

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]
[REDACTED]

BETWEEN

[REDACTED]

Represented by
[REDACTED],
Gloucester, Ontario
(Canada)

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 Appellant is [REDACTED], born on [REDACTED] 1917 in Brezno (Priesen), Bohemia (Czechoslovakia). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1889 in Rakovnik, Bohemia (former Austria-Hungary) and died on 24th June 1960 in Vancouver (Canada);

[REDACTED] was born on [REDACTED] 1893 in Hřensko and died on 13th September 1965 in Vancouver. The [REDACTED] family lived in Prague (Czechoslovakia) before they immigrated to Canada to escape persecution by the National Socialist Regime.

Her brother [REDACTED] represents her in the appeals and claims procedure.

2. The Respondent is [REDACTED].
3. The Appellant's representative submitted four claim forms dated 9th May 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that "[REDACTED]" issued policies of life insurance. These four claims against [REDACTED] relating to four different policy numbers were processed under the ICHEIC numbers shown in the caption of this decision.
4. The ICHEIC submitted the claims to [REDACTED]. In a decision letter dated 15th May 2003 and relating to all four policy numbers [REDACTED] writes, "*based on this Agreement your inquiry had first been reviewed for possible prior decisions by relevant compensation or restitution authorities with regard to that specific insurance policy. ... In your case we found out that you, your brother and your sister, represented by the United Restitution Organization in Frankfurt, had already filed a claim on compensation in June 1963 with Lastenausgleichsamt in Bremen Moreover, the extracts of the records of the Compensation Office available to us show that ... your authorized persons declared your claim on compensation of your father's policies as settled on 29th December 1987 in view of the compensation awarded to you in the main proceedings under file no. [REDACTED]. As the "Agreement" dd 16th October 2002 stipulates in Article 2 Section 1 that a life insurance policy cannot be compensated if it has been subject to a prior decision rendered by a compensation authority, you are not eligible for compensation. We are confident that you will understand our decision not to submit an offer under the given circumstances*".
5. The Appellant submitted an appeal to the Appeals Office dated 5th September 2003, which was accompanied by a statement in which the Appellant's representative set out his reasons for the appeal. With this statement the Appellant's representative sent copies of documents, which had been received during the claims procedure.
6. The Appeals Office received this appeal on 2nd October 2003 and sent a copy of it to [REDACTED] on 21st October 2003.
7. [REDACTED] responded in a letter dated 31st October 2003 and requested the Appeals Panel, for reasons it had set out before, to "*reject the appeal submitted with respect to this claim and to confirm [REDACTED]'s previous decision on it*".
8. On 20th November 2003 the Appeals Office informed both parties that the appeal 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.
9. No request for an oral hearing has been 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 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

11. The Appellant has submitted the following information in relation to the claims for the proceeds of life insurance policies.

- a) Claim number [REDACTED]
This claim deals with policy number [REDACTED].
 - (i) The Appellant's representative, her brother [REDACTED], who was born on [REDACTED] 1919 in Brezno (Priesen), Bohemia (Czechoslovakia) submitted a claim form to the ICHEIC in which he asserted that five insurance policies had been issued, four by [REDACTED][REDACTED] and one by [REDACTED].
 - (ii) In section five regarding the type of policy the Appellant's representative marks "life insurance" and writes, "*I heard once my father state: 'Leben' 'Erleben' I believe it was a German company*".
 - (iii) In section six the policyholder is identified as [REDACTED], the Appellant's father, who was born on [REDACTED] 1889 in Rakovnik, Bohemia.
 - (iv) The insured person is also identified as the Appellant's father.
 - (v) The beneficiary is identified as the Appellant, [REDACTED], who was born on [REDACTED] 1917. The Appellant's representative had entered his mother's name in this section, but it has been crossed through and marked with the words "delete". With regards to the question of living heirs, the Appellant's representative writes, "*brothers, both myself [REDACTED] and [REDACTED] realize that sister [REDACTED] is sole surviving beneficiary of our parents' estate*".
- b) Claim number [REDACTED]
This claim deals with policy number [REDACTED].
- c) Claim number [REDACTED]
This claim deals with policy number [REDACTED].
- d) Claim number [REDACTED]
This claim deals with policy number [REDACTED].

12. The above claims and policies are listed in one claim form; it was copied and used for all claims. For this reason there is no additional information with regard to the other three claims.

13. The following documents are in the claim files:

- a) A copy of a document dated 7th February 1969, which confirms that the Appellant was the sole executrix and trustee of her mother, [REDACTED].
- b) A letter from the Appellant's representative dated 13th May 2000 further to his submission of the claims forms. In this letter the Appellant's representative states that supporting documentation has been discovered by his family in Vancouver and reveals that payments were made on five policies. The Appellant's representative writes, "*to put it mildly, I am NOT happy with that paper. Payments on five policies amounted to some 53,822.38 Kc, which was adjusted to 35,881.58 KC, which in turn was converted to 3588.16 RM and a final figure was arrived at DM 358.82 and considered NOT worth bothering with. How cavalier! The monies were there for some sixty years, the companies must have benefited from that.*"

- c) A fax from the compensation office of Bremen dated 29th January 2002 informing the Holocaust Claims Processing Office (HCPO) that there were four contracts with [REDACTED]. Furthermore, it states that neither [REDACTED] nor his heirs were granted compensation in accordance with the compensation and restitution law for these life insurances.
- d) Attached to the above mentioned fax was a copy of a letter from [REDACTED] to the compensation office of Bremen dated [REDACTED] 1968 referencing four policy numbers and providing the following information:

| | | |
|------------------------|-----------------------|-------------------|
| <i>Policy number:</i> | <i>[REDACTED]</i> | <i>[REDACTED]</i> |
| <i>Insured sum:</i> | <i>Kc 30,000</i> | <i>Kc 20,000</i> |
| <i>Date of issue:</i> | <i>1922</i> | <i>1926</i> |
| <i>Term:</i> | <i>20 years</i> | <i>20 years</i> |
| <i>Annual premium:</i> | <i>Kc 1680</i> | <i>Kc 1168</i> |
| <i>Loan:</i> | <i>?</i> | <i>?</i> |
| <i>Country:</i> | <i>Czechoslovakia</i> | |

| | | |
|-----------------------|-----------------------|-------------------|
| <i>Policy number:</i> | <i>[REDACTED]</i> | <i>[REDACTED]</i> |
| <i>Insured sum:</i> | <i>Kc 50,000</i> | <i>Kc 50,000</i> |
| <i>Date of issue:</i> | <i>1933</i> | <i>1937</i> |
| <i>Term:</i> | <i>22 years</i> | <i>20 years</i> |
| <i>Annual premium</i> | <i>Kc 2808</i> | <i>Kc 2825</i> |
| <i>Loan:</i> | <i>?</i> | <i>?</i> |
| <i>Country:</i> | <i>Czechoslovakia</i> | |

According to our closing statistics from 1939, the first three policies were terminated by way of redemption. Policy [REDACTED] expired in 1939 without establishing a value, as premium payments were terminated prematurely.

We cannot find anything further on these policies, which is because the files and documents are still at our former offices in Prague. These are life assurance policies which were taken out in Czechoslovakia via our former agency in Prague. As defined by the Federal regulatory office, these policies must be regarded as independent foreign policies by our company, which come under § 8 of the law on the settlement of claims arising out of life assurance and annuity policies as worded on 03.07.1964, so we cannot entertain claims under these policies.

Under the tariffs agreed for these policies, the total premiums paid up to October 1938 should have been

*Kc 22,890 on policy [REDACTED]
 Kc 12,430.00 on policy [REDACTED]
 Kc 15,093.00 on policy [REDACTED]
 Kc. 2825.00 on policy [REDACTED]..."*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. [REDACTED] denied the claim in its decision letter dated 15th May 2003 (see above paragraph 4). Attached was an instruction (“*Verfügung*”) from the compensation office of Bremen that shows that a letter was written to the United Restitution Organization dated 27th August 1987. This letter lists four policies issued to [REDACTED] by [REDACTED], giving information about the following policies:

- a) [REDACTED] number [REDACTED]. Insured sum Kc 30,000
- b) [REDACTED] number [REDACTED]. Insured sum Kc 20,000
- c) [REDACTED] number [REDACTED]. Insured sum Kc 50,000
- d) [REDACTED] number [REDACTED]. Insured sum Kc 50,000
- e) [REDACTED] number [REDACTED]. Insured sum Kc 50,000. ([REDACTED] has made an offer on this policy).

This letter states, “*as we already informed you in our letter of 14.11.1985, the policies claimed can be determined under § 17 para. 3 FG at 2/3 of the premiums paid up until the time of the loss. The premiums paid in each case are as follows:*”

| | | |
|--------------------------------|--------------|-------------------------------------|
| a) premiums paid Kc 8990.00 | of which 2/3 | Kc. 5993.33 |
| b) premiums paid Kc 12,430.00 | of which 2/3 | Kc. 8286.76 |
| c) premiums paid Kc. 15,093.00 | of which 2/3 | Kc. 10,052.00 |
| d) premiums paid Kc. 2825.00 | of which 2/3 | Kc. 1883.33 |
| e) premiums paid Kc 14,484.38 | of which 2/3 | <u>Kc. 9656.25</u> Kc. 35,881.58 |

Under § 20 FG, valuations denominated in any currency other than Reichsmarks must be converted to Reichsmarks: the conversion rate is taken from Schedule 2 to §1 of the 11th FDV: One Czech crown in the period from 16.03.1939 to 31.10.1945 = RM 0.10. The Kc 35,881.58 above, when converted, thus gives RM 3558.16.

Under § 245 (4) LAG, subject to the provisions of § 249 a LAG, expulsion losses and Eastern losses and claims to other private law pecuniary claims are to be set at a conversion ratio, in this case 10:1. Unfortunately we have to note that the resulting loss of RM 358.82 cannot result in any further compensation in chief on the matter. For the sake of procedural economy, we do not propose to issue any full ruling. Unless we hear from you otherwise in the next four weeks, we will consider the loss of the life insurance policies reported as ‘settled otherwise’ and close the case accordingly.”

15. Further documents submitted by [REDACTED] with the final decision letter are:

- a) A letter from Dr. [REDACTED] (United Restitution Organization - URO -) to the compensation office of Bremen, dated 16th September 1987, sharing the compensation

office's point of view but asking for more time to obtain the consent of the then claimant and to answer the letter of the compensation office dated 27th August 1987.

- b) Handwritten note from the compensation office in Bremen relating to a telephone conversation between Frau [REDACTED] of the compensation office and Dr. [REDACTED] (URO) that Dr. [REDACTED] had requested "*settlement otherwise*".
 - c) Letter from the compensation office of Bremen dated 7th May 2003 to [REDACTED] that states, "*Enclosed is a copy of a letter dated 05.07.1968 from [REDACTED] Berlin concerning [REDACTED]'s insurances with [REDACTED]. There are no other documents in the file. These insurance claims have not been classified as claims for losses due to expulsion (losses due to confiscation), so no compensation was granted for them under the Equalisation of Burdens Law. Because the ascertainable loss was so small, no further basis compensation would have been calculated for it in combination with other financial losses. ... There were no validated insurance claims in the file of the directly injured party, [REDACTED], Ref. [REDACTED]*".
16. [REDACTED] made further comments during the appeals process. In a statement of 31st October 2003 [REDACTED] writes, "*...we can state that the claimant does not deny the fact of a compensation of the policies in question. Indeed, he has received the maximum amount in the proceedings initiated by him on the basis of the German Compensation Law (Lastenausgleichsgesetz); therefore the claimant's then authorized person had been advised by the Bremen Compensation Office to withdraw the claim, which he then did*".
17. Additional comments were made by letter dated 27th November 2003 in which [REDACTED] states, "*we wish to state explicitly that the sums of the policies in question have not been considered in the compensation proceedings with the Lastenausgleichsamt Bremen because, as this office had explained as early as in the year 1987, the detailed calculation of the loss from the policies would not have resulted in a higher main compensation amount, as the legally stipulated maximum compensation had already been awarded*".

THE ISSUES FOR DETERMINATION

18. The Panel decided, pursuant to Section 14.1 of the Appeal Guidelines (Annex E of the Agreement) to consolidate claim numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. They were denied by the same decision letter and are appealed in one appeal form.
19. There is, based upon the record, no doubt that the Appellant's father had four life insurance policies with [REDACTED] and that the Appellant, [REDACTED], as the named beneficiary would have been entitled to the proceeds of these policies. Further, it is not questioned that [REDACTED] and [REDACTED] and their children, [REDACTED], [REDACTED] and [REDACTED] are Holocaust victims. Therefore, the claims of the Appellant in general 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 of the 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.

20. The Respondent has met its burden of proof in this regard. There is written evidence that within the framework of a compensation procedure the claims regarding policy numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were settled pursuant to the “*Feststellungsgesetz*” (FG) and the “*Lastenausgleichsgesetz*” (LAG) [Assessment Law and Equalisation of Burdens Law]. [REDACTED] submitted a copy of an internal instruction (“*Verfügung*”), dated 27th August 1987, which was sent to the United Restitution Organisation (URO) – acting on behalf of the heirs of [REDACTED] - from the compensation authority of Bremen explicitly quoting all insurance policies and explaining why an offer could not be made. This document states that no full ruling was intended and informs the claimant that the claim for these life insurance policies will be considered as “*otherwise settled*” unless communication is received within four weeks. A handwritten telephone note records a telephone call between Dr. [REDACTED] of the URO (then representing the claimant) and Frau [REDACTED] of the compensation authority of Bremen, in which Dr. [REDACTED] asked for the afore-mentioned claim to be regarded as “*otherwise settled*”. Furthermore, in a letter from the department responsible for compensation matters in Bremen, dated 7th May 2003, it is stated that the claim for compensation of the insurance policies taken out by [REDACTED] with [REDACTED] was withdrawn.
21. While these facts are not disputed by the Appellant, her representative claims that the amounts calculated at the time were too low and could not be regarded as fair. The Appeals Panel notes these arguments concerning the calculations by the compensation authority of Bremen. However, with regard to claims, which are considered to have been covered by a decision rendered by a German restitution or compensation authority or by a settlement, the Panel, pursuant to section 2.2.2. of the Appeal Guidelines, lacks jurisdiction to reopen the case and to reconsider the fairness of the underlying legal provisions.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 8th day of July 2004

The Appeals Panel

(signed) Timothy J. Sullivan
Timothy J. Sullivan
Chairman

(signed) Rainer Faupel
Rainer Faupel
Panel Member

(signed) Abraham J. Gafni
Abraham J. Gafni
Panel Member

This is to certify that the original has been signed by the Panel Members.

London, 23rd day of July 2004

Martin Gutfrucht
Principal Legal Adviser