

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

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 is [REDACTED] (nee [REDACTED]), born on [REDACTED] 1960 in London (UK) and presently resides in Israel. She is the great granddaughter, and one of several heirs, of [REDACTED], who was born [REDACTED] 1877, in Krotoszyn (Germany) and died in Tel Aviv (Israel) on 10th April 1939. The Appellant’s great grandmother was [REDACTED] (nee [REDACTED]) who was born on [REDACTED] 1882 in Gollub (Germany) and died on 13th March 1963 in Chicago (USA).

2. The Respondent is [REDACTED] (“[REDACTED]”). [REDACTED] is a predecessor company of [REDACTED]’s.
3. The Appellant submitted a claim form to the International Commission on Holocaust Era Insurance Claims (“ICHEIC”) dated 6th February 2001. The ICHEIC processed the claim under claim number [REDACTED]. The ICHEIC forwarded the claim to [REDACTED].
4. In [REDACTED]’s final decision letter dated 9th July 2004 the company informed the Appellant that it had found a [REDACTED] name card for Dr [REDACTED] concerning life insurance policy number [REDACTED] with insured sum of 10,000 RM. The policy had been converted to a paid up value of 6,596 RM on 1st July 1938, redeemed on 1st July 1939 and the surrender value of 3,607.75 DM had been confiscated on 22nd December 1942. [REDACTED] further stated that the Appellant’s great grandmother, [REDACTED], received compensation for the policy by the Offenbach Restitution Authority on 18th February 1950 in the sum of 360.77 DM. Another sum of 1,478.75 DM had been paid on 5th June 1957 for the policy in question resulting from a settlement in a County Court proceeding instituted at Darmstadt by [REDACTED]. Consequently, no further payment for the [REDACTED] policy would be made.
5. The Appellant submitted an appeal to the Appeals Office dated 14th November 2004, which was received on 25th November 2004. The Appellant is seeking to appeal the [REDACTED] decision questioning the amounts paid out pursuant to the aforementioned restitution procedure in 1950 and the Court proceedings in 1957.
6. The Appeals Office sent a copy of the Appeal form to [REDACTED] on 25th November 2004.
7. [REDACTED] responded in a letter dated 13th January 2005. It reiterated the comments it had made in its decision letter and asked the Panel to dismiss the appeal.
8. On 5th January 2005, the Appeals Office informed both parties that the appeal would be decided on a “*documents only*” basis unless it received notification from either party requesting an oral hearing within 14 days of receipt of this 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 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 Decision is made there.

THE CLAIM

11. The Appellant submitted an ICHEIC claim form in relation to the claim for the proceeds of her great grandfather’s life insurance policy number [REDACTED]. The following information was provided:

- a) In section three, she is unable to provide any details about which insurance company issued the policy, although she does state that the policy was probably purchased in Offenbach (Germany).
 - b) In section four, she states that she cannot provide any copies of documents or statements to substantiate her claim.
 - c) In section five, she identifies the policy as one of life insurance. She adds that the currency was “*Deutsche Marks (presumably)*” and that the date of issue was “*probably 1920s*”. She is not aware of any payments resulting from the policy.
 - d) In sections six and seven, she identifies her great-grandfather, [REDACTED], as the policyholder and insured person. He was born on [REDACTED] 1877 in “*Krotoszyn, Germany*” and died on 10th April 1939 in Tel Aviv. The Appellant writes: “*After ‘Kristallnacht’ [the ‘night of broken glass’ in November 1938], he was arrested and sent to Buchenwald for a few weeks, from where he left Germany for Mandate Palestine*”. She adds that he was Rabbi of the Jewish community of Offenbach. She states that there are other living heirs and refers to the attached family tree and list of names.
 - e) In section eight, she identifies her great-grandmother, [REDACTED] née [REDACTED], as the beneficiary. She was born on [REDACTED] 1882 in Gollub (Germany) and died on 13th March 1963 in Chicago (USA). Regarding other living heirs, she provides the same response as in sections six and seven.
 - f) In section nine, she states that no one has participated in any compensation/restitution procedure for this claim. She adds: “*After the war, [REDACTED] received a pension for her late husband from Germany, but this was not part of the BEG – dealt with by her son-in-law, [REDACTED], who worked from UK for the Jewish Colonial Trust*”.
12. The Appellant submitted biographical information with her Claim form, such as a family tree and passport.
13. Following [REDACTED]’s rejection of her claim the Appellant submitted an Appeal form dated 14th November 2004. The Appellant explained that she accepts her great grandmother received restitution for the surrender value of the policy in 1950 and 1957. However, [REDACTED] did not explain various issues such as the compensation calculations and the recipients of the compensation.

THE INVESTIGATION AND DECISION BY [REDACTED]

14. In [REDACTED]’s final decision letter dated 9th July 2004 it states:

“*We have found the following documents of our predecessor company ‘[REDACTED]’.*

- *Name card issued for Dr. [REDACTED] concerning policy no. [REDACTED] taken out with [REDACTED]*
- *An appendant statistics card concerning policy no. [REDACTED] (a file card with contract data of this policy).*
- *Correspondence of [REDACTED] with the ‘Regierungspräsident Darmstadt’ concerning the actuarial valuation of policy no [REDACTED].*

Please find copies enclosed.

Although the date of birth documented on Dr. [REDACTED]'s name card differs from the date you have provided for your great-grandfather, we assume an identity. According to the available documents, policy no. [REDACTED] taken out by Dr. [REDACTED] commenced on 1 July 1924 with a stipulated term of 21 years. The sum insured originally amounted to Reichsmark (RM) 10,000.00 with an annual premium of RM 576.00. As documented on the statistics card, the policy was converted to a paid up status as per 1 July 1938, the paid up value amounted to RM 6,596.00. According to the correspondence of [REDACTED] with the Regierungspräsident Darmstadt, the policy was redeemed as per 1st July 1939. The local tax office Offenbach confiscated the surrender value of RM 3,607.75 on 22nd December 1942”.

[REDACTED] further states in its final decision letter: *“In accordance with the Agreement state-run public German compensation and restitution archives were checked to verify whether policy no. [REDACTED] was part of a previous decision of a German restitution or compensation authority. The ‘Hessisches Hauptstaatsarchiv’ in Darmstadt has now confirmed that Mrs. [REDACTED] had filed a claim (reference no. [REDACTED]) under the German Compensation Laws regarding i.a. the surrender value of [REDACTED] policy no. [REDACTED]. An official notification of the Restitution Authority Offenbach dated February 18th 1950 states that a restitution payment of Deutsche Mark (DM) 360.77 had been awarded to Mrs. [REDACTED] for the surrender value of policy no. [REDACTED]. Moreover policy no. [REDACTED] was subject of a settlement which took place at the county court Darmstadt on 5th June 1957. As stated in the memorandum of the hearing (reference no. [REDACTED]), Mrs. [REDACTED] received a further compensation payment in the amount of DM 1,478.75 for [REDACTED] policy no. [REDACTED]. We are confident that you will understand our decision not to submit an offer under the given circumstances.”*

15. Enclosed with the decision letter, and the letter in response to the appeal, were copies of various documents evidencing the above.
16. In its reply to the appeal dated 13th January 2005 [REDACTED] enclosed 49 pages of compensation authority documents. These documents include documents that had been submitted with the decision letter (which had evidently been a selection of a larger file). The additional documents provide further details about how the compensation decisions of 1950 and 1957 were reached. They also detail other instances of BEG compensation, for example, arising from emigration costs, damaged household items, loss of employment. Two documents are highlighted below:
 - i) Report dated 11th June 1957 on the oral hearing of 5th June 1957. It states that the regional state of Hesse is obliged to pay the claimant DM 1,478.75 (including old savers’ compensation) to settle all the claims arising from the [REDACTED] policy [REDACTED]. It concludes that this case is thus closed.
 - ii) Document signed by [REDACTED] (date unclear). The final paragraph states: *“My deceased husband was insured with three life insurance companies. The surrender value of one policy was paid out to him himself. The surrender value of another policy was confiscated by the German Reich (see above). I have not yet been able to find out the name of the third insurance company. Its surrender value was probably also confiscated by the tax office. As a precaution, I claim compensation for this confiscation”*.

THE ISSUES FOR DETERMINATION

17. There is no doubt that the Appellant's family were Holocaust victims, that [REDACTED] had insurance, or that the Appellant as heir would be entitled to the proceeds of the insurance. Therefore, the claim of the Appellant in general is within the scope of the Agreement. But, as far as the policy in question, namely number [REDACTED], is concerned [REDACTED] 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 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.

18. [REDACTED] has proven that policy number [REDACTED] was the subject of compensation proceedings under BEG law in Offenbach as early as 1950. The heir of [REDACTED], his wife [REDACTED], at that time received a compensation payment of DM 360.77 for the policy. As a consequence of a settlement a further payment of DM 1,478.75 was made on 5th June 1957 by [REDACTED] to [REDACTED] for the said policy number [REDACTED]. The Panel lacks, according to the above mentioned provision of the Agreement, the jurisdiction to reconsider insurance claims which had been the subject of previous restitution proceedings, and, consequently, it also lacks the jurisdiction to reconsider or recalculate any BEG payment, be it the consequence of a ruling or of a settlement.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 13th day of July 2005

[REDACTED]