

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

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 [REDACTED] (nee [REDACTED]), was born on [REDACTED] 1928 in Munich, Germany. The Appellant is the daughter of [REDACTED] born on [REDACTED] 1883 in Munich, Germany, and [REDACTED] born on [REDACTED] 1895 in Fechenbach, Germany. The Appellant’s parents survived the Holocaust and died in Israel during 1953 and 1956 respectively.
2. The Respondent is [REDACTED] ([REDACTED]).

3. The Appellant claims insurance taken out from an unknown insurer in her ICHEIC Claim Form dated 16th August 2003. ICHEIC set up Claim file number [REDACTED] and sent the claim to German insurance companies.
4. Since an attached letter from the Munich Compensation Authority to the Appellant's mother dated 9th May 1973 regarding her claim concerning her husband's insurance policies included [REDACTED] policy number [REDACTED], [REDACTED] searched its archives for the Appellant's father's name and the policy number provided. It found no evidence of a contractual relationship with the Appellant's father and explained that another policyholder, with the surname of [REDACTED], had purchased policy [REDACTED]. A partial decision dated 15th February 1960 from the Compensation Authority in Munich, however, showed that the heirs of [REDACTED] were awarded a compensation payment of DM 3,017.38 for the losses of four life insurance policies which included a policy of [REDACTED] no. [REDACTED]. These details were provided to the Appellant in a decision letter dated 12th August 2005 and the Appellant was given an opportunity to appeal.
5. The Appellant submitted an appeal form dated 22nd August 2005 to the Appeals Office and states: *"The decision that the policy no. [REDACTED] was not in my father's, [REDACTED]'s name, cannot be a correct one. I am in possession of several advises and decision submitted by my late mother's lawyer in Munich, based on notifications of German Government officials, acknowledging and confirming the above claim, amongst others. The documents date back to the 1960s and early 1970s, a few pages were lost. Enclosed are photo copies."*
6. [REDACTED] responded to the Appellant's appeal in its letter dated 19th September 2005 and repeated its reasons for denial.
7. On 23rd September 2005 the Appeals Office informed the Appellant and [REDACTED] 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. No request for an oral hearing has been received from either party. The appeal proceeds on a *"documents only"* basis.
8. 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 ISSUES FOR DETERMINATION

9. The main issue for determination in this appeal is whether the Appellant has established the existence of a policy issued to her father by [REDACTED]. If this is established, then [REDACTED] has the burden of proving a proper defence as set out in the Appeal Guidelines (Annex E of the Agreement), Section 17, which provides that to succeed in an appeal when the

Claimant has satisfied the existence of a policy the German company must establish, based on the Relaxed Standards of Proof, that the Claimant is not entitled to any payment if:

- 17.3.1 the policy was cancelled before the insured event occurred and before the beginning of the Holocaust in the relevant country, in accordance with Section 7.5.1 of the Valuation Guidelines; or
 - 17.3.2 the insurance policy in question was fully paid as required by the insurance contract. However, where it appears that the policy was paid or surrendered into a blocked account the provisions of Section 5 of the Valuation Guidelines shall apply; or
 - 17.3.3 another person other than the Claimant, who has submitted a claim, has a higher entitlement to the proceeds of the policy in accordance with Section 2(1)(d) of the Agreement or the Succession Guidelines; or
 - 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).
10. In this matter there is no doubt that the Appellant and her parents were Holocaust victims and that the Appellant and her brother would be entitled to the proceeds of any insurance policy as either named beneficiaries or as co-heirs.
11. Taking into account the evidence presented, it is determined that on the basis of plausibility there was no policy issued to the Appellant's father by [REDACTED]. [REDACTED] has provided handwritten evidence that a person with the surname [REDACTED] had policy number [REDACTED]. Nevertheless, this finding is contradicted by two documents – first, the partial decision by the Munich Compensation Authority dated 15th February 1960 which awarded payment of DM 3,017.38 to the policyholder's heirs for four policies that included [REDACTED]'s policy number [REDACTED], and the second document is the letter from the Appellant's mother's attorney dated 23rd February 1960. Irrespective of the conflicting evidence, the documentation as a whole is plausible evidence that the heirs were compensated by “a German restitution or compensation authority” as specified in Section 17.3.4 of the Agreement. Therefore: even if, contrary to the registers of [REDACTED], there was a policy of the Appellant's father with [REDACTED], this policy, as proven by the above mentioned documents, was covered by a decision of a German restitution or compensation authority. Under the Agreement, the Appeals Panel has no jurisdiction to re-open the case in the circumstances or to check the BEG calculations.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated: 10th February 2006

[REDACTED]