

**THE APPEALS PANEL**

Established under an Agreement dated 16<sup>th</sup> 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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THE APPEALS OFFICE, PO BOX 18230, LONDON EC1N 2XA, UNITED KINGDOM

Fax:

++ 44 (0) 207 269 7303

Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

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**PRIVILEGED AND CONFIDENTIAL**

**APPEAL NUMBER:** [REDACTED]

**CLAIM NUMBER:** [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] 1926 in Hamburg, Germany. She is the daughter of [REDACTED] ([REDACTED]) [REDACTED] who was born in Hamburg on [REDACTED] 1893 and died in London in approximately 1967. Her mother, [REDACTED], née [REDACTED], was born Hamburg on [REDACTED] 1899 and died in Buckinghamshire, England in approximately 1970.
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 27<sup>th</sup> October 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming a life insurance policy issued to her father by an unknown company in Hamburg, Germany. She named her father as the insured person and her mother as the beneficiary. She indicated that the policy had not been the subject of a prior compensation proceeding.

The Appellant named her brother [REDACTED] of Florida, USA, as another living heir.

4. ICHEIC processed the claim form under claim number [REDACTED] and submitted it to the Respondent, among other companies, for investigation. During the course of processing, claim number [REDACTED] was reassigned as GMC claim number [REDACTED].
5. [REDACTED] declined the claim on 19<sup>th</sup> September 2005 stating:

*“Based on the information that you have provided in the claims form we have intensively searched all the relevant archives and records in accordance with the Agreement for information on the life insurance policies. We found that your father signed policy no. [REDACTED] on June 1 1928.*

*The policy had an insured sum of Reichsmark (RM) 10,000 -. The insurance contract was supposed to end on June 01, 1958. [REDACTED] paid out the value of the insurance contract on March 23, 1938.*

*Based on this Agreement your inquiry has been reviewed for possible prior decisions by relevant compensation authorities with regard to that specific insurance policy.*

*... According to the Agreement a policy is not eligible for additional compensation, if that specific policy was covered by a prior decision of a German restitution or compensation authority.*

*The German authorities have now confirmed that Mrs [REDACTED] has filed a claim under the German Compensation Laws regarding policy [REDACTED] no. [REDACTED] in the 1950ies. The Amt für Wiedergutmachung of Hamburg has confirmed that [REDACTED] no. [REDACTED] was the subject matter of the agreement dated January 23, 1959 in the compensation proceeding of Mr. [REDACTED] under file number [REDACTED]. Settlement proceeds in the amount of 1,568.43 Deutsche Mark were paid out in reference to insurance contract [REDACTED].*

*We are confident that you will understand our decision not to submit an offer under the given circumstances.”*

6. The Appellant appealed the decision on 23<sup>rd</sup> September 2005 stating with respect to the agreement of 23<sup>rd</sup> January 1959:

*“We left Germany in 1937. [REDACTED] died 1967. Nothing is known of the above agreement and nothing found in [REDACTED]’s papers. No one in the family has ever heard of [REDACTED]. She is an unknown person to us. We think some confusion of identity has arisen. Would appreciate a check being made.”*

7. [REDACTED] responded to the appeal on 25<sup>th</sup> October 2005 reiterating that it had unable to find the insurance file for policy no. [REDACTED], but that it did find a note in its client database stating that the Appellant’s father was a customer, and data sheets providing technical information on the contract and showing that the contract was cancelled and paid out prior to 1938.

[REDACTED] further stated that it had learned through the [REDACTED] that the policy had been the subject of a compensation proceeding in Hamburg in the 1950s pursuant to the Bundesentschädigungsgesetz (BEG). It advised that its reference to Ms. [REDACTED] in the decision letter of 19<sup>th</sup> September 2005 was an error.

It enclosed a number of documents with this letter including:

- a) Its name card for [REDACTED] with this letter, bearing the note “[REDACTED]”;
  - b) Entries from its technical register for policy [REDACTED];
  - c) A letter from [REDACTED] to the Hamburg Office for Restitution (undated) indicating that policy number [REDACTED] was issued to [REDACTED] on 1<sup>st</sup> June 1928 for the insured sum of 10,000 Marks. It was cancelled and the surrender value of RM 2,133.75 paid out on 23<sup>rd</sup> March 1938 for the credit of Mr [REDACTED]’s emigrant non-depletion account at the Dresdner Bank, Hamburg;
  - d) A letter to [REDACTED] dated 23<sup>rd</sup> January 1959 requesting that he sign and return an agreement for compensation regarding policies with [REDACTED] and the Respondent. The letter indicates that DM 1,568.43 is offered for [REDACTED] policy number [REDACTED] (inclusive of interest and old savings compensation) pursuant to Art 128 of the BEG.
  - e) A settlement document dated 19<sup>th</sup> February 1959 in which it is agreed that [REDACTED] shall receive DM 14,000 from the Hamburg Restitution Office in return for waiving all claims to further compensation for life insurance, with the exception of social security;
8. On 21<sup>st</sup> November 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.
  9. No request for an oral hearing was received from either party. The appeal proceeds on a “*documents only*” basis.
  10. The appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16<sup>th</sup> 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 6<sup>th</sup> July 2004 this appeal was assigned to [REDACTED].

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

### **THE ISSUE FOR DETERMINATION**

11. In this case, the Respondent accepts that it held a contractual relationship with the Appellant's father, [REDACTED], prior to the war. Although it was unable to find the contractual documents concerning policy number [REDACTED], it was able to uncover a note about the policyholder in its client database and technical documents showing that the policy was cancelled and paid out prior to 1938.
12. Therefore, the main issue for determination concerns whether [REDACTED] has established a valid defence pursuant to section 17.3.4 of the Appeal Guidelines (Annex E to the Agreement). This states that an Appellant is not entitled to payment if:  
  
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) of the Agreement.
13. Section 2(1)(c) provides that a policy or policies will be considered to have 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, except in certain circumstances.
14. In this case, [REDACTED] was able to provide documentary evidence showing that policy number [REDACTED] was the subject of compensation procedure during the 1950s. The settlement dated 19<sup>th</sup> February 1959 shows that Mr. [REDACTED] received a compensation payment of DM 14,000 by agreeing to waive all further claims for compensation. The Hamburg compensation authority's letter to Mr [REDACTED] dated 23<sup>rd</sup> January 1959 makes it clear that DM 1,568.43 was awarded specifically for policy number [REDACTED] with [REDACTED] pursuant to Art 28 of the BEG. Therefore, the policy can be considered to have been 'covered' by a decision of a German compensation authority for the purposes of section 2(1)(c) of the Agreement. As the Appeals Panel has no jurisdiction to hear this claim, the appeal must be dismissed.

### **IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed

Dated this...day of February 2006

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[REDACTED]