

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

Fax: ++ 44 (0) 207 269 7303

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

PRIVILEGED AND CONFIDENTIAL

APPEALS NUMBERS: [REDACTED],
[REDACTED]

CLAIMS NUMBERS: [REDACTED],
[REDACTED]

BETWEEN

DR. [REDACTED]
AND [REDACTED]

Represented by:
Rechtsanwältin [REDACTED],
Berlin, Germany

APPELLANT

AND

[REDACTED]

RESPONDENT

PANEL DECISION

The Appeals Panel 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 Appellants are Dr. [REDACTED], born on [REDACTED] 1919 in Memel (Memelland), and his sister [REDACTED], born on [REDACTED] 1915 in Coatjuten

(Memelland). They are the children of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1879 in Garsten (Garsdai), Lithuania and died in 1941 or 1942 in the ghetto of Schaulen; [REDACTED] was born on [REDACTED] 1889 in Coatjuten (Memelland) and also died in the ghetto of Schaulen in approximately 1941 or 1942. The Appellants have another sister, [REDACTED], née [REDACTED], born on [REDACTED] 1916.

2. The Respondent is [REDACTED].
3. The Appellants submitted claims to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which they claimed that [REDACTED] issued a policy of life insurance on their father's life.
4. The ICHEIC submitted the claims to the Respondent. [REDACTED] stated in its decision letter dated 26th February 2003 *"The result of our research was that there was a life insurance contract for [REDACTED] [REDACTED] with the number [REDACTED]. We also found the contract file. There was a compensation procedure conducted by the compensation authorities (Amt für Wiedergutmachung) in Düsseldorf for the heirs of Mr. [REDACTED]. On 10th January 1961 a compensation claim of RM 3,399 was settled at the county court of Stuttgart – arbitrator for compensation matters – reference [REDACTED]. Within the framework of this compensation procedure the heirs of Mr. [REDACTED] [REDACTED], inter alia Mrs. [REDACTED] and Mr. Dr. [REDACTED] received a payment of in total DM 705.29 as a compensation for the withdrawal of an insurance policy, which had been converted into a paid up policy. Our intent is – in accordance with the guidelines of the International Commission – to compensate life insurance claims, which have remained unsettled so far and for which we have documentation. This however, does not apply to your inquiry as the life insurance policy of Mr. [REDACTED] was compensated. We therefore ask you for your understanding that we cannot comply your request for further compensation"*.
5. The Appellants' representative submitted separate appeals to the Appeals Office dated 22nd May 2003, which were accompanied by attachments setting out the reasons for the appeals. As noted hereafter, these Appeals were consolidated for consideration and decision by the Appeals Panel.
6. The appeal forms received from the Appellants were incorrect appeal forms in that they did not contain a declaration of consent to the adjudication of the appeal by way of arbitration in Geneva Switzerland under Swiss federal law, a declaration of being bound to 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 to the Appeal Guidelines, a declaration waiving any right to appeal such decision as provided in the Appeal Guidelines and in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law and a declaration waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
7. The Appeals Office asked the Appellants by letters dated 29th July 2003 to sign an amended appeal form.
8. On 29th September 2003 the Appeals Office received the new appeal forms, which were dated 23rd September 2003 and mailed copies to the Respondent.
9. [REDACTED] responded in a letter dated 22nd October 2003 and asked the Appeals Panel for reasons previously asserted to *"reject the appeals submitted with respect to these claims*

and to confirm our decision on it". In addition [REDACTED] pointed out "according to the dates of signing and receipt of the Appeal Form, the claimant did not appeal within the 120-day-period. Therefore we consider the appeal as inadmissible".

10. On 21st November 2003 the Appeals Office informed both parties that the appeals will be on a "documents only" basis unless it received notification from either party requesting an oral hearing within 14 days of the date after receipt of this letter.
11. No request for an oral hearing has been received from either party. The appeals proceed on a "documents only" basis.
12. The appeals are 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 Panel Decision is made there.

THE CLAIM

13. The Appellants have submitted the following information in relation to their claims for the proceeds of a life insurance policy.
 - a) They identify [REDACTED] as the insurance company that issued a life insurance policy to their father. They state that the policy was purchased in Frankfurt am Main.
 - b) In section four, concerning documents which would substantiate the claim, they write "confirmation from the 'Oberfinanzpräsident' about the forfeiting of the insurance policy to the German Reich."
 - c) In section five, concerning policy specific details, the policy number is designated as [REDACTED] with the currency given as Goldmark. The insured sum is stated as approximately 4300 and the date of issue is identified as 1924. The date of maturity is unknown.
 - d) In answer to question 5.7 'are you aware of any payments resulting out of the insurance policy?' the Appellants mark 'yes' and state that a payment (loan) of RM 3500 was made to [REDACTED] on 20th May 1937 and a further payment (loan) of RM 1000 was made to [REDACTED] on 18th June 1938. They indicate that a payment was also made to the government following the confiscation of the policy and note, "21st July 1943, [REDACTED], Königsberg, RM 2450.95."
 - e) They indicate that premiums were paid on a monthly basis, but they do not know the amount of premium paid. They state that to the best of their knowledge all premiums were paid until 1938-39.
 - f) In section six, the policyholder is identified as [REDACTED], the Appellants' father, born 12th July 1879, in Garsdai, Lithuania.
 - g) In section seven, the insured person is identified as [REDACTED].
 - h) In section eight, the beneficiary is identified as the Appellants' mother, [REDACTED], née [REDACTED], born 16th August 1889 in Coatjuten, an area of Memel. She died in

the ghetto of Schaulen in approximately 1941 or 1942. The Appellants and [REDACTED] are identified as living heirs of the beneficiary.

- i) In answer to section nine concerning ‘*compensation*’, the Appellants marked ‘yes’ and wrote that DM 339.90 were paid by the compensation authorities of Stuttgart, file number [REDACTED], to themselves and their sister [REDACTED].

14. In the appeal forms the Appellants’ representative writes,

- “1. *The attachments 1-6 mentioned in the letter were not included. The correctness of the decision cannot be checked.*
2. *Should a compensation payment to the value of DM 705.29 indeed have been paid, this is disproportionate to the sum for which the contract was taken out.*
3. *The premium payments stopped because Mr [REDACTED] had to flee as a result of persecution”.*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. [REDACTED] provided with the above mentioned decision letter the following documents:

- a) A letter to the Compensation authorities of Düsseldorf dated 1st June 1960 policy number [REDACTED] in which reference to details of the policy terms are provided. According to this letter the policy was taken out with [REDACTED]. The policyholder and insured person are indicated as being [REDACTED] [REDACTED], born on 12th June 1879. The policy was issued on 1st December 1928 and the date of maturity was 1st December 1949. The insured sum was RM 20000 and loans totalling RM 4550 had been taken out. The premium amount was RM 303.85, which was to be paid on a quarterly basis. The surrender value of RM 2450.95 was paid on 21st July 1943 to the ‘[REDACTED]’ in Königsberg. Following the detailed description of the policy terms, [REDACTED] calculated the compensation to be awarded.
- b) A settlement was made by the compensation authorities of Stuttgart dated 10th January 1961 which states: “*the parties agree that the German Reich is bound to pay compensation for seizing a paid up life assurance policy number [REDACTED] with [REDACTED] in the sum of RM 3399.00.*” The heirs of [REDACTED] are identified as [REDACTED], née [REDACTED], [REDACTED], née [REDACTED] and [REDACTED] now [REDACTED].
- c) The Stuttgart compensation authorities, in a ruling dated 3rd July 1961, awarded DM 705.29 for policy [REDACTED] to the beneficiaries of [REDACTED], namely [REDACTED], [REDACTED] and [REDACTED].
- d) In a previous letter dated 10th July 1943 the Oberfinanzpräsident informed [REDACTED] that in accordance with the ‘*Eleventh Decree supplementing the state citizenship law*’ of 25th November 1941, the assets of Jews are forfeit to the German Reich. This letter references policy [REDACTED] of [REDACTED] and asks that the redemption value be transferred to the higher finance cashier’s office.

- e) A subsequent payment order for RM 2450.95 dated 21st July 1943 shows the redemption value of policy number [REDACTED] of [REDACTED] to the higher finance cashier's office.

THE ISSUES FOR DETERMINATION

16. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement) to consolidate claim numbers [REDACTED] and [REDACTED] and appeal numbers [REDACTED] and [REDACTED]. They are "related appeals" because related persons (siblings) submitted the claims and filed the appeals. The subject of both are the proceeds of the same life insurance policy.
17. The Panel deems the appeals to have been filed within the 120 days time limit. The Appellants first appealed with "incorrect" appeal forms dated 22nd May 2003, which their representative sent to a Dutch post box where the dates of receipt of such appeal forms were not noted. After their representative was asked by the Office on 29th July 2003 to sign the correct appeal form, the new appeal forms were signed on 23rd September 2003; these appeal forms were received in the Office within the time limit on 24th September 2003.
18. There is, based upon the record, no doubt that the Appellants' father had an insurance policy with [REDACTED], that the Appellants, as heirs of their parents were entitled to the proceeds of this policy and that all family members were Holocaust victims. Therefore, the claims of the Appellants are within the scope of the Agreement. However, the Respondent has succeeded in establishing a valid defence under the terms of the Agreement. According to Section 17.3 Appeal Guidelines the Appellants are not entitled to payment from the Foundation funds 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".*
19. The Respondent has met its burden of proof in this regard. There is written evidence that within the framework of a restitution procedure, an award directing payment was entered, that the claim has been settled and that a payment to the Appellants of in total DM 705.29 was made on the policy which is subject of the appeal.
20. The Panel notes the contention that the payment was "*grossly inequitable in comparison with the amount for which the policy was taken out*". However, with regard to claims which are considered to have been covered by a decision rendered by a German restitution or compensation authority the Panel lacks jurisdiction (Section 2.2.2 Appeal Guidelines); therefore, the Panel lacks the authority to reconsider the fairness of an award so entered. Moreover, it appears that the acceptance of the award was voluntary. The parties did not lodge an appeal from the award, although they were given the opportunity to do so pursuant to its terms. They were also represented by counsel. There is no evidence that they were under any duress or were otherwise misled by their resolution of their claim.

Appellants: Dr. [REDACTED] and [REDACTED] **Appeals Nos.:** [REDACTED] and [REDACTED]
Claims Nos.: [REDACTED] and [REDACTED]

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeals are dismissed.

Dated this 16th day of March 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member