

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 NUMBER: [REDACTED]

BETWEEN

[REDACTED]

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] who was born on [REDACTED] 1926 in Munich (Germany). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1879 in Heiligenstadt (Germany), [REDACTED] was born on [REDACTED] 1892 in Memmingen (Germany). Both were deported in autumn 1941 and perished in a death camp in Poland.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim to the New York State Banking Department's Holocaust Claims Processing Office which was transferred to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in January 2000. In this claim the Appellant asserts that "[REDACTED]" and "[REDACTED]" issued policies for life insurance.
4. The ICHEIC submitted the claim to [REDACTED] which issued a decision letter on 18th August 2003. In its decision letter [REDACTED] writes, "*according to the 'Agreement' policies are not eligible for additional compensation if those specific policies were covered by a prior decision of a German restitution or compensation authority and no new aspects or evidence are available which could allow a decision to the contrary. As – in contrast – to your assumption – the situation has not changed since the 1961 decision due to the lack of new information and the Compensation Office in Munich had rendered a decision, you are not eligible to compensation as per the rules of the 'Agreement'.*".
5. The Appellant submitted a letter dated 8th December 2003 to [REDACTED], in which he states that he is appealing the Respondent's decision. This letter with many attachments (which were sent a second time with the appeal form and are described in paragraph 15 in detail) was forwarded by fax by [REDACTED] to the ICHEIC London Office. An appeal form, however, was not among the documents forwarded by the Respondent and this was not received until 16th December 2003. This appeal form was submitted with several documents and a statement setting out the reasons for the appeal (see paragraph 15).
6. On 22nd December 2003 the Appeals Office forwarded a copy of the appeal to the Respondent.
7. [REDACTED] responded in a faxed letter dated 5th January 2004. In this letter [REDACTED] requested that the Appeals Panel reject the claim (see paragraph 23).
8. On 27th January 2004 the Appeals Office informed both parties that the appeal will be decided 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 submitted the following information relating to his claim in the claim form dated 15th March 1998:
 - a) He identifies [REDACTED], his father, as the insured person and states that his father was a clothing manufacturer, trading under his own name.

- b) In section five regarding the ‘*known facts about insurance policy(ies)*’ the Appellant writes, “[REDACTED]. *Life insurance. Munich*” and “[REDACTED] *Lebensversicherung. Life insurance. (See [REDACTED] letter dated 27.3.61).*”
 - c) In section six regarding the ‘*basis for your claim on the policy(ies) listed above*’ the Appellant writes, “*old letters from 1950’s and 60’s*”.
 - d) In section seven regarding ‘*basis for belief that a policy was not paid*’ the Appellant writes, “*my parents were deported in ? November 1941 and the [REDACTED] and [REDACTED] Insurance Companies were unable to trace the sums of money which appear to have been paid to them, as shown by the copies of the enclosed letters etc.*”.
12. On the declaration of consent the beneficiary and insured person are identified as the Appellant.
13. Many documents were faxed with the claim form. They were:
- a) Several copies of a letter dated 24th March 1961 from [REDACTED] to the lawyer [REDACTED] in Munich concerning a life insurance policy for [REDACTED]. In this letter [REDACTED] admits that the redemption value is known and that the sum insured is stated as RM 10,000. [REDACTED] believes that it will be able to reconstruct the policy, but requires further information. In this letter [REDACTED] states, “*for your information, we would also like to point out that we are already in correspondence with the higher finance directorate, Munich on this matter. On 31.08.1955, the higher finance directorate informed us as follows: ‘from the seizure file for [REDACTED] and [REDACTED], [REDACTED], they had a life assurance policy with ‘[REDACTED]’ life assurance company. [REDACTED]. transferred the redemption value of this policy, of RM 70.15 to the higher finance cashier’s office on 14.08.1943. I believe the reparations authority may have confused insurance companies in this case’. If the higher finance authority still has a seizure file, one would have to assume that this also records a life assurance policy with our company. As this appears not to be the case, it cannot be excluded by any means that the insurance in question was not with our company.*”
 - b) Several copies of a letter dated 7th December 1948 from the Appellant to Dr. [REDACTED] asking for assistance concerning assets held by his parents with [REDACTED], in Zurich.
 - c) Copies of a letter dated 21st August 1953 from [REDACTED] to the Appellant informing him that it has been unable to trace any policy in the name of his father [REDACTED].
 - d) Copies of a letter dated 27th March 1961 from [REDACTED] to the “[REDACTED]” ([REDACTED]) requesting information concerning the date the policy taken out by [REDACTED]. He writes, “[REDACTED] *referred me on to you as I am searching for a life assurance policy for Herr [REDACTED]. The details known to me are as follows: [REDACTED], born Heiligenstadt, [REDACTED] 1879, declared dead 20.11.1941. Life assurance policy with [REDACTED], redemption value as at 31.12.38 RM 3,649.50; presumable life assurance value RM 10,000.00. To enable me to actually claim compensation, I absolutely must have further details as to when the policy started and ended, and the actual value, and would therefore be grateful for further details from you, as [REDACTED] has no further documents*”.
 - e) Copies of a letter dated 16th March 1961 from [REDACTED] to [REDACTED] ‘[REDACTED]’ which states, “*according to [REDACTED], the sum of DM 131.60 was*

paid to your insurance company on 17.12.38. I would be interested to know, and would therefore be grateful for information as to, what policy this payment was made in respect of, and what became of that policy (probably redeemed by Herr [REDACTED] under duress)."

- f) Copies of letter dated 16th March 1961 from [REDACTED] to [REDACTED] Life Insurance Company stating that he has only been able to find out the redemption value of the policy taken out by [REDACTED]. He writes, *"I have in the meantime done everything possible to find out details of this life assurance policy, of which only the redemption value of RM 3,649.50 (31.12.1938) is known to date. The Munich tax office does not have any documents, which would show the policy number, such as a statement of assets. I have examined the account cards from 01.01.1939 at [REDACTED], Munich, but failed to find any amount from this policy (redemption value). All the records at the [REDACTED] with which Herr [REDACTED] also had an account were lost in the war...As Herr [REDACTED] was 60 on [REDACTED] 1939, it cannot be ruled out that he came into the benefits under the life assurance policy, which would obviate any claim for compensation. From the redemption value of RM 3,649.50 as shown in the statement at 31.12.1958, I assume this policy was for RM 10,000."*
- g) Copies of a letter from [REDACTED] to the Appellant dated 15th October 1953 informing him that it has been unable to find a life insurance policy. It states that the policy may have been a group life policy. It concludes, *"as the higher finance president says the redemption values are RM 44.35 and 25.80 respectively, perhaps we may assume that you have no particular interest in them, given the devaluation to Deutschmarks"*.
- h) There is also much pre-ICHEIC correspondence between the Holocaust Claims Processing Office in New York regarding its investigations into the existence of a policy issued to [REDACTED].
14. In a letter sent to the Respondent dated 8th December 2003, the Appellant states that he is appealing [REDACTED]'s decision and writes, *"I understand the Bavarian State Compensation Office rejected my claim in 1961. That office assumed, in the written verdict, that my father drew his money out when he reached the age of 60, in 1939. There is no proof that he did and there is no proof that he did not. But there is proof that he had one or more policies with [REDACTED] and with [REDACTED]. In my opinion, that Court had no right to assume that he withdrew his money. I have enclosed for you copies of bank statements, which my lawyer at that time, Dr. [REDACTED] in Munich showed to the Court. None show that he received money from [REDACTED] or [REDACTED]. At the same time they also do not show that he paid any money to the Insurance companies. But perhaps this is due to the fact that he had reached the age of 60 in September 1939 and therefore the policies had matured. It is now for the Appeal Court in Geneva to draw a conclusion as to what might have happened. You can also see clearly that my father had shares at all times and what was left of them in November 1941 was confiscated and sent to Berlin. There is no evidence that he was in great need of money and I am still of the opinion that there are at least two Insurance policies which were never paid out to him."*
15. In his reason of appeal the Appellant writes, *"[REDACTED] rejected my claim because they relied on the judgement of the Bavarian State Compensation Office when they rejected my claim in 1961. In my opinion that the Court should not have assumed that my father drew out his money from the [REDACTED] and [REDACTED] Co's when my lawyer, Dr. [REDACTED] submitted much evidence in my favour at the time. I recently found bank statements from my old file of Dr. [REDACTED]. Please refer to my separate letter to [REDACTED] of 8 December 2003. Copies of Bank statements from Dr. [REDACTED]'s*

file of 1957 are enclosed. It can clearly be seen on the [REDACTED] Statement that he was still paying income tax when he paid RM 960.00 on 26.9.1941 to the Finance Office in Munich (marked (1) on the green marker). On that statement you can also see that the account was closed on 4.12.1941, which was two weeks after my parents were deported. (marked (2) in green). Then on 5.5.1942, six share certificates were sent to the main cashier office in Berlin. (marked (3) in green). I emphasise all this evidence to show that my father was not desperately short of money right up to the end of his life. Therefore the ASSUMED judgement of 1961 is wrong. There was no appeal against that judgement in 1961. That was unconstitutional. But that was 1957 and 1961. I wonder how Dr. [REDACTED] would feel now, now that we live in times which are more transparent, more realistic and more sympathetic.”

16. With his form the Appellant submitted the following documents:

- a) A copy of [REDACTED]’s decision letter dated 18th August 2003 in German and English (see paragraph 21).
- b) A copy of his letter dated 8th December 2003 informing [REDACTED] of his intention to appeal its decision (see paragraph 14).
- c) An extract from the bank account of [REDACTED], number 82, for the period 12th July 1941 to 4th December 1941. The Appellant has highlighted two transactions: a payment of RM 960 to the Finance Office of Munich-North for income tax on [REDACTED] 1941; and the closing charges of RM 20.73 on 4th December 1941. Next to the payment to the Finance Office there is a green marker with the number (1) and next to the closing charges there is green marker with the number (2).
- d) Page three of a document regarding [REDACTED]’s financial situation. The Appellant has highlighted section (k) which states, “*on 05.05.1942, securities were delivered to the Reichs main treasury as follows:*

<i>RM 1,000.00</i>	<i>Re Dt redemption certificates incl. 1/5 withdrawal loan</i>
<i>RM 5,000.00</i>	<i>4% debt reassignment association German local authorities stock 1937 A/O</i>
<i>RM 100.00</i>	<i>[Brush works] [REDACTED] shares</i>
<i>RM 100.00</i>	<i>Ditto new shares</i>
<i>RM 20.00</i>	<i>[REDACTED] Munich shares</i>
<i>RM 3,800.00</i>	<i>4 ½ % German treasury mandates of 1938 series 3 A/O</i>

*Numbers for the securities delivered are to hand. The statement from the [REDACTED] Munich on this subject of 11.08.1953 agrees with the certificate from [REDACTED] in terms of the securities delivered. At the time they were delivered, the securities were worth at least **RM 11,520.00** [highlighted by the Appellant] subject to precise estimate).*

- e) An extract of a letter from the [REDACTED] to [REDACTED] dated 7th October 1949, concerning the deposit account [REDACTED] of [REDACTED]. This letter is a statement of securities from the deposit account issued for statement of assets, Reichs-emigration-tax etc. The Appellant has highlighted the following section and has attached a green marker with the number (3): “*on 05.08.1942, the securities below were transferred to the Reichshauptkasse [chief cashier’s office] securities office, Berlin, on the instructions of the higher finance president, Munich, office of asset realisation.*

RM 1,000.00 *Re Dt redemption certificates inc. 1/5 withdrawal loan*
 RM 5,000.00 *4% dept reassignment association German local authorities stock
 1937 A/O*
 RM 100.00 *[Brush works] [REDACTED] shares*
 RM 100.00 *Ditto new shares*
 RM 20.00 *[REDACTED]. Munich shares*
 RM 3,800.00 *4 ½% German treasury mandates of 1938 series 3 A/O*

- f) Letter dated 27th March 1961 from [REDACTED] to the [REDACTED] [see paragraph 13 d)].
- g) Letter dated 16th March 1961 from [REDACTED] to [REDACTED] [see paragraph 13 e)].
- h) Letter dated 24th March 1961 from [REDACTED] to [REDACTED] [see paragraph 13 a)]. The Appellant has highlighted the first paragraph, which states that the redemption value is known and that the sum insured is stated as RM 10,000. He has also highlighted the third paragraph, which is a quote from a letter dated 31st August 1953 from the higher finance directorate [see paragraph 13 a)].
- i) Page four of a letter from the “[REDACTED]”. The Appellant has highlighted section (l), which states, “*according to a notice from the higher finance presidium Munich, the redemption value of the [REDACTED] life assurance policy, RM 70.15, was paid in on 28.02.1948. The policy value was much higher of course.*” He also highlighted part of section (m), which states, “*from 1933 up to an including 1937, Herr [REDACTED] had a taxable income of around RM 62,000, i.e. over RM 10,000.00 a year*”.
17. The Appellant responded to the Respondent’s comments of 5th January 2004 by letter dated 27th January 2004. He writes, “*once again I am sending you copies of three 40 years old letters from my lawyer Dr. [REDACTED] for all parties to see. On 16 March 1961 he wrote to [REDACTED] that the [REDACTED] sent DM 131.60 to [REDACTED] on the 17 December 1938. Perhaps the [REDACTED] still has the records in their archives. On the 24 March [REDACTED] replied that the Finance Office in Munich has evidence that Bank Seile sent RM 70.15 to the Finance Office on 14 August 1943 regarding the [REDACTED] Insurance. My parents died in 1941. Perhaps the Finance Office can look into their 1943 archives. On 27 March 1961 Dr. [REDACTED] wrote to the [REDACTED] about sums of money of RM 3649.50 and RM 10 000.00 in which [REDACTED] Life Insurance is mentioned. There is also abundant evidence as to the amount of Income Tax my father paid right up to the last year of his life. From all that documentary evidence it is clear that a contractual relationship did exist between both [REDACTED] and [REDACTED] and my father.*”
18. With the afore-mentioned letter the Appellant sent copies of three letters dated 16th March 1961 [see paragraph 13 e)], 24th March 1961 [see paragraph 13 a)] and 27th March 1961 [see paragraph 13 d)].
19. On 12th February 2004 a further letter was received from the Appellant in which he states, “*I quite agree and accept that no records can be found of an Insurance Policy in the name of my father. However, there is circumstantial evidence that there was one, going back sixty years, which the Appeals Panel should take into consideration. My lawyer in Munich in 1961 received a letter from the [REDACTED] that my father made payments to [REDACTED] on 17 December 1938. Even though the sum is relatively small, it proves that a contractual relationship existed between my father and [REDACTED]. For*

[REDACTED] to say that they cannot accept that my father was a client of theirs is not realistic. Their records may have burnt in Berlin in 1945 but the [REDACTED]'s records in Munich did not. In my opinion [REDACTED] have a responsibility towards my late father's estate on the evidence of the [REDACTED]. As I have said previously, there is no proof that my father cashed the policies in because he was in need of money. The judge in the Bescheid of 1961 had no justification to 'assume' this on the evidence of Dr. [REDACTED]'s papers. From the enclosed copy of one letter of his it can be seen that my father made numerous substantial payments. Therefore there is no justification from the [REDACTED] to say that he might have needed the money the moment he was 60 in 1938. Even after he was deported there were still considerable sums of money which were sent to various confiscating finance offices."

20. The following documents were attached to this letter:

- a) A copy of a letter dated 16th March 1961 from [REDACTED] to the [REDACTED] '[REDACTED]' [see paragraph 13 e)]. The Appellant has highlighted the following: "according to the [REDACTED], the sum of DM 131.60 was paid to your insurance company on 17.12.38".
- b) The second page of document which lists the following claims:
 - i) Jewish assets levy in the sum of RM 17,250.00 of which the sum in acceptance values of RM 6844.87 was delivered by way of securities.
 - ii) Reichs-emigration-tax paid according to information from the Munich North tax office of 11.08.1953, RM 5938.00
 - iii) [REDACTED] statement re. Herr [REDACTED]'s account no [REDACTED] shows the sum of RM 1,000.00 was paid to the Israelite cultural community by way of emigrant's levy.
 - iv) Seizures of:
 - (a) On 10.12.1941 [REDACTED] paid the higher tax office of Munich RM 3,845.00
 - (b) On 05.05.1942, [REDACTED] surrendered securities to the value of at least RM 11,250.00.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

21. In the decision letter dated 18th August 2003 the Respondent writes, "in your case we have been able to find out that you had already filed a claim for compensation on the policy taken out by your father with [REDACTED] within the scope of the BEG (Bundesentschädigungsgesetz - German Compensation Law) with the 'Bayerische Landesentschädigungsamt in München' (Bavarian State Compensation Office in Munich) in December 1957. Under file No. [REDACTED] the a/m Office rendered a decision on 19th October 1961. For your information we enclose a copy of the decision. The Office justified the denial of your claim as per BEG mainly with the fact that on the basis of the information submitted it was not possible to find out if and to which extent there had been insurance policies taken out by your father. Moreover, the Office found out based on the available documentation it must be assumed that due to your father's age at the time and his financial situation he had received his insurance benefits. Today, more than 40 years later, we have the same level of information as in 1961. Moreover, you mention, that as early as in 1938 your father had been compelled to make his living from his personal property. We suppose that benefits from life insurance policies were part of this. According to the 'Agreement' or policies are not eligible for additional compensation if those specific policies were covered by a prior decision of a German restitution or compensation authority and no new aspects

or evidence are available which could allow a decision to the contrary. As – in contrast to your assumption- the situation has not changed since the 1961 decision due to the lack of new information and the Compensation Office in Munich had rendered a decision, you are not eligible to compensation as per the rules of the ‘Agreement’”.

22. With this letter the Respondent sent a copy of a “*Bescheid*” (ruling) dated 19th October 1961 for compensation for loss of financial advancement through loss of life insurance with [REDACTED] and [REDACTED] AG. This ruling states, “*according to the communications from [REDACTED], Berlin of 29.07.1960 and [REDACTED], Munich of 17.08.1960, these assurance companies cannot find any policies in their files in the name of the deceased. By his own admission, the applicant is unable to provide any details required to clarify matters further. Under the circumstances given, there is therefore no proof, nor any reason to believe that the testator took out any life assurance policy with [REDACTED], and in particular that he lost the (illegible) of a life assurance policy for reasons of persecution, as § 127 BEG inter alia requires. The deceased was deported to Riga on 20.11.1941. From the documents to hand, it appears that no life assurance policies of the deceased were listed either in the testator’s statement of assets of 10.11.1941 or in the statement by the Munich North tax office of 12.01.1942 on the testator’s assets at 01.01.1941. If the deceased had life assurance with the insurers above, as the applicant claims, it must be assumed from the facts that those policies had already expired in 1941 and that the deceased also received the benefits from the insurers. This argument is also supported by the fact that the testator was already over 60 at the time, and the applicant himself admits that these policies may have already existed for some time. Nothing has been proved to the contrary in any case, nor does the applicant argue otherwise. The applicant’s claim for compensation for loss of financial advancement must therefore be dismissed as unfounded for lack of evidence under §§127 et seq. BEG.*”
23. The initial [REDACTED] response in the appeals process dated 5th January 2004 states, “*the only information related to former activities in Germany in [REDACTED]’s possession consist of a reduced number of statistical and some technical registers sorted by policy numbers still available out of [REDACTED]’s former main archive in Berlin, which was destroyed in February 1945. These registers, which contain no names of policyholders whatsoever were thoroughly analysed and recorded together with all the information obtained as a result of internal and external searched into one electronic database to perform all possible research. Unfortunately, with respect to the claim at issue, no supporting evidence of a contractual relationship has been either provided by the claimant, or found by [REDACTED] or by the ICHEIC. This is the reason why we have to confirm the rejection of the claim, and also the reason for the impossibility to produce to the Panel any document related to the claim at issue, because no such document is available to us.*”
24. In a letter dated 9th February 2004 [REDACTED] responds to the Appellant’s letter dated 25th January 2004. [REDACTED] states, “*after the research in our internal archives remained without success, we contacted the external archives of the Federal Filing Agency (Bundeszentalkartei) in Düsseldorf, the State Compensation Office (Landesentschädigungsamt in Munich), the Munich State Archives (Staatsarchiv), the Central State Archival (Hauptstaatsarchiv) in Potsdam, the Nuremberg Regional Finance Office (Oberfinanzdirection), and the Nuremberg State Archives (Staatsarchiv). In none of these archives a reference or documents relating to the a/m policy could be found. We do not see any indications for further research.*”

THE ISSUES FOR DETERMINATION

25. The initial issue for determination in this appeal is whether the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. According to Section 17.3 of the Appeal Guidelines, the Appellant is not entitled to payment from 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.

This is the case here. Pursuant to section 2 (1) (c) of the Agreement “*a policy or policies will be considered as having 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 ...*”. As the Appellant in both the compensation proceedings in the 1960’s as well as in the ICHEIC claim proceedings claimed compensation for only one life insurance policy, which, according to his statement, was issued by [REDACTED], the decision of the Bavarian compensation authority must be construed as relating to this “*specific*” policy. Accordingly, the policy in question was covered by a decision of the compensation authority, and the Panel, pursuant to section 2.2.2 of the Appeal Guidelines, lacks jurisdiction to consider a claim relating to such a policy.

Having determined that the policy which is the subject of this appeal was covered by a decision of a compensation authority and that, accordingly, the Panel lacks jurisdiction to consider the claim, the Panel may not address questions relating to the existence or disposition of any such policy.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES

The appeal is dismissed.

Dated this 13th day of September 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member