

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

Fax:

++ 44 (0) 207 269 7303

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] 1919 in Budapest (Hungary). He is the son of [REDACTED] and [REDACTED], nee [REDACTED]. [REDACTED] was born on [REDACTED] 1895 in Budapest (Hungary) and died on 7th March 1982 in Coquitlam, British Columbia (Canada); [REDACTED] was born on [REDACTED] 1893 and died in 1944 in Auschwitz. The Appellant has a sister, [REDACTED], nee [REDACTED], who was born on [REDACTED] 1923 in Budapest (Hungary) and now lives in Canada. The Appellant changed his name from [REDACTED] to [REDACTED]. The Appellant’s family was deported to Auschwitz in 1944. Before his deportation, Appellant himself was in a forced labour camp from September 1942.
2. The Respondent is [REDACTED] as the legal successor to “[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 life insurance policy to his father [REDACTED].
4. The ICHEIC submitted the claim to the Respondent as the successor-company to “[REDACTED]”. [REDACTED] stated in its decision letter dated 6th February 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 18th February 2003, which was accompanied by a letter dated 19th February 2003 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 and employees, except as provided under Swiss law. By letter dated 7th May 2003 the Appeals Office requested the Appellant to sign a new Appeal Form.
7. On 16th June 2003 the Appeals Office received the new Appeal Form, which is dated 16th May 2003 and mailed a copy of it to [REDACTED].
8. [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*”.
9. 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.
10. 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.
11. 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.
12. The Seat of the Appeals Panel is Geneva, Switzerland, and the Panel Decision is made there.

THE CLAIM

13. The Appellant has 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 insurance company, which issued the policy was “[REDACTED]”.
- a. In answer to question 5.1 he states that his claim relates to a life insurance policy. He does not know any of the terms of the insurance policy but suggests it had been issued in Swiss Francs for an amount of 15,000 or 20,000 per person.
 - b. In answer to question 5.7 he states that he is not aware of any payment resulting out of the insurance policy.
 - c. In answer to question 6.1 he states that the policyholder was his father [REDACTED], born 26th July 1895, who was deported to Auschwitz in 1944.
 - d. In answer to question 7.1 he states that the insured were his father, he, the Appellant, his late mother [REDACTED] and his sister [REDACTED].
 - e. In answer to question 8.1 he states the named beneficiary was “*most likely my mother [REDACTED] ([REDACTED])*”.
 - f. In answer to Question 8.14 (“*Do you know of any other living heirs of the beneficiary?*”) he answers “*no*”.
 - g. In answer to question 11 the Appellant states “*as I mentioned before, a life insurance was purchased by my late father at [REDACTED] in Budapest with the active help of my maternal uncle - [REDACTED] - A Director-Manager of the company*”. He expresses some doubt about other policies, which may have been issued to his father, and also as to the terms and conditions of the policies issued by [REDACTED] but he says he “*knows for sure it was in Swiss Franks – I remember my discussions with my father about Swiss Franks and not Hungarian currency. I also remember that the whole insurance package was handled by my uncle - [REDACTED] - an officer of the company’s head office in Budapest. He lived in Budapest, [REDACTED] Street*”. He also states that “*my sister and I are the only survivors - and beneficiaries entitled*”.
14. In his reasons for appeal of the decision which accompanied his Appeal Form and in his letter dated 29th July, 2003 to the Appeals Office the Appellant again stresses that the insurance contract with “[REDACTED]” was made by taking advantage of family connections and says that it was plausible for his father to use such contacts when “*making a life insurance ... for his family at [REDACTED]*”. He expresses doubt that [REDACTED] does not know the names of the top officers of their subsidiary “[REDACTED]” in Budapest. He points out that his maternal uncle [REDACTED] was “*a Managing Director at the Head Office*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. ICHEIC submitted a copy of the Claim Form to [REDACTED] as successor-company to “[REDACTED]”. By its decision letter dated 6th February 2003 [REDACTED] informed the Appellant that it had “*carefully examined the information ... provided*” and “*also carried out a search of all the information available to us that could support your claim*”. [REDACTED] 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”.

16. In a letter dated 4th July 2003 [REDACTED] repeated the above and confirmed its decision.
17. 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 identity details 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. Because of the above recalled nationalisation and expropriation, [REDACTED] has nowadays almost no internal evidence of Eastern European Insurance policies denominated in Swiss Francs: we only have 2 records mentioning two policies denominated in Swiss Francs and issued in Romania. On the other hand, insurance policies denominated in Swiss Francs have been sometimes submitted by the claimants together with the claim forms ...”.*

THE ISSUES FOR DETERMINATION

18. 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.
19. The Appellant has succeeded in establishing that a life insurance policy issued by “[REDACTED]” existed.

20. 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 company.
21. As to the existence of a life insurance policy, the Panel concludes that the Appellant has met his burden of proof as his statements, taken as a whole, have the requisite authenticity and particularity. However, he did not meet his burden of proving that the insured sum was Swiss Franks “15,000 or 20,000 per person”.
- a) The Appellant specified the name of the company that issued the insurance policy, the place where the policy was issued and the person who negotiated its issuance. He further could name the currency in which the insurance was issued, and, finally, he was able to set out the names of the policyholder and insured persons. 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 Appellant states, and that he discussed details of the insurance contract with his father before the family was deported to Auschwitz in 1944, when he would have been in his twenties. Further, it is plausible under section 17.2.2 above that the Appellant and his sister in equal shares are the persons entitled to the proceeds of the policy, as the only living relatives of the policyholder and insured and the possible beneficiaries. Finally, there is no doubt that the policyholder is a Holocaust victim as set out in section 14 of the Agreement as his family was deported to a concentration camp, where his mother died. The Panel concludes this aspect of the appeal, i.e whether a policy issued by the Respondent’s subsidiary existed, in favour of the Appellant.
- b) In the Claim Form the Appellant answered question 5.4, which is about the sum insured, with “*Not sure – 15,000 or 20,000 per person*”. Under these circumstances the Panel is not satisfied that the insured sum the Appellant set out in the Claim Form has been plausibly established according to the relaxed standards of proof. Therefore, while the contract must be regarded as existing, it must be valued as a contract with an unknown insured sum.
22. Where the Appellant has established the conditions listed in section 17.2, the relevant German company has a defence in accordance with the Agreement and - under the same relaxed Standards of Proof – can establish that the Appellant is not entitled to payment from the Foundation funds (section 17.3). However, [REDACTED] has not established any of the defences mentioned in section 17.3. The inability to locate records will not serve as a sufficient defence.

VALUATION

23. 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).

24. For policies issued in Hungary between 1920 and 1945 the average value set out in Schedule 3 of the said Annex is Pengö 827, 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 Pengö 2,481.
25. This value in Pengö corresponds according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.1376 laid down in Step 1 of Schedule 2 of the said Annex to the value of US\$ 341.3856.
26. 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 end of the year 2000. This results in a value of US\$ 3,852.8778816 by end 2000.
27. 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 (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 % according to the month, in which the decision is made, plus two months, i.e. 14/12 of 4.75 %), which leads to the amount of US\$ 4,060.9332872064 for 2001, US\$ 4,263.97995156672 for 2002 and US\$ 4,500.2755072160424 for 2003.

THE APPEAL PANEL THEREFORE HOLDS AND DECIDES

1. The appeal succeeds.
2. [REDACTED] shall pay the sum of **US\$ 4,500.28** within 60 days from the date of this decision such sum to be shared equally between the Appellant and his sister [REDACTED], nee [REDACTED].

Dated this 17th day of December 2003

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member