“Based on your submitted documents, we have searched our archives for further documents. However, we were unsuccessful in locating an insurance file or similar document, just a file card listing the following three policies:

Policy number [REDACTED], issued on December 7, 1922, insurance sum: Mark 500,000.00

Policy number [REDACTED], issued on February 15, 1923, insurance sum: Mark 250,000.00 Policy number [REDACTED], issued on February 14, 1924, expired in 1926.

The 1922/23 era during which the first two aforementioned contracts were concluded, belongs to the inflation period which explains the amount of the insurance sums.

Within the scope of the monetary reform and with the entry into force of the 'revaluation laws', policies no. [REDACTED] and [REDACTED] were converted and replaced by policy no. [REDACTED]. Pursuant to the note on the file card, policy no. [REDACTED] has expired in 1926, i.e. 7 years prior to the relevant compensation period (1933-1945).

Based on these facts, we are unfortunately unable to provide you with any compensation payment for the afore mentioned insurance policies."

6. The Appellant appealed the decision by submitting an Appeal Form (undated) to the Appeals Office, which was received on 30th August 2005. In an enclosed letter to the Respondent dated 15th August 2005, she provided the following reasons for appeal:

- 1) *"With respect to policy [REDACTED], you write "lapsed in 1926". I am enclosing a copy of the receipt from [REDACTED] dated 16 November 1926, which confirms that the insured amount was increased. It is hard to believe that the insured sum was increased and expired 3 – 4 weeks later.*
- 2) *In the meantime, we have determined that another policy also existed, Policy Number [REDACTED]. Please check to see what happened to this policy.*
- 3) *Nor do you mention the life insurance policy with policy number [REDACTED], dated 7 July 1927, from [REDACTED]. It is hard to understand why the policies were cancelled in 1926 and new ones issued six months later. Maybe these are the same ones that were exchanged?*
- 4) *We also found a confirmation that policies had expired bearing a seal with a swastika dating from 1941-42, which we sent to the Darmstadt Regional Council; that means that the policies lapsed many, many years later, although we fled Germany in 1936."*

7. [REDACTED] responded to the Appellant's letter on 16th September 2005, informing her that policy number [REDACTED], which was increased on 16th November 1925, expired in 1926.

It also informed her that it had conducted a further search of its archives, but that it had been unable to find any evidence of a policy number [REDACTED]. It suggested that the Appellant may have mistaken the number for [REDACTED].

Regarding policy number [REDACTED], the Respondent advised the Appellant that her query had been forwarded to [REDACTED] for consideration.

Finally, it stated that it had contacted the Darmstadt compensation authorities requesting a copy of the receipt to which the Appellant had referred in her letter.

8. The Appellant responded to this letter on 11th October 2005, acknowledging that the reference to policy number [REDACTED] had been misinterpreted. However, she confirmed her belief that the policies had expired in 1941, after the commencement of the Holocaust era in Germany.

As evidence, she enclosed a copy of the Respondent's file card which mentions the policy numbers "[REDACTED]" and "[REDACTED]" and the amounts "500,000", "250,000" and "5,000". The file card is partly illegible, but is clearly stamped "cancelled".

9. On 4th November 2005, the Respondent wrote directly to the Appellant informing her that it had received a response from the compensation authorities in Darmstadt. The authorities had reported that the file contained only the Respondent's own file card, which the Appellant also enclosed with her letter of 11th October 2005. On this basis, the Respondent suggested that the Appellant had perhaps misinterpreted the application number "[REDACTED]" on this card to mean "1941".
10. On 15th December 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. As no request was received, the appeal proceeded on a "documents only" basis.
11. On 24th January 2006 the Respondent wrote to the Appeals Office enclosing its letter to the Appellant dated 4th November 2005 and confirming its denial of the claim.
12. 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

13. The policies at issue in this appeal concern policy numbers [REDACTED], [REDACTED] and [REDACTED] only. The Appellant has accepted that she misinterpreted the policy number [REDACTED] for policy number [REDACTED] on her Appeal Form, and that [REDACTED] is the appropriate Respondent regarding her claim for policy number [REDACTED].
14. There is no doubt that [REDACTED] issued policy numbers [REDACTED], [REDACTED] and [REDACTED] to the Appellant's father, [REDACTED]. The Appellant submitted copies of these insurance policies with her claim form, together with other documents establishing this contractual relationship. Moreover, she has established that her parents were Holocaust victims for the purposes of the Agreement, and that she would be entitled to the proceeds of any insurance as her parents' heir. In general, therefore, the claim would be eligible for compensation pursuant to section 17.2 of the Appeal Guidelines (Annex E to the Agreement).
15. The sole issue for determination concerns whether the Respondent has succeeded in establishing a valid defence. Pursuant to section 17.3.1 of the Appeal Guidelines a company shall have a defence where:

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.

16. In this case, the Respondent has asserted that all three policies were cancelled during the 1920s, prior to the commencement of the Holocaust era in Germany in 1933 (see Schedule 1 of the Valuation Guidelines). As evidence, it provided a copy of its file card for [REDACTED], which lists the policy numbers [REDACTED] and [REDACTED] and another illegible number, in addition to the stamp “*erloschen*” (or “*cancellation*”). The Respondent submits that policy numbers [REDACTED] and [REDACTED] were cancelled and replaced by policy number [REDACTED], which was issued on 14th February 1924 and expired during 1926.
17. [REDACTED] accepts this evidence on the basis of the file card, which clearly shows the two earlier policies and one other entry marked “*cancelled*”. Policies numbers [REDACTED] and [REDACTED] were valued at 500,000 Marks and 250,000 Marks respectively, and would have been left virtually worthless by the hyperinflation that took place in Germany during the early 1920s. It is not surprising, therefore, that they were cancelled and the value incorporated into a new policy as the Respondent asserts.
18. Furthermore, it is not accepted that the Appellant has succeeded in establishing that policy [REDACTED] was in force after the commencement of the Holocaust, even based on the Relaxed Standards of Proof. Although it is understandable that the Appellant may have been surprised that policy [REDACTED] was increased in November 1925, only to have expired shortly afterwards, she was not able to provide other evidence that the policy continued in force after this time. Neither the Darmstadt compensation authorities nor the Respondent have been able to locate the letter dated 1941, bearing the mark of the swastika, on which the Appellant bases her claim. Rather, the authorities were able to locate only a copy of the Respondent’s own file card in its files, which the Appellant also attached to her letter of 11th October 2005. On this basis, [REDACTED] accepts that the Appellant may have misinterpreted this file card for a letter of confirmation from 1941.
19. It is held, therefore, that the Respondent has established a valid defence in establishing that the three policies at issue were cancelled prior to the commencement of the Holocaust era in Germany. As the elements of section 17.3.1 have been met, the appeal must be dismissed.

IT IS THEREFORE HELD AND DECIDED

The appeal is dismissed.

Dated this 16th day of February 2006

[REDACTED]