

The Appeals Panel

Established under the Agreement Concerning Holocaust Era Insurance Claims of 16 October 2002 among the Foundation “Remembrance, Responsibility and the Future”, the International Commission on Holocaust Era Insurance Claims and the [REDACTED].

THE APPEALS OFFICE, PO Box 18230, London, United Kingdom, EC1N 2XA

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Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

APPEAL NUMBER [REDACTED]

CLAIM NUMBER [REDACTED]

BETWEEN

[REDACTED]

APPELLANT

AND

[REDACTED]

RESPONDENT

PANEL DECISION

The Appeals Panel 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] who was born [REDACTED] 1922 in Cracow, Poland. She was the only child of [REDACTED] and [REDACTED]. She lived with her parents just outside the city limits of Cracow until her family was deported to a labor camp in 1943. The Appellant does not know the actual date when both of her parents were killed in the Cracow ghetto concentration camps. She is the sole survivor of her family and now resides in the USA.
2. Since 1997 the Appellant has been seeking compensation from [REDACTED] relating to a life insurance policy issued on the life of her father [REDACTED]. A Power of Attorney for the settlement of Holocaust insurance claims before the International Commission on Holocaust Era Insurance Claims (the ICHEIC) was given by the Appellant to the law firm [REDACTED] in Seattle, WA, USA dated 9th June 2002.
3. On 11th September 2002 the Appellant’s legal representatives wrote to the ICHEIC and stated that the claim form noted a policy with [REDACTED] and requested information as to “*how to file a claim against [REDACTED] through your commission*”. The ICHEIC wrote to the Appellant’s legal representatives on 23rd October 2002 confirming that it had notified [REDACTED] of this claim and that [REDACTED] was investigating. On 6th February 2003 [REDACTED] advised the Appellant that there was no record of a contractual relationship and as a result the claim was denied. The Appellant completed an Appeal Form, which included her reasons for appealing and sent it to the Appeals Office.

4. The Appeal Form received from the Appellant was an incorrect Appeal Form in that it did not contain certain waivers of immunity in favour of the Appeals Panel, and other required information. The Appeals Office by letter dated 7th May 2003 requested that the Appellant sign a new Appeal Form (the new Appeal Form).
5. On 16th June 2003 the Appeals Office received the new Appeal Form dated 14th May 2003 in which the Appellant set out her reasons for appealing the [REDACTED] decision.
6. On 19th June 2003 a copy of the new Appeal Form and reasons for appeal of the decision was sent to [REDACTED]. [REDACTED] by its letter dated 4th July 2003 to the Appeals Panel repeating the reasons it had set out before, to “*reject the appeal with respect to this claim and to confirm [REDACTED]’s previous decision on it*”.
7. By letter dated 19th July 2003 the Appeals Office produced a copy of the letter from [REDACTED] to the Appeals Office to the Appellant and informed both parties that the appeal will be on a “documents only” basis unless within 14 days of the date of receipt of its letter the Appeals Office received notification from either party requesting an oral hearing of the appeal.
8. No request for an oral hearing has been received from either party. The appeal proceeds on a “documents only” basis.
9. 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 Commission and the [REDACTED] (the Agreement) and its annexes, including, but not limited to Annex E, the Appeal Guidelines.
10. The seat of the Appeal Panel is Geneva, Switzerland and the Panel Decision is made in that place.

THE CLAIM

11. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy. In answer to Section 3 of the Claim Form she states that the policyholder is [REDACTED] (her father) who was born [REDACTED] 1892 in Mogilany, Poland and died in the Cracow ghettos and thus did not survive the Holocaust. In answer to Section 5 of the Claim Form she states that her father was the Insured under the policy. The Appellant was not able to state the policy number, currency, sum insured, date of issue, date of maturity or any other terms and conditions of the policy. In answer to Section 7 of the Claim Form the Appellant states that she is not aware of any payment resulting out of the insurance policy. The Appellant has not produced any documents evidencing the existence of the policy.
12. In the Appellant’s reasons for appeal of the decision, which accompanied her Appeal Form, she states that her father “*took out an insurance policy on his life....and the policy specified my mother and me as the beneficiaries.*” In the Appellant’s statement dated 12th March 2003 she cannot recall when or for what sum the policy was issued to her father. However, she does recall that the policy was with [REDACTED] because she remembers “*seeing the policy*”

with the [REDACTED] logo and specifically recall (sic) associating the name with the [REDACTED] sea. It is for this reason that the name of the insurance company remains in my memory more than 60 years later”. The Appellant’s father apparently stressed to the family “the policy had enough money to secure our well-being and maintain our lifestyle”. She recalls seeing her mother dealing with important family papers in the safe that was kept in their house and the insurance documents were also kept there. All documentation was lost in the war. The Appellant says that “I know that this policy was not paid by the time of the outbreak (sic) of the war 1939 – September 1.”

THE INVESTIGATION AND DECISION BY THE RESPONDENT

13. A copy of the Claim Form was submitted by the ICHEIC to [REDACTED] and [REDACTED] by its provisional decision letter dated 6th February 2003 informed the Appellant that it had “carefully examined the information you provided” and “also carried out a search of all the information available to us that could support your claim”. It continued “however, our documentation is limited because the archives relating to the policies issued in Eastern Europe were held locally and are no longer in our possession”. Based upon the “information you provided and our search, no supporting evidence of a contractual relationship with our company or any of our subsidiaries in Eastern Europe could be found, and we are therefore declining your claim.”

THE ISSUES FOR DETERMINATION

14. The sole issue for determination in this appeal is whether the Appellant has met her burden of proof as set out in Annex E, section 17 which provide that to succeed in an appeal the claimant 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 1 January 1920 and 8 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.”

15. Where no written record of a policy can be traced by the relevant Member Company, the burden upon the Appellant to establish that a policy existed is a heavy one, even when the burden is limited to establishing that the assertion is “plausible” rather than “probable”. Where the Appellant does not submit any documentary evidence in support of the claim, the Appellant’s assertions 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 Member Company.

16. The Appellant's evidence relating to the name of the insurance company is not challenged by [REDACTED]. [REDACTED] states that it has not found a match with its records but admits that those archives relating to policies issued in Eastern Europe were held locally and are no longer in its possession.
17. The Panel has concluded that the Appellant has not met her burden of proof in that her evidence lacks the requisite authenticity and particularity. There is no corroborative evidence (such as letters or statements from third parties) to support the Appellant's recollection of the existence of an [REDACTED] policy. The Panel accepts that the Appellant had a clear recollection of the [REDACTED] logo because she associated it with the [REDACTED] Sea and this is the reason why she can recall it over 60 years later. However, this recollection alone is not enough to persuade the Panel that it is plausible her father had a policy with [REDACTED]. In the circumstances the Panel dismisses the appeal.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:-

1. The appeal is dismissed.

Dated this 21st day of August 2003

The Appeals Panel

T J Sullivan

Timothy J Sullivan,
Chairman

R Faupel

Rainer Faupel,
Panel Member

A J Gafni

Abraham J Gafni,
Panel Member