

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 Interim Decision pursuant to Section 10 of the Appeal Guidelines:

BACKGROUND

1. The Appellant is [REDACTED] (previously [REDACTED]), born on [REDACTED] 1928 in Leipzig (Germany) and presently resides in California (USA). He is the grandson, and heir, of [REDACTED] (nee [REDACTED]), who was born in 1873, in Bischofsburg or Allenstein, East Prussia (Germany) and died at the Riga concentration camp in November or December 1942. The Appellant’s father was [REDACTED] born [REDACTED] 1895 and died in September 1970 in USA. The Appellant’s mother was [REDACTED] born [REDACTED] 1906 and died in August 1990 in USA. Both parents changed their surname to [REDACTED] after surviving the Holocaust. The Appellant’s great uncle, Dr

[REDACTED], was killed at Theresienstadt concentration camp in 1942 or 1943. As the Appellant had no siblings, he is the sole heir to his immediate family.

2. The Respondent is [REDACTED] (“[REDACTED]”). [REDACTED] insurance company was taken over by [REDACTED] which is a subsidiary company of [REDACTED].
3. The Appellant submitted three Claim forms to the International Commission on Holocaust Era Insurance Claims (“ICHEIC”) during 2003 for his family members. The ICHEIC initially processed the claims under three different claim numbers. However, the claims were merged and processed under Claim number [REDACTED]. The ICHEIC forwarded the claim to [REDACTED].
4. In [REDACTED]’s final decision letter dated 9th December 2004 it informed the Appellant that it had found an [REDACTED] life insurance contract for [REDACTED] concerning policy number [REDACTED] for 352 RM. The policy was redeemed in 1939 and the surrender value of 53.55 RM was remitted on 17th May 1939 to the Appellant’s grandmother. Consequently, no further payment for the [REDACTED] policy would be made.
5. The Appellant submitted an appeal to the Appeals Office dated 14th December 2004, which was received on 22nd December 2004. The Appellant is seeking to appeal the [REDACTED] decision because his parents’ names were spelt incorrectly by [REDACTED] and he considers that this is a factor in the non-payment of life insurance.
6. The Appeals Office sent a copy of the Appeal form to [REDACTED] on 13th January 2005.
7. [REDACTED] responded in a letter received by the Appeals Office on 26th January 2005. It explained that the Appellant’s parents’ surname “[REDACTED]” was searched, but no matching policy was found for either parent. [REDACTED] reiterated the comments it had made in its decision letter regarding the Appellant’s grandmother and asked the Panel to dismiss the appeal.
8. On 21st February 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 three ICHEIC Claim forms dated 24th June 2003 ([REDACTED]); 16th June 2003 (Dr [REDACTED]) and 24th June 2003 (Dr [REDACTED]). He did not know the name of the insurance company that issued insurance to each family member. He could not provide any further information about the policies. All policies were purchased in Germany. His mother, [REDACTED] was the beneficiary of his father's policy. His great aunt, [REDACTED] was the beneficiary of Dr [REDACTED]'s policy and she died with her husband at Theresienstadt concentration camp in 1942 or 1943.
12. The Appellant submitted biographical information with his Claim forms, such as family passports and his driving license.
13. Following [REDACTED]'s rejection of his claims the Appellant submitted an Appeal form dated 14th December 2004. The Appellant explained that: *"I never expected to obtain any payouts on my grandmother – [REDACTED] – and only made the application because of an unofficial recommendation to do so. As for [REDACTED] – that was my mother and all such matters were handled only by my father [...] my father's and my mother's names misspelled ("[REDACTED]") and my father's name misspelled ("[REDACTED]") when it should have been [REDACTED] and [REDACTED]. Could this be the reason for the delay of a payout on my father's life insurance policy [...]. I had no siblings, was an only child, and my parents were married to each other."*

THE INVESTIGATION AND DECISION BY [REDACTED]

14. In [REDACTED]' final decision letter dated 9th December 2004 it states:

"[...] the archive documents reveal, that your grandmother Mrs [REDACTED] had concluded a life insurance contract with the [REDACTED] insurance company, which was later taken over by [REDACTED].

The documents reveal that your grandmother had concluded a life insurance with us, commencing on October 1, 1932 with a sum insured of RM 352.- and an insurance term of 26 years. In 1939 the insurance contract was re-bought. The surrender value in the amount of RM 56.55 was paid to your grandmother, Mrs [REDACTED] on May 17, 1939 (enclosure 1)."

[REDACTED] further states in its final decision letter: *"In order to find out more about the fate of the policy we contacted the compensation authorities. Compensation proceedings were conducted after the end of World War II by the State compensation authorities on behalf of the Federal Republic of Germany. As the legal successor to the German Reich, the Federal Republic of Germany assumed the responsibility for the financial losses – including the losses from life insurance – incurred by the victims of the National Socialist Regime. The files kept by these authorities may contain information on life insurance contracts and their contents, as losses from life insurance contracts of victims of persecution were compensated by compensation or restitution authorities.*

The life insurance of your grandmother had indeed been compensated in the course of compensation proceedings by the compensation authority in Berlin.

Within the framework of the German State compensation procedure Mrs [REDACTED], Mr [REDACTED], Mrs [REDACTED], nee [REDACTED] and Mrs [REDACTED], as the heirs of Mrs [REDACTED], received a compensation payment in the amount of DM 63.- for the

losses from the life insurance contract concluded with [REDACTED] due to persecution (enclosure 2).

Our intent is – in accordance with the guidelines of the International Commission – to compensate life insurance claims which have remained unsettled so far. However, this does not apply to your grandmother’s life insurance as the surrender value was paid and the policy was compensated in the course of compensation proceedings.

We hope that you will understand that we cannot comply with your wish for further settlement.”

15. Enclosed with the decision letter, and the letter in response to the appeal, were copies of various documents evidencing the above. The recipients of the BEG compensation were [REDACTED] (USA); [REDACTED] (Israel); [REDACTED] (Israel); and [REDACTED] (Israel).

16. In a letter to the Appellant dated 22nd December 2004 [REDACTED] writes:

“On the basis of the data given for your mother, Mrs [REDACTED], and your father, Mr [REDACTED], we once again checked your file.

We regret to inform you that we can not alter our decision concerning life insurance contracts of your parents. We already searched our registers on the basis of the correctly spelled name “[REDACTED]”. It was just a misspelling in our last letter, when I falsely wrote the name of your mother “[REDACTED]”. However, we could not find entries for your parents in our registers. Therefore, we hope you understand that we can not offer any payment.”

In response to the Appeal [REDACTED] states in a letter received on 26th January 2005:

“With his letter dated December 9, 2004 Mr [REDACTED] informed us that we misspelled the names of his parents in our letter. Unfortunately, when answering this letter we misspelled the name again. Nevertheless, we can assure you that the search was done under the name “[REDACTED]”, e.g. under the correctly spelled name. Just when writing the letter to the claimant the first “t” in the name was forgotten. However, this did by no means affect our search. Thus, the result stays the same. We could not find entries for the parents of Mr [REDACTED] in the [REDACTED] register.

THE ISSUES FOR DETERMINATION

17. There are two separate issues that must be determined. First, whether the Appellant is entitled to any proceeds concerning the policy purchased by [REDACTED]. Secondly, whether the Appellant met his burden of proof regarding policies issued to his parents and great uncle.

1) [REDACTED]

18. It is not disputed that the Appellant’s grandmother had insurance, and the Appellant as heir would be entitled to a share of 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.

19. [REDACTED] has proven that the [REDACTED] policy number [REDACTED] was the subject of compensation proceedings under BEG law in Berlin on 18th April 1969. Consequently, the heirs received a compensation payment of DM 62 for the policy (see paragraph 15 above). The Panel lacks the jurisdiction to reconsider any BEG payment calculation. Similarly, under the Agreement, which is binding for the parties to the appeal as well as for the Panel, there is no authority granted to the Panel to order that further sums of money be paid as compensation for policy number [REDACTED].

2) [REDACTED] and [REDACTED] and Dr [REDACTED]

20. The second issue for determination is whether there were policies for the Appellant's parents, [REDACTED] and [REDACTED], and great-uncle, Dr [REDACTED]. As Dr [REDACTED]'s name did not appear to have been searched by [REDACTED], a request for further information was sent to [REDACTED] on 20th July 2005. A reply was received on 21st July 2005 and [REDACTED] stated that it had searched its records for a Dr [REDACTED] born on [REDACTED] 1871 in Bischofsburg and who resided in Berlin Wilmersdorf, but no entry was found in its archives.

21 The main issue for determination in this appeal is whether the Appellant has met the burden of proof as set out in the Appeal Guidelines (Annex E of the Agreement), Section 17, which provides that to succeed in an appeal the Appellant must establish, based on the Relaxed Standards of Proof, that it is plausible:

17.2.1 that the claim relates to a life insurance policy in force between 1st January 1920 and 8th May 1945, and issued by or belonging to a specific German company (as defined in the Glossary to this Agreement) and which has become due through death, maturity or surrender;

17.2.2 that the Claimant is the person who was entitled to the proceeds of that policy upon the occurrence of the insured event, or is otherwise entitled in accordance with Section 2 (1)(d) of the Agreement and pursuant to the Succession Guidelines (Annex C); and

17.2.3 that either the policy beneficiary or the policyholder or the insured life, who is named in the claim was a Holocaust victim as defined in Section 14 of the Agreement.

22. Where the relevant company can trace no written record of a policy, the burden upon the Appellant to establish that a policy existed is a heavy one, even when the burden is to establish that the assertion is "plausible" rather than "probable". Where the Appellant is not able to submit any documentary evidence in support of the claim, the Appellant's assertion must have the necessary degree of particularity and authenticity to make it credible in the circumstances of this case that a policy was issued by the company.

23. The Appellant has not met the burden of proof that policies were issued by [REDACTED]. The evidence lacks the requisite particularity and authenticity and there is no corroborative evidence (such as letters or statements from third parties) to support the Appellant's claim for insurance policies issued by [REDACTED].

24. The Appellant was not able to present anything substantial about any life insurance policy issued by [REDACTED]. The Appellant states in the claim form that he does not know which company issued the life insurance policy. There are no known details about the life insurance policies except for the place where they were purchased. This is insufficient evidence of the existence of any life insurance contract between the Appellant's father,

mother or uncle and [REDACTED]. Additionally, neither [REDACTED] nor the ICHEIC found any proper research match whatsoever in their databases.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this day of July 2005

[REDACTED]