

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

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] 1924 in Kisbodak (Hungary). He is the son of [REDACTED] and [REDACTED]. His father was born on [REDACTED] 1900 and died on 5th May 1945 in the concentration camp of Mauthausen. His mother also vanished in the Holocaust.
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 a policy of life insurance to his father [REDACTED].
4. The ICHEIC submitted the claim to [REDACTED], which denied it by letter to the Appellant dated 6th February 2003. In its letter [REDACTED] stated, *“based on the information you provided and on 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 Form to the Appeals Office dated 19th February 2003, in which he sets 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 of waiving any right to appeal such decision as provided in the Appeals 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 of waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents and employees, except as provided under Swiss law.
7. The Appeals Office requested the Appellant by letter dated 7th May 2003 to sign an amended Appeal Form.
8. On 10th June 2003 the Appeals Office received the amended Appeal Form dated 13th May 2003, in which the Appellant repeated his reasons for appealing the decision of [REDACTED], which he had set out previously in the imperfect Appeal Form.
9. The Appeals Office sent the new Appeal Form with the reasons for appeal to [REDACTED] on 19th June 2003.
10. [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.”*
11. On 21st July 2003 the Appeals Office sent a copy of the letter from [REDACTED] to the Appellant and informed both parties that the appeal will be on a “documents only” basis unless it received notification from either party requesting an oral hearing within 14 days of the date of receipt of its letter.
12. On 31st August 2003 the Appeals Office received a fax from the Appellant, which was dated 28th August 2003, with a request for an oral hearing. By letters dated 4th September 2003 the Appeals Office acknowledged receipt of the request for an oral hearing and informed the Respondent of that request. It further gave the following information to the Respondent: *“The Appeals Office is preparing this hearing. A further letter dated 4th September 2003, which has been sent to the Appellant, has been attached for your information as well. This letter is written in German, as the Appellant does not speak*

English. Summarised this letter says the following: The Appeals Panel acknowledges receipt of the request for an oral hearing, which will be by conference call. The Appellant is informed that the call will be made on the phone number given on 16th or 17th October 2003 and that the interview will be in Hebrew. There will be an interpreter to translate the Hebrew part of the hearing into English". The Respondent informed the Appeals Office by fax dated 8th September 2003, that it wants to take part in this hearing. It further asked the following questions:

"Why has the oral hearing been granted, in spite of the clear elapse of the 14 days term for requesting it, established by your letter dated 21st July 2003 ?"

"The Appellant's letter dated August 28, 2003 mentions an Appeal Panel's letter 'dated July 19, 2003, in which you explain the reasons for rejecting my appeal': is it possible to get a copy of this letter ?"

"Why is the correspondence with the appellant being held in German, and why will the hearing be held in Hebrew, when the letter dated August 28, 2003 shows that he is able to write perfectly understandable English ?"

13. On 12th September 2003 the Appeals Panel decided that there would be an oral hearing of the Appellant by setting up a telephone conference call on Thursday, 16th October 2003, 16.00 (Israeli time) and that the interview would be conducted in Hebrew. The Appeals Office informed both parties about this decision by letter dated 12th September 2003. In this letter it also answered the above quoted questions the Respondent asked in its letter dated 8th September 2003 and provided a copy of this letter to the Appellant.
14. The oral hearing took place on 16th October 2003. It was conducted in Hebrew and translated by an interpreter into English.
15. 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.
16. The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made in that place.

THE CLAIM

17. The Appellant submitted the following information in relation to the claim for the proceeds of a life insurance policy. In answer to question 3.1 of the Claim Form he states that the name of the company that issued the policy was "[REDACTED]". In answer to question 5.7 he states that he is not aware of any payment resulting out of the insurance policy. In answer to Question 6 he states that the policyholder is his father, [REDACTED], born [REDACTED] 1900 in Kisbodak (Hungary) who died on 5th May 1945 in Mauthausen. In answer to Questions 7 and 8 of the Claims Form he states that his father was the insured and he, the Appellant, was beneficiary. The Appellant could not state the policy number, the insured sum or the date of maturity, but he stated the year of issue in the Appeal Form, which was 1930, and the currency in which the insurance contract was issued, which was in Pengo. In answer to Question 11 of the Claim Form the Appellant states *"To the best of my knowledge the insurance was on my family members:*

[REDACTED], *his wife* [REDACTED], *his son* [REDACTED] *and his daughter* [REDACTED]”.

18. In a letter dated 24th November 2002, which is on the Claim File and which is written in Hebrew, the Appellant informs the ICHEIC, that he stated in his original claim, that the policy of his parents was issued by “[REDACTED]”, but that he now got hold of a document showing that all Jews of his town were insured with “[REDACTED]”.
19. In his Appeal Form the Appellant states that “*my parents paid the insurance*” and “*the last payment I paid myself to the insurance broker in my village in 1943*”. He further states that when he “*returned to his home nothing was found.*” In answer to question 7.14 he states that he does not know of any other living heirs of the insured person. Finally, in his Appeal Form, he states that he does “*not remember the name of the insurance company in our area. In the Hungary the insurance companies that worked were* [REDACTED] *and many more*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

20. By its decision letter dated 6th February 2003 [REDACTED] 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.*”

ISSUES FOR DETERMINATION

21. Contrary to the doubts and questions of the respondent regarding the admissibility of an oral hearing such hearing was necessary and possible under the Appeal Guidelines. The Panel was aware that the time limit, which was set for the request of an oral hearing (14 days after receipt of the letter dated 21st July 2003), had elapsed when the request arrived in the Appeals office on 31st August 2003. However, such time limits, set by the Appeals Panel to accelerate the proceedings only, can be prolonged if necessary. Moreover, in the given case the Appeals Panel decided according to 8.2 of the Appeal Guidelines that additional information is needed from the Appellant in order to properly evaluate the appeal. When receiving the request for the oral hearing it became clear, that the Appellant had misunderstood what the Appeals Office had written to him in the letter dated 19th July 2003. This letter definitely did not – as the Appellant understood – “*explain the reasons for rejecting his appeal on his insurance claim from* [REDACTED]”. Since after further research it became clear, that the Appellant – who, as he wrote parts of the correspondence in English, seemed to be English speaking – does not speak English at all, the Panel decided to conduct an oral hearing independent of the Appellant’s request to make sure that there were no misunderstandings by imprecise or wrong translations which might lead to a wrong decision.

22. The sole issue for determination in the matter of this appeal is, whether the Appellant has met his burden of proof as set out in Annex E, Section 17. 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 Appellant 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”.
23. Where the relevant German company cannot trace a 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 is not able to 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 company, which declined the claim.
24. The Panel concludes that the Appellant has not met his burden of proof, that it was [REDACTED], which issued the insurance policy; his evidence lacks the requisite authenticity and particularity and there is no corroborative evidence (such as letters or statements from third parties) to support the Appellant’s recollection of the existence of a life insurance policy issued by [REDACTED]. The Appellant’s recollection is on the contrary rather vague. In the Claim Form he states that “[REDACTED]” was the issuing company. In his letter dated 24th November 2002 he informs the ICHEIC, that he has documents showing that the issuing company was “[REDACTED]”. Finally, in the Appeal Form he says that he does not remember the name of the insurance company in his area. The only recollection he has is, that the insurance companies operating in Hungary were “[REDACTED], [REDACTED] and many more”. The Panel took note, that the Appellant, when summarising his case in the oral hearing, returned to the original statement that it was [REDACTED], which issued the insurance policy. However, the Panel is not convinced, that this is a secure knowledge, as the Appellant was not able to explain convincingly, how he regained this recollection. The explanation he gave was, that he knew, because he contacted “*someone from [REDACTED], who confirmed that*”, but he could not tell when and whom exactly he contacted. He also could not give a convincing explanation, why what he wrote in his letter dated 24th November 2002 was wrong and why he confused “[REDACTED]” and “[REDACTED]”. In case “[REDACTED]” should read “[REDACTED]” the information he gave in that letter would not make sense.
25. The Panel nevertheless is convinced that an insurance policy was in existence, even if it is not sure with which insurance company. The Appellant credibly remembered the specific detail that it was he who made “*the last payment to the insurance broker in his*

village in 1943” and that he was taken to a camp thereafter. The Panel took note, that the Appellant in the oral hearing, asked which company was represented by the one who received this “*last payment*”, said that it was the representative of “[REDACTED]”. Given however all his different statements during the whole claims and appeals procedure about the insurance company the Panel was not convinced, that the Appellant’s recollection now is right; there were no plausible explanations for the differences and why the last statement should be accepted as the correct one.

26. Since the Panel is convinced that there was an insurance policy in existence, even if the appellant was not able to establish with which insurance company, the Panel concludes that the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures upon final consideration and dismissal of all his possibly outstanding named company claims related to the same information within the ICHEIC process. The Panel will inform the ICHEIC accordingly.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES

The appeal is dismissed.

Dated this 17th day of October 2003

The Appeal Panel

Timothy J. Sullivan,
Chairman

Rainer Faupel,
Panel Member

Abraham J. Gafni,
Panel Member