

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 NUMBERS: [REDACTED],
[REDACTED]

BETWEEN

[REDACTED]
Represented by [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], née [REDACTED], was born on [REDACTED] 1920 in Berlin, Germany and presently resides in Israel. She is the daughter of [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1889 in Swocevice, Poland and died on 4th January 1944 in Israel. He was interned in the Sachsenhausen concentration camp for two weeks. [REDACTED], née [REDACTED], was born on [REDACTED] 1896 in Berlin, Germany and died on 31st December 1959 in Israel.

The Appellant's grandparents are [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1868 and perished on 29th December 1942 in the Theresienstadt concentration camp. [REDACTED], née [REDACTED], was born on [REDACTED] 1873 or 1876 in Magdeburg, Germany and died on 11th December 1943 in the Theresienstadt concentration camp.

2. The Respondent is [REDACTED].
3. The Appellant submitted five Claim Forms (two are undated and three are dated 1st August 2003) to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming life insurance policies issued to her grandfather, grandmother, father and mother. She named "[REDACTED]" and "[REDACTED]" and "*maybe some other company*" as the insurers and confirmed that the policies were taken out in Berlin, Germany. She stated that the policies were issued in Reichsmark.
4. Initially, the ICHEIC assigned claim numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] to the claims. Subsequently claim number [REDACTED] has been merged with claim number [REDACTED] and claim numbers [REDACTED] and [REDACTED] have been merged with claim number [REDACTED]. The ICHEIC submitted claim numbers [REDACTED] and [REDACTED] to the Respondent, together with a letter dated 16th April 2001 from the Appellant stating that compensation was claimed for [REDACTED] and [REDACTED] but that this compensation was not in connection with any insurance policies.
5. Claim No. [REDACTED]
In its decision letter dated 22nd September 2004, [REDACTED] informed the Appellant that it had checked whether the policy for which she has filed a claim was part of a previous decision by a German compensation or restitution authority. This investigation revealed that life insurance policy no. [REDACTED] of [REDACTED] and [REDACTED] had been the subject of a decision by the compensation office in Berlin. [REDACTED] stated that [REDACTED], [REDACTED] and [REDACTED] received a compensation payment in the amount of DM 741.51.

The Respondent provided the following relevant documents:

- (i) A letter dated 7th June 1956 from the [REDACTED] to the United Restitution Organization in Berlin. The letter provides details regarding life insurance policy no. [REDACTED].
 - (ii) A letter dated 3rd June 1959 from the Senator for Finance to the compensation authorities in Berlin regarding compensation proceedings by [REDACTED] for the insurance policy number [REDACTED]. It is stated that a compensation payment of DM 1,483.03 is offered.
6. Claim No. [REDACTED]
In its decision letter dated 15th June 2005, [REDACTED] informed the Appellant that it had located documents in German compensation and restitution archives regarding life insurance policy no. [REDACTED] taken out by the Appellant's father [REDACTED]. These documents reveal that insurance policy no. [REDACTED] had been the subject of a decision by the compensation authority in Berlin. Settlement proceeds in the amount of DM 1,869.00 were paid to the Appellant and her sister [REDACTED], née [REDACTED].

The Respondent provided the following relevant documents:

- (i) A claim for compensation with date stamp 16th December 1957. The heirs of [REDACTED] submitted a claim for a life insurance policy with [REDACTED].
 - (ii) A letter dated 6th October 1969 from [REDACTED] to the compensation authorities in Berlin referencing file number [REDACTED] Reg. Nr. [REDACTED]. The document provides details regarding life insurance policy no. [REDACTED]
 - (iii) A BEG decision with date stamp of 13th November 1969 referencing file number [REDACTED] Reg. Nr. [REDACTED]. The heirs of [REDACTED], which are the Appellant and [REDACTED], nee [REDACTED] are awarded the amount of DM 1,869.00 for the loss of an insurance policy.
7. On 15th September 2005, the Appellant submitted an Appeal against [REDACTED]'s rejection of her claims. In an accompanying letter the Appellant's Representative set out the grounds of appeal. With regard to policy no. [REDACTED] he stated that the Respondent "*indicated that compensation had been paid, meaning that no further benefits are payable*". Furthermore, the Representative argued that [REDACTED] "*has long denied that any insurance policy ending with [REDACTED] for the policyholder [REDACTED] even exists*" and concluded that it "*was only through "rummaging" through old files that it was finally possible to prove that the second insurance policy also existed*".
8. [REDACTED] responded to the appeal on 11th October 2005 confirming its decision. It stated that the decisions were in conformity with the Agreement which stipulates that a policy is not eligible for payment by the Foundation if it was considered to have been covered by a decision of a German restitution or compensation authority. Regarding the Representative's contention that [REDACTED] denied the existence of the policies, it is stated:
- "[REDACTED] never denied the existence of any of the two policies. When [REDACTED] [The Appellant's Representative] contacted [REDACTED] for the first time in 1997, we informed him that we could not find anything on the names of the [REDACTED] or the [REDACTED] family. Some time later Mrs. [REDACTED] provided us with a document that referred to policy [REDACTED] of [REDACTED] and indicated restitution proceedings after the war. Following Mr. [REDACTED]'s wish, Mr. [REDACTED] (as [REDACTED]'s representative) sighted the respective restitution documents on 6 July 1999. With letter of 27 July 1999, we informed Mr. [REDACTED] of the contents of those restitution documents informing him of the compensation paid. Then in June 2004, we received your claim number [REDACTED] regarding policy [REDACTED] of [REDACTED], which we denied with our decision letter of 22 September 2004. In March 2005, we received claim number [REDACTED] including documents from the "[REDACTED]" showing that [REDACTED] had a [REDACTED] policy (number [REDACTED]). However, the policy also was compensated after the war. We therefore denied the claim with our decision letter of 15 June 2005. Accordingly it was not by "rummaging through old files" that policy [REDACTED] was detected – as Mr. [REDACTED] alleges – but within the scope of the procedure of the Foundation's Claims Handling."*
9. On 28th October 2005 the Appeals Office informed the parties that the appeal would be decided on a "*documents only*" basis unless it received a request for an oral hearing from either party within 14 days of receipt of the letter. No request for an oral hearing has been received from either party and the appeal was processed 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.

CONCLUSIONS OF LAW

11. There is no doubt that the Appellant’s grandfather and father had life insurance policies no. [REDACTED] and [REDACTED] with [REDACTED], that they were Holocaust victims, and that the Appellant and her sister [REDACTED] as the policyholders’ heirs are entitled to make a claim. Therefore, the claims are valid within the scope of the Agreement.
12. The sole issue for determination concerns whether the Respondent has established a valid defence pursuant to Section 17.3 of the Appeal Guidelines, Annex E to the Agreement which 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.”
13. The letter from the Senator for Finance to the compensation authorities in Berlin dated 3rd June 1959 (paragraph 5. (ii) above) shows that insurance policy number [REDACTED] was compensated by German restitution authorities to the amount of DM 1,483.03. The proceedings were in the name of [REDACTED] while the Appellant is not mentioned in this letter. However, to establish a valid defence in accordance with Section 17.3.4 the company has to show that the policy as such has been covered by restitution proceedings not that the Appellant herself has been part of the proceedings or had received compensation.
14. The letters dated 6th October 1969 and 13th November 1969 (paragraph 6. (ii), (iii) above) show that the Appellant and [REDACTED] received compensation of DM 1,869.00 for policy number [REDACTED] by the German restitution authority in Berlin. [REDACTED] therefore established a valid defence against the Appellant’s claim within Section 17.3.4 also for insurance policy number [REDACTED].
15. Accordingly, policies number [REDACTED] and [REDACTED] were covered by decisions of the compensation authorities in Berlin and fall within the ambit of Sections 2 (1) (c) and 2.2.2 of Annex E of the Agreement which states 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. The Respondent has established a valid defence in accordance with Section 17.3.4, therefore [REDACTED]’s decision must be confirmed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed

Dated this 1st day of February 2006.

[REDACTED]