

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 NUMBERS: [REDACTED] [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] 1922 in Novi Sad (former Yugoslavia). He is the son of [REDACTED], who was born on [REDACTED] 1888 in Sid (former Austria-Hungary) and died in October 1965 in Los Angeles (USA). [REDACTED] changed his name from [REDACTED] to [REDACTED]. The Appellant’s father had a brother, [REDACTED], who was born in [REDACTED] 1890 in Sid and died on 23rd January 1942 in Novi Sad.
2. The Respondent is [REDACTED].

3. The Appellant submitted several claims, one to the Department of Insurance of the State of California and one to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which he claims the proceeds of life insurance and non-life insurance policies. These claims, subsequently, were given the claim numbers [REDACTED] and [REDACTED] (details below).
4. The ICHEIC submitted the claim to the Respondent.
5. In the decision letter dated 25th January 2002 [REDACTED] identifies the Appellant, his father and his uncle [REDACTED] and states, *“there are no entries corresponding to the data of your enquiry in our register. Since this register is complete, this means that there exists no contractual relationship with [REDACTED] or any company subsequently purchased by [REDACTED]. In accordance with the rules of the International Commission, [REDACTED] can only make payment when there exists some evidence that a contract may have existed. Unfortunately, the information that you provided to us does not confirm this fact, and we are unable to offer you any form of payment.”*
6. The correspondence on the Claim Files No. [REDACTED] and [REDACTED] reveals that the Appellant did not receive the above mentioned decision letter before 27th September 2002. Problems with his current address had not been resolved until the end of September 2003.
7. [REDACTED] repeated the reasons for the denial in its letters of 18th March 2003 and 14th October 2003.
8. The Appellant submitted an appeal dated 25th March 2003 to the Respondent, which [REDACTED] forwarded to the Appeals Office by letter dated 8th April 2003.
9. 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.
10. The Appeals Office requested the Appellant by letter dated 24th July 2003 to sign an amended Appeal Form.
11. On 18th September 2003 the Appeals Office received the new Appeal Form, which is dated 4th August 2003 and mailed a copy of it to the Respondent on 19th September 2003.
12. [REDACTED] responded in a letter dated 14th October 2003, submitted copies of all documents relating to the claim, confirmed its previous decision and asked the Panel *“to reject the appeal submitted with respect to this claim and to confirm our decision on it”*.

13. On 21st October 2003 the Appeals Office 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 after receipt of this letter.
14. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
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 ICHEIC and the [REDACTED] 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 there.

THE CLAIM

16. The Appellant has submitted the following information in relation to the claims for the proceeds of life and non-life insurance policies.

- a) Claim number [REDACTED]

- i) In the Claim Form - produced by the State of California – the Appellant inter alia identifies ” [REDACTED] *in Munich, Germany*” as the insurance company that issued a life insurance policy to his father, [REDACTED].
- ii) In answer to question 7 of this form with regard to ‘basis of belief that a policy was not paid’ he writes, “*father was insured with the [REDACTED] headquartered in Belgrade. His policy was underwritten by the [REDACTED] in München (Munich) Germany. During the Hungarian military occupation we moved to Budapest, Hungary. There was no money collected ever.*”
- iii) The Claimant states that his father was the director of [REDACTED] in Novi Sad, Yugoslavia.

- b) Claim number [REDACTED]

There are two Claim Forms on the Claim File one of them is not completely filled and is marked with a highlighter. This incomplete form has been given the number [REDACTED] (same as above sub a).

- i) In this Claim Form the Appellant writes, “[REDACTED] *policies reinsured with the [REDACTED] in Munich*”.
- ii) In answer to question 5 concerning the policy type and specific details he writes, “*I am not certain, but I presume life insurance policy and the house etc.*”
- iii) He identifies his uncle [REDACTED] as the policyholder and insured person and himself as the beneficiary. The Appellant states that his uncle was an assistant to the director of the [REDACTED] In answer to question 11

concerning 'further information', he writes, "*my uncle (father's brother), [REDACTED] owned a house in Novisad, Yugoslavia. He was killed with the entire family by the Hungarian army January 23 1942. I am the only heir.*"

- c) Within ICHEIC there exist two other claim files with the numbers [REDACTED] and [REDACTED] containing similar information. They are not the subject of this appeal because they were not submitted to the respondent or any other company so far.
16. The Claimant states in the imperfect Appeal Form naming the two claim numbers [REDACTED] and [REDACTED], "*the insured person was not me, [REDACTED], it was my father [REDACTED]. He changed his name to [REDACTED] in the US. His last name could have been spelled [REDACTED] on the policy.*" In the 'perfected' Appeal Form received on 18th September 2003, the Claimant writes, "*my father [REDACTED] was a director of the [REDACTED] in Novi Sad, Yugoslavia. Headquarter were in Beograd. All policies were reinsured with the [REDACTED]. The company is still in existence. My father and his brother [REDACTED] held the position of director thru 1920's til 1941. In 1941 the Hungarian army marched into Yugoslavia. They confiscated our 2 automobiles, our house. My father was replaced by a Hungarian national. My uncle [REDACTED] was killed with his whole family. We moved to Budapest in 1942. All documents were lost. I am positive that my father and his brother had life ins. Policies. I am certain that the [REDACTED] would be the only place where the insurance papers could be located.*"
17. Further comments are made by the Claimant in a statement received on 24th October 2003. Repeating his assertions that his father and his uncle had a life insurance policy he states, "*I remember that his Insurance company was reinsured with the [REDACTED], which is still in existence and that was all I remember. My father was a very conscientious man. It is totally inconceivable to me that he wouldn't have purchased a life Insurance policy for his family The same applies for my uncle [REDACTED] who was assistant Director in the same Company. He was killed by the Hungarian Nazis with the rest of his family January 23, 1942. In the Novi Sad Massacre. I am his only surviving heir. Uncle [REDACTED] had only one child her name was [REDACTED] who was also killed with my father's all family' so as I said I am the only heir*".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. In the decision letter dated 25th January 2002 which later was confirmed by the letters dated 18th March and 14th October 2003 [REDACTED] identifies the Appellant, his father and his uncle [REDACTED] and states, "*there are no entries corresponding to the data of your enquiry in our register. Since this register is complete, this means that there exists no contractual relationship with [REDACTED] or any company subsequently purchased by [REDACTED]. In accordance with the rules of the International Commission, [REDACTED] can only make payment when there exists some evidence that a contract*

may have existed. Unfortunately, the information that you provided to us does not confirm this fact, and we are unable to offer you any form of payment”.

THE ISSUES FOR DETERMINATION

19. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), for the purpose of the appeals procedure to consolidate claim numbers [REDACTED] and [REDACTED]. They were denied by the same decision letter and are appealed in one appeal form. They are “*related appeals*” submitted by the same claimant but relating to different policies, namely a life insurance policy and a non-life insurance policy.
20. The main 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), 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 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 (17.2.1). As far as a possible non-life insurance contract is concerned this claim is eligible pursuant to section 2 (2) of the Agreement and Section 1.3 of the Appeal Guidelines (Annex E).
21. 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 is not able to submit any documentary evidence in support of the claim, the Appellant’s assertion 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 German company.
22. On the basis of the Appellant’s statements and all further information obtained in the claim and appeal procedures the Appeals Panel is not satisfied that the Appellant has made it “plausible” in the sense of the Agreement described above that insurance policies issued by the Respondent existed. Neither the Respondent nor ICHEIC when processing the claim found a research match with regard to the relevant names in their different spellings on their databases. The Appellant himself did not assert that the policies were bought from “[REDACTED]” but states himself that his father either took out insurance policies at “[REDACTED] in Munich, Germany” or at “[REDACTED]” which had its insurance policies “*reinsured with the [REDACTED] in Munich*”. Neither “[REDACTED]” nor “[REDACTED]” are or have been subsidiaries of [REDACTED]. Furthermore, even if a reinsurance existed this normally would not lead to a direct claim against the reinsuring company.
23. Whether in this case (where there is some possibility that one or more policies existed but no match for a specific insurance company could be found) a humanitarian payment might be considered as a matter for the appropriate ICHEIC body to decide as soon as all related claims are closed.

Appellant: [REDACTED] Claim Nos.: [REDACTED] [REDACTED] Appeal No.: [REDACTED]

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 26th day of January 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member