

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] 1914 in Doronoi, Romania.
2. The Respondent is [REDACTED] as the legal successor to “[REDACTED]”
3. The Appellant commenced employment as an accountant at “[REDACTED]” on 5th December 1934. By letter dated 21st October 1940 “[REDACTED]” informed the

Appellant, who is Jewish and a Holocaust victim, that it was terminating the contract of employment pursuant to the then current legislation (the Romanian Law No. 3361 published on 5th October 1940), because he was Jewish.

4. On 23rd May 2002 the Appellant submitted a Claim Form signed on 1st May 2002 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims salary and pension benefits for the period between October 1941 and October 1945.
5. The Claim was treated as an unpaid insurance claim by the ICHEIC and submitted to [REDACTED], which denied it by letter to the Appellant dated 17th March 2003.
6. The Appellant submitted an Appeal to the Appeals Office dated 12th April 2003.
7. 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 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 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.
8. The Appeal Office requested the Appellant by letter dated 18th June 2003 to sign an amended Appeal Form.
9. On 18th July 2003 the Appeals Office received the amended Appeal Form in which the Appellant repeated his reasons for appealing the decision of [REDACTED], as earlier set out in the imperfect Appeal Form.
10. The Appeals Office sent the new Appeal Form with the reasons for appeal to [REDACTED] on the same day.
11. [REDACTED] responded in a letter dated 13th August 2003. It repeated the general reasons it had set out before and added for the first time the following remark: *“Moreover, we wish to underline that this claim appears to fall well out of the ICHEC scope, as it has been submitted ‘for the salary from 1940 [...] to 1945’ (3.3 of the claim form), rather than for any insurance policy”*.
12. In a letter dated 26th August 2003 the Appeals Office provided a copy of this letter to the Appellant. The Office further 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.
13. No request for an oral hearing has been received from either party. The Appeal proceeds on a “documents only” basis.
14. 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

15. The Appellant submitted the following information about his Claim: *“My claim is for the salary from 1940 when I was fired being Jewish til 1945 Oct. when I was reinstated, plus the pensie accumulated for the whole period I was an employee of the company Dec 1934 to Oct. 1949.”* Again in answer to Question 5 of the Claim Form relating to the ‘insurance policy’ and type of insurance policy the Appellant writes: *“salary for 4 years and the pensie accumulated from 1934 to 1949.”* In using the ICHEIC claim form for unpaid insurance claims the claimant made reference to questions relating to an insurance contract but didn’t give information about a specific insurance policy.
16. In the Appeal Form the Appellant sets out the reasons for his Appeal as follows: *“The insurance company rejected my claim on the fact that the archives related to their branches and subsidiaries from Eastern Europe could not be found any more. I consider that this is not a good reason for rejection, because the documents and informations submitted with my claim were proof enough that the claim is real and I am entitled to compensation.”* In the Claims procedure the Appellant has - besides the letter dated 21st October 1940 already mentioned above – produced the following documents:
 - a) a document from the Personal Department of “[REDACTED]” dated 11th October 1944;
 - b) a letter from “[REDACTED]” dated 3rd October 1949 stating that the Appellant had been employed by the company from 5th December 1934 until 12th September 1949; and
 - c) a letter issued by the Romanian Ministry of Finance dated 19th January 1962 which provides dates and positions held by the Appellant from 1927 onwards.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. The Claim Form was treated by the ICHEIC as an unpaid insurance claim and submitted to [REDACTED]. In its decision letter dated 17th March 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”*. It informed him 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”*. Only in its answer to the appeal dated 13th August 2003 did [REDACTED] add for the first time: *“Moreover, we wish to underline that this claim appears to fall well out of the ICHEC scope, as it has been submitted ‘for the salary from 1940 [...] to 1945’ (3.3 of the claim form), rather than for any insurance policy”*.

THE ISSUES OF DETERMINATION

18. The sole issues for determination in this Appeal are whether a claim for salary and pension is within the scope of the Agreement and whether, accordingly, the Appeals Panel has jurisdiction over the issues raised by this Appeal.
19. The Agreement Concerning Holocaust Era Insurance Claims dated 16th October 2002, under which the Appeals Panel functions, deals only with unpaid insurance claims, not with other restitution matters. This is apparent not only from the title of the Agreement but also from the introductory “clauses” and other sections of the Agreement and its Annexes cited below.
20. In Section 1 of the Agreement (“*Scope of the Agreement*”) the parties of the Agreement have agreed to work together in a close and trustful cooperation in order
 - (i) to compensate unpaid or confiscated and not otherwise compensated insurance policies of German insurance companies;
21. Section 2 of the Agreement clearly defines the eligible claims as insurance claims. Section 2 (1) provides that a claim concerning a life insurance policy is eligible for compensation under certain circumstances, which are described in this Section; in Section 2 (2) the conditions for the compensation of a claim concerning non-life insurance are described.
22. Similarly, the Appeal Guidelines (“*Scope of these Guidelines*”) according to Section 1, apply only to appeals of decisions on life insurance policies (1.2). In reaching decisions on appeals of decisions on non-life insurance policies, the Appeals Panel applies the rules set out in Section 2 (2) of the Agreement and in other respects follows these Guidelines to the extent possible, making adjustments as required.

Neither the Agreement nor the Appeal Guidelines (Annex E of the Agreement) covers the regulation of “non-insurance-claims” of the type for which the Appellant is now making a claim. His claim concerns salary and pension benefits, not an insurance contract. That his claim is against a former employer, which was an insurance company, does not convert his claim for salary and pension into a claim based on an insurance contract.

23. The decision made by [REDACTED] on the specific request made by Appellant, cannot be interpreted as relating to any claim for past salary and pension benefits. It simply represents a denial of the claim on the ground that the Claim does not relate to an insurance contract, the only type of claim that is cognisable under the Agreement and by the Appeals Panel. For this reason, the Appeals Panel, lacks the authority to make any ruling on the merits of Appellant’s claim for salary or pension benefits.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The Appeal is dismissed.

Dated this 17th day of October 2003

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member