

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], née [REDACTED], born on [REDACTED] 1924 in Vinitsa (Ukraine). She is the niece of [REDACTED], who was born in [REDACTED] 1881 in Jurbakas (Memel, later Lithuania) and died on 21st December 1939 in London. [REDACTED] was married to [REDACTED], née [REDACTED], who was born on [REDACTED] 1897 in Krakow (former Austria, later Poland) and died in September 1966 in London. [REDACTED] and [REDACTED] had a son, [REDACTED] who was born on [REDACTED] 1923 in Königsberg (Germany). On 5th August 1952 he changed his name from [REDACTED] to [REDACTED].
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that an unnamed company issued policies of life insurance to her uncle.
4. The ICHEIC submitted the claim to the [REDACTED] companies and to the German companies.
5. In its decision letter dated 3rd February 2003 [REDACTED] informed the Appellant that it had checked its central register on the basis of the names of her uncle, his wife and their son and that there were no entries for [REDACTED] and [REDACTED]. [REDACTED] further stated: *“please note that your cousin Mr [REDACTED], who changed his name to Mr [REDACTED], had already filed a claim for a life insurance policy of his father and your uncle Mr [REDACTED]. Our research for Mr [REDACTED]’s claim revealed that Mr [REDACTED] had taken out the life insurance policies # [REDACTED] and # [REDACTED] with [REDACTED]. In a declaration of assets filed out by [REDACTED] in January 1941 both contracts were listed with their value and declared as matured due to death of your uncle. The sum insured could not be paid out to the beneficiary, your aunt Mrs [REDACTED], because she had left Germany. We strongly assumed that the sum insured had – due to legal requirements – to be paid out to the authorities of the Third Reich. Therefore Mr [REDACTED]’s claim was eligible for compensation in the context of the ICHEIC and the German Foundation ‘Remembrance, Responsibility and Future’. We offered Mr [REDACTED] a payment for his father’s life insurance policies. This offer was calculated according to the ICHEIC Valuation Guidelines. Since Mr [REDACTED] accepted this offer, we paid the offered sum out to him in 2002. Mr [REDACTED] agreed to share the payment with other entitled claimants. According to the ICHEIC succession guidelines, Mr [REDACTED] is – as Mr Abraham [REDACTED]’s son – entitled to the payment. However, you – as Mr [REDACTED]’s niece – are according to the Succession Guidelines not entitled to the payment. Our intent is – in accordance with the guidelines of the International Commission – to compensate life insurance claims that have remained unsettled so far. However, this does not apply to Mr [REDACTED]’s life insurance policies as the policies were compensated in the course of ICHEIC.”*
6. The Appellant submitted an appeal to the Appeals Office dated 10th 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 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.

8. The Appeals Office requested the Appellant by letter dated 24th July 2003 to sign an amended Appeal Form.
9. On 11th September 2003 the Appeals Office received the new Appeal Form, which is dated 9th August 2003 and mailed a copy of it to the Respondent.
10. [REDACTED] responded in a letter dated 9th October 2003 and, claiming that the appeal was not filed in time, requested the Appeals Panel for reasons it had set out before “to *reject the appeal submitted with respect to this claim and to confirm our decision on it*”.
11. 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.
12. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
13. 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

14. The Appellant has submitted the following information relating to the claim for the proceeds of a life insurance policy.
 - a) In the Claim Form, the Appellant does not identify the company that issued an insurance policy.
 - b) She states that the policy was a life insurance policy, but does not provide any specific details regarding the policy number, currency, date of issue or date of maturity.
 - c) She states that the policyholder and insured person were her uncle, [REDACTED] born 1881, and the beneficiary was [REDACTED] (the wife of the policyholder). She states that the policyholder resided in Lithuania.
 - d) In answer to question 11 concerning ‘further information’ the Appellant writes, “*my uncle [REDACTED] with his family live in Kaunas. He had wife [REDACTED] and son [REDACTED] 1923 birth. Possible [REDACTED] was beneficiary also.*”
 - e) In answer to question 6.15 and 8.14 the Appellant denies knowing any other living heir of the policyholder or the beneficiary.
15. In the reason for grounds of appeal the Appellant writes, “*I have send my claim on 01/08/02. Since then I have not received any papers regarding my case. That’s why I don’t*

know if my claim is processing. Would you please respond to this letter and let me know your decision. I am sending you a copy of the documents I send before. If it is possible next time can you send me all documents in Russian language, because my - illegible - language is very fluent”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. [REDACTED] confirmed that two life insurance policies were issued to [REDACTED] – the Claimant’s uncle – numbered # [REDACTED] and # [REDACTED]. [REDACTED] states that a payment was made for these life insurance policies to the son of the policyholder, [REDACTED] (formerly [REDACTED]), in 2002 and that he agreed to share the payment with other entitled claimants. [REDACTED] as evidence submitted a copy of the release, waiver and agreement signed by [REDACTED]. [REDACTED] states that according to the ICHEIC succession Guidelines the Appellant is not entitled to the payment.

THE ISSUES FOR DETERMINATION

17. The appeal is deemed to be filed within the 120 days time limit. The Appellant first appealed with an “incorrect” appeal form dated 10th April 2003 which she sent to a Netherlands post box where the dates of receipt of such appeal forms were not noted. After she was asked by the Office on 24th July 2003 to sign the correct appeal form she signed the new appeal form on 8th September 2003; this appeal form was received in the Office within the time limit on 11th September 2003.
18. The only issue for determination in this appeal is whether the Appellant is entitled to payment with respect to the two insurance policies issued on the life of her uncle.
19. Pursuant to section 17.2.2 and in accordance with the Agreement, to succeed in an appeal the Appellant must establish, based on the Relaxed Standards of Proof, that it is plausible that she 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).
20. The Panel concludes that she is not entitled for the following reasons:
- a) The Appellant states that beneficiary of the insurance policy were the policyholder’s wife [REDACTED] and possibly also his son [REDACTED] (now called [REDACTED]). The Panel accepts the assertion that [REDACTED] was the beneficiary of the policies disclosed by [REDACTED] research.
 - b) From the claims procedure number [REDACTED] it is known that a research [REDACTED] performed at the State Archive of Berlin revealed a declaration of assets filled out by [REDACTED] in January 1941. Both contracts (numbered [REDACTED] and [REDACTED]) were listed with their value and declared as matured (“bereits fällig”) due to the death of the policyholder [REDACTED]. In these

two life insurance policies [REDACTED] was named beneficiary but, obviously, the sum insured could not be paid out because she had left Germany and German laws of the time did not allow payments to such persons.

- c) Pursuant to section 1 of the Succession Guidelines (Annex C) the Panel applies the succession rules in matters concerning who may succeed to or inherit the benefits of an insurance policy (the “proceeds”) from the person who was entitled to the proceeds at the insured event (the “deceased person”). Here the deceased person (who is the beneficiary [REDACTED]) had a son, [REDACTED]. He was the only son of the [REDACTED]. In terms of the Succession Guidelines this is a “Category A1” case (issue and no spouse) in which all proceeds are distributed to issue as provided in section 2 (i). This rule states: “*Where the proceeds or part of the proceeds are to be divided in accordance with this paragraph 2 (i), those proceeds shall be divided into as many equal shares as there are (a) living members of the nearest generation of issue then living and (b) deceased members of that generation who leave issue then living* “. As [REDACTED] is the only issue of the nearest generation of [REDACTED] living, he is the only person entitled to succeed to the benefits of the two insurance policies taken out by his father [REDACTED]. Moreover, it would appear that Mr. [REDACTED] did receive the proceeds relating to the policies pursuant to a settlement agreement as referenced in paragraph 5 hereunder.
- d) Finally, there is nor evidence or suggestion that [REDACTED] left a written will which would have provided for a different distribution of the insurance proceeds pursuant to Section 3 of the Succession Guidelines.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 18th day of February 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member