

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

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 on [REDACTED] 1930 in Prague, Czechoslovakia. He is the son of [REDACTED], nee [REDACTED], who was born on [REDACTED] 1905 in Velke Pořiči, (former Austria-Hungary) and died on 20th January 1995 in London. [REDACTED], née [REDACTED], is the daughter of [REDACTED], who was born on [REDACTED] 1873 in Nachod (former Austria-Hungary) and was deported to Terezin (Theresienstadt) on 17th December 1942, where he died on 18th January 1943. [REDACTED] had another child, [REDACTED], who was born on [REDACTED] 1911 in Hronov (Austria-Hungary) and died on 17th July 2003 in Mahwah (NJ), USA.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] issued policies of life insurance to his grandfather [REDACTED].
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 27th March 2003 that *“based on 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.”*
5. The Appellant submitted an appeal to the Appeals Office dated 10th March 2003, which was accompanied by an attachment setting out the reasons for the appeal.
6. The Appeal Form received from the Appellant was an incorrect Appeal Form in that it did not contain a declaration of consent to the adjudication of the appeal by way of arbitration in Geneva Switzerland under Swiss federal law, a declaration of being bound to 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 to the Appeal Guidelines, a declaration waiving any right to appeal such decision as provided in the Appeal Guidelines and in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law and a declaration waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
7. The Appeal Office requested the Appellant to sign an amended Appeal Form.
8. On 16th June 2003 the Appeals Office received the new Appeal Form, which is dated 12th May 2003 and mailed a copy of it to [REDACTED].
9. [REDACTED] responded in a letter dated 4th July 2003 and requested the Appeals Panel for reasons it had set out before to *“reject the appeal submitted with respect to this claim and to confirm [REDACTED]’s previous decision on it”*.
10. By letter dated 21st July 2003 the Appeals Office sent a copy of this letter to the Appellant. It informed both parties that the appeal will be on a *“documents only”* basis unless the Appeals Office receives a notification from either party requesting an oral hearing within 14 days of the date of receipt.
11. No request for an oral hearing has been received from either party and the Appeals Panel does not consider it necessary to order such a hearing and thus the appeal proceeds on a *“documents only”* basis.
12. By letter dated 22nd October 2003 the Appeals Office asked the Appellant at the direction of the Appeals Panel to provide a statement from his uncle [REDACTED], which confirms the statement given by the Appellant that *“[REDACTED] personally knew members of the [REDACTED] family and knew that they sold life insurance policies to his father”*.
13. The Appellant by letter dated 17th November 2003 informed the Appeals Office that his uncle and co-claimant died on 17th July 2003. He also informed the Office that prior to the letter dated 22nd October 2003 he had lodged requests with Czech archives and was advised, *“documents are ‘on the way’”*.

14. By letter dated 16th December 2003 the Appellant wrote to the Appeals Office that he was “unable to locate anything of immediate relevance” but informed the Appeals Panel as follows: “[REDACTED] had a cousin, [REDACTED], ... , who was often present when [REDACTED] discussed (among other matters) his late father’s insurance policies ... [REDACTED] would be ready to prepare an affidavit or sworn testament concerning this matter which he could forward to you”.

Attached to this letter were:

- a) A declaration dated 1st December 2003 signed by [REDACTED], who is the Executor of the Estate of [REDACTED] reading: “I hereby appoint [REDACTED] my attorney and agent authorizing him to pursue a claim for proceeds of insurance policies held by [REDACTED] with the [REDACTED]”.
 - b) A “California All-Purpose Acknowledgement” dated 1st December 2003 and issued by [REDACTED], Notary Public in the County of Orange, confirming that [REDACTED] was the one who signed the above [17. a)] mentioned declaration.
 - c) A certificate of death issued on 18th July 2003 by the Health Department of the Village of Ridgewood, New Jersey certifying that [REDACTED] died on 17th July 2003.
15. At the direction of the Appeals Panel the Appeals Office informed the Appellant by letter dated 9th January 2004 that “with respect to your offer to submit additional information the Appeals Panel requests that you fax or send to the Appeals Office any further written evidence you wish to put before the Panel Please be advised that evidence need not to be in the form of an affidavit”.
16. [REDACTED] sent a letter dated 17th January 2004, in which he provided further information. The Appeals Office forwarded a copy of this letter to the [REDACTED], which gave a statement by letter dated 30th January 2004.
17. The appeal is governed by the Agreement Concerning Holocaust Era Insurance Claims dated 16th October 2002 made between the Foundation “Remembrance, Responsibility and Future”, ICHEIC and the [REDACTED] (The Agreement) and its Annexes including, but not limited to, Annex E, the Appeal Guidelines.

The Seat of the Appeals Panel is Geneva, Switzerland, and the Panel Decision is made in that place.

THE CLAIM

18. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
- a) In answer to question 5.7 of the claim form he states that he is not aware of any payment resulting out of the insurance policy.

- b) In answer to question 6.1 he states that the policyholder is [REDACTED] (his grandfather), born on [REDACTED] 1873 in Nachod (later Czechoslovakia), who died in Terezin (Theresienstadt) on 18th January 1943.
 - c) In answer to question 7.1 of the claim form he states that his grandfather was the insured under the policy.
 - d) To question 8.1 he states the named beneficiary was his mother, [REDACTED]. He states that he is the grandson of the policyholder.
 - e) 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. The Appellant has not produced any documents evidencing the existence of the policy.
19. The Appellant sets out the reasons for his appeal as follows: *“my grandfather purchased his life insurance policies from an agent in Nachod (Czech Republic) whose name was [REDACTED]”. He also states that “my uncle, [REDACTED] of [REDACTED], Mahwah, NJ, 07430 in the United States (co claimant in this claim), recalls that his father ([REDACTED], purchaser and holder of the policies with [REDACTED]) discussed the purchase of life insurance policies with him. [REDACTED] personally knew members of the [REDACTED] family (father and son) and knew that they sold life insurance policies to his father. My uncle knows precisely where the [REDACTED] insurance agency offices were located in Nachod”. In a letter dated 12th December 2002, which was discovered after the Appeals Office forwarded the file to the Appeals Panel, the Appellant wrote: “The insurance agent who in all likelihood sold the relevant policies to my grandfather was [REDACTED] who, together with his son [REDACTED], had an insurance business in Nachod ... The [REDACTED] insurance business offices were next door to the Hotel [REDACTED], on the main square, in Nachod “.*
20. In his statement dated 17th January 2004 [REDACTED]’s cousin [REDACTED] declares the following: *“I am a nephew of [REDACTED] who lived in Velke Pořiči, Czechoslovakia, and perished in the ghetto of Theresienstadt in January 1943. I knew [REDACTED] and his wife [REDACTED], especially during the German occupation, because we all lived together in the same house in Nachod before we were deported to Theresienstadt in December 1942. The son of [REDACTED], [REDACTED], ..., took me into his household when I arrived in the United States as an orphan in 1951. ... [REDACTED] and I often spoke of his father and [REDACTED] recounted much about his father’s business, his friends and his family. He took delight in recalling and telling one and all vivid details of life at his home in Velke Pořiči, in Nachod, where he had attended school and in the business world beginning with his years in Czechoslovakia. He spoke often of his father’s textile mill in Velke Pořiči of which he was very proud and the details of which he was intimately familiar having been named “prokurista” (proxy) after he completed his education in France, Germany and England. This made him a daily participant in all of his father’s decisions, both business and personal. In the last five years, the subject of his father’s insurance policies came up frequently in our conversations as the media began mentioning the matter of life insurance policies of victims of Holocaust. Consequently I was often present when my cousin [REDACTED] discussed his late father’s insurance policies. He always maintained that his father, [REDACTED], bought [REDACTED] policies from the local insurance agent, [REDACTED], whose office was on the main square in Nachod. Because [REDACTED] left Czechoslovakia on a business trip just a few weeks before Hitler occupied the country, he did not take with him any relevant documents that could prove this fact. ... “.*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

21. A copy of the Claim Form was submitted by the ICHEIC to [REDACTED]. In its decision letter dated 6th February 2003 [REDACTED] informed the Appellant *“we have carefully examined the information you provided. We have also carried out a search of all the information available to us that could support your claim. However, our documentation is limited because the archives relating to policies issued in Eastern Europe were held locally and are no longer in our possession”*. They further informed him in a letter dated 27th March 2003 that *“based on 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”*.
22. In a letter dated 4th July 2003 [REDACTED] repeated its earlier explanation for rejection and confirmed its decision.
23. In answering a letter dated 20th August 2003, in which the Appeals Panel asked [REDACTED], whether it or its predecessor companies have any records which contain information referring to any former “Agents” or “Officers or Directors” of [REDACTED] or its predecessor companies that sold insurance policies between 1920 and 1945 in Eastern European countries and whether any policies denominated in the currency of Swiss Francs in Eastern European countries were issued, [REDACTED] responded on 2nd September 2003: *“Among ... surviving records we have 2,659 names of former employees of the [REDACTED]’s independent branch offices in Czechoslovakia, Poland, Hungary and Yugoslavia. On the contrary, no information is available with respect to any former “Agents”, and with respect to [REDACTED]’s subsidiaries. As duly verified during the ICHEIC Audit, these 2,659 records are included into [REDACTED]’s general Eastern European database, and are therefore investigated and matched against any new claim, irrespectively of the specific country mentioned by the claimant. As a consequence, any possible match between a name quoted by the claimant and one of these 2.659 available records is found and properly evaluated while making a decision on the claim. ...”* .

THE ISSUES FOR DETERMINATION

24. The first issue for determination in this appeal is whether the Appellant has met his 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.

25. The Appellant has established that a life insurance issued by [REDACTED] did exist.
26. Where the relevant German 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 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.
27. The Panel has concluded that the Appellant has met his burden of proof in that his evidence has the requisite authenticity and particularity. The Appellant has particularised the name of the local representative selling the insurance, the company that issued the insurance, and the place where the insurance was issued. These statements were already made – as turned out after the letter dated 12th December 2002 came to the claims file – in the claims procedure, later repeated in the appeals procedure by the Appellant and confirmed by [REDACTED]. He states that his uncle has direct knowledge, from a discussion with the policyholder, of the purchase of a policy from [REDACTED]. The Panel is satisfied that it is plausible under section 17.2.1 above that the policy was in force between 1920 and 1945 as the conversation which occurred between the Appellant’s uncle and the policyholder must have occurred in that period, as the policyholder died in 1943. Further, it is plausible under section 17.2.2 above that the Appellant and his uncle’s heirs are the persons entitled in equal shares to the proceeds of the policy as the only living relatives of the policyholder. Finally, with regard to section 17.2.3 above, there is no doubt that the policyholder is a Holocaust victim under section 14 of the Agreement. He died in a camp in Terezin (Theresienstadt) during the Holocaust.
28. The Appellant’s statements are supported and confirmed by the recollections of [REDACTED] as described in the letter dated 17th January 2004.
29. [REDACTED]’s statement that it has not found a match with its records and that those archives relating to policies issued in Eastern Europe were held locally and nowadays are no longer in its possession is no valid defence against the plausibility of the Appellant’s assertions.
30. In the circumstances the Panel concludes this appeal in favour of the Appellant.

VALUATION

31. In determining the present value of the policy, the existence of which was established under the relaxed standards of proof, the Appeals Panel had to calculate according to the rules laid down in the Valuation Guidelines (Annex D of the Agreement). Under section 7.1 of the Valuation Guidelines where a claimant satisfies ... that a policy existed, which was unpaid, and names the company that issued the policy, but the amount of the policy – as it is the case here - cannot be determined, the offer of the company shall be based on a multiple of three times (3X) the average value for policies in the respective country (shown in Schedule 3 of the said Annex). According to the same provision the appropriate multipliers then have to be applied but the payment offered shall not exceed US\$ 6,000 per policy (capped amount).

32. For Policies issued in Czechoslovakia between 1920 and 1945 the average value set out in Schedule 3 of the said Annex is Koruna 12,070, which has, according to Schedule 3 and section 7.1 of the said Annex, to be multiplied by 3 to get the base value of Koruna 36,210.
33. This value in Koruna corresponds according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.024 laid down in Step 1 of Schedule 2 of the said Annex to the Value of US\$ 869.04.
34. According to Step 2 of Schedule 2 of the said Annex this dollar value has to be multiplied by 11.286 to give the value up to the year 2000. This results in a value of US\$ 9,807.98544 by end 2000.
35. According to Step 3 of Schedule 2 of the said Annex additions have to be made to the dollar value up to the end of 2000 for the subsequent years. These interest rates have been agreed on in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC which has been circulated to the other two parties of the Agreement, the Foundation and [REDACTED] (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 %; 2004: 5.0 % according to the month, in which the decision is made, plus two months, i.e. 4/12 of 5.0 %). A calculation on this basis leads to the amount of US\$ 10,337.61665376 for 2001, US\$ 10,854.497486448 for 2002, US\$ 11,370.08611705428 for 2003 and 11,559.587552338518 for 2004.
36. This total amount of US\$ 11,559.59 of the policy in question is, according to section 7.1 of the said Annex, subject to a capped amount of US\$ 6,000. The Respondent therefore has to pay the amount of US\$ 6,000.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

1. The appeal succeeds.
2. [REDACTED] shall pay the Appellant the sum of US\$ 6,000 no later than the last day of the second month following the month of the decision, which is 31st May 2004, such sum to be shared equally between the Appellant (1/2) and the heirs of his uncle [REDACTED] (1/2).

Dated this 16th day of March 2004

The APPEALS PANEL

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member