

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]

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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]. He was born on [REDACTED] 1909 in Berlin, Germany. He is the Son of [REDACTED], born [REDACTED] 1871 in Sagen, and [REDACTED] born [REDACTED] 1876 in Plathe, Pommern, Germany. Both died in Theresienstadt concentration camp. [REDACTED] died in March 1943. [REDACTED]’s date of death is unknown.

2. The Appellant had a sister, [REDACTED] nee [REDACTED], born in Berlin [REDACTED] 1905. She died in 1997 in Maryland, USA. The Appellant moved to the United States after the Holocaust and has a son, [REDACTED].
3. The Respondent is [REDACTED].
4. The Appellant submitted a claim form dated 15th June 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which he claimed that his father held life insurance of which his mother was the beneficiary.
5. In its decision letter dated 7th June 2005, [REDACTED] informed the Appellant that it had checked whether the policy for which he has filed a compensation claim was part of a previous decision of a German restitution or compensation authority. This investigation revealed that insurance policy No. [REDACTED] had been the subject of a decision by the Landesentschädigungsamt Berlin dated 19th February, 1964. Settlement proceeds in the amount of 1,380 DM were paid on 12th March 1964 for the above policy to the Appellant and his late sister, Mrs [REDACTED].

The Respondent provided the following relevant documents:

- (i) A letter from Rechtsanwälte Kroll und Heinz Gregor to [REDACTED] dated 3rd January 1963 informing that [REDACTED] had a life insurance policy with [REDACTED] bearing policy number [REDACTED].
 - (ii) A Letter dated 6th February 1963 from [REDACTED] to the compensation office in Berlin. The letter provides details regarding the value of the policy and how the compensation was to be calculated.
 - (iii) A decision by the compensation authority dated 19th February 1964 addressed to Rechtsanwälte Kroll und Heinz Gregor as legal representatives of [REDACTED] and [REDACTED] awarding the amount of 1,380 DM to them.
6. In his Appeal dated 21st June 2005 against [REDACTED]'s decision, the Appellant claimed that in 1939 his father's German citizenship has been taken from him, therefore he was unable to work and to continue paying the premiums for the above policy. The Appellant stated that since it was not his father's fault that the premiums for the above policy had stopped, he was entitled to the full value, to date, of the above policy. Furthermore, when he received the compensation for the above policy from the German restitution authorities, there was no opportunity to appeal that decision.
 8. In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel's general decision in July 2004, this appeal was assigned to [REDACTED].

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 Decision is made there.

CONCLUSIONS OF LAW

9. There is no doubt that the Appellant's father had life insurance policy No. [REDACTED] with [REDACTED], that he was a Holocaust Victim because he died in the concentration camp Theresienstadt, and that the Appellant and his late sister, Mrs [REDACTED], as his children and heirs were entitled to make a claim. The claim therefore is valid within the scope of the Agreement.
10. However, Respondent has succeeded in establishing a valid defence in accordance with Section 17.3 of the Appeal Guidelines, Annex E to the Agreement. This states that the Appellant is not entitled to a payment if:
 - 17.3.4 "The policy (or policies) in question is considered to have been covered by a decision of a German restitution or compensation authority".
11. Respondent provided archive evidence that the policy No. [REDACTED] was subject to previous compensation proceedings.

Initially, Respondent had informed the Appellant's and his sister's legal representatives [REDACTED] about the details of the insurance policy. They had passed the information to the restitution authorities in Berlin by their letter of 6th February 1963. Subsequently, the restitution authorities in Berlin issued their decision dated 19th February 1964 addressed to the Appellant and his sister awarding compensation of DM 1,380.

Accordingly, the claim was subject of a previous compensation proceedings and fall within the ambit of Sections 2 (1) (c) and 2.2.2 of Annex E of the Agreement which, state that the Appeals Panel lacks jurisdiction over claims concerning policies which have been covered by a decision rendered by a German restitution or compensation authority. Furthermore, that there may have been no right to appeal from that earlier decision cannot confer jurisdiction upon the Appeals Panel whose authority is strictly limited by the Agreement and Appeal Guidelines to which both parties to this arbitration are subject.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 5th day of December 2005

[REDACTED]