

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]

Represented by
[REDACTED],
Advocate and Notary
and [REDACTED],
Rechtsanwalt (Deutschland),
Tel-Aviv, Israel

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] ([REDACTED]), née [REDACTED], born on [REDACTED] 1936 in Ilok (Yugoslavia). She is the granddaughter of [REDACTED], née [REDACTED]. [REDACTED] was born in 1888 in Ilok (at that time Austria-Hungary) and died on 25th January 1939.

2. The Respondent is [REDACTED] as the legal successor of “[REDACTED]”.
3. The Appellant, at that time represented by [REDACTED], submitted a claim dated 29th June 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that “[REDACTED]” and “[REDACTED], filial Novi Sad” issued policies of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 6th February 2003 “*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’s representative, together with a power of attorney signed by the Appellant on 12th March 2003, submitted a statement dated 9th June 2003 that the Appeals Office received on 3rd July 2003, which reads: “*The base of the claim is an insurance contract for [REDACTED] née [REDACTED] that has never been paid. The Claimant, the granddaughter and sole heir of the above mentioned, is of the opinion that her claim has been denied without reason: the attachment to the claim dated 17th July 2001 is an insurance policy issued by the company [REDACTED] from Ilok, Yugoslavia...Neither the murdered grandmother of the claimant, nor their sole daughter [REDACTED] [REDACTED] nor the claimant herself have ever been paid out the proceeds of the insurance or were given a compensation or restitution for that. Summarising it can be said that provably a life insurance contract with [REDACTED] existed which was in force between 1st January 1920 and 8th May 1945 and that this contract became due through death/maturity but that until today no proceeds have been paid*”.
6. As the appeal was filed without using an appeal form, the Appeals Office requested the Appellants representatives in the appeals procedure by telephone call on 28th August 2003, which was confirmed by a fax on the same day, to file the appeal by using an appeal form. An appeal form was transmitted to them by fax that same day.
7. There was no reaction until February 2004. On 16th February 2004 the Appeals Office received a letter dated 4th February 2004 that reads: “*In response to your telephone call with Mrs. [REDACTED] (an employee of the law Office [REDACTED], [REDACTED] and others in Tel Aviv) and your fax dated 28th August 2003 we send attached a new Appeal Form. Regarding section C we refer to the reasons we already forwarded together with the appeal filed on 9th June 2003. As you asked for we also attach a copy of the Appeal Form we received together with the decision letter sent by the company. ...*”. The attached appeal form was dated 8th February 2004.
8. The Appeals Office mailed a copy to the Respondent on 17th February 2004.
9. [REDACTED] responded in a letter dated 3rd March 2004 that reads: “*... Unfortunately, with respect to the claim at issue, no supporting evidence of a contractual relationship has been either provided by the claimant, or found by [REDACTED] or by the ICHEIC. This is the reason why we have to confirm the rejection of this claim, and also the reason for our impossibility to produce to the Panel any document related to the claim at issue, because no such document is available*”.
10. On 23rd March 2004 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.
11. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.

12. 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

13. The Appellant identified the company(ies) that issued the policies as “[REDACTED], Ilok and [REDACTED], filial Novi Sad.” She asserts that the policy was taken out in Ilok, Yugoslavia. In question 3.3 relating to other information, which might support the search, she also writes, “*I. enc. Insurance policy issued in Zagreb 2.1.1930*”. Reference to “*insurance decisions*” and “*documents enclosed*” were also made in other places of the claim form. In section eleven regarding “*further information*” the Appellant’s representative, [REDACTED], writes: “*Mrs [REDACTED] is deaf and more or less dumb and therefore has great difficulties in communicating with her surroundings and is therefore to a great extent, not too familiar with the events surrounding her. Enclosed various documents relating to the original insurance person, Mrs [REDACTED]’s grandmother. I hope all the enclosed will enable you to relate to Mrs [REDACTED]’s claim*”.

14. Three documents, all in Serbian language, were submitted with the claim form:

- a) A copy of a (in the translation of “[REDACTED]” called “*insurance*”) document relating to a loan, signed by [REDACTED] née [REDACTED]. This document states in its first part, “*I, [REDACTED], née [REDACTED], from Ilok hereby invest into a mortgage all real estate, in particular the land registered under no. [REDACTED] in the municipality of Ilok in order to insure the loan which was approved to me by the Novi Sad branch of the Novi Sad company Serbian bank d.d in Zagreb for the amount of 25,000 dinars, in letters twenty five thousand...*”.
- b) A copy of a decision dated 2nd January 1930 from the district of Ilok. This states in the English translation: “*On the basis of the “insurance” [quotation marks added out of the reason above] documents for a loan dated 2/1/1930, the right to mortgage the real estate of [REDACTED] née [REDACTED], from Ilok is hereby allowed to be recorded as well as the right to own and exploit the products of the land registered under the number [REDACTED] in the municipality of Ilok, against the value of the main policy to the amount of Dinars 25,000 with 8% interest and for the possible costs to the maximum of 8000 Dinars to the benefit of the Serbian bank d.d in Zagreb, branch of Novi Sad. The notification remains at the land registry bureau. The application is entered in the register...*”.
- c) A copy of a hand-written document dated 14th January 1930, which in the translation also mentions “*an “insurance” [quotation marks added out of the reasons above] document for a loan*”, referring apparently to the document quoted sub a).

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. In the decision letter issued on 6th February 2003 [REDACTED] it writes, “...*Within the German Foundation framework and according to the ICHEIC procedures, we have undertaken that, where there is evidence of an unpaid policy relating to a Holocaust victim and issued y one of [REDACTED]’s former independent Branch Offices or subsidiaries in Eastern Europe, we will pay out on such policy in accordance with the German Foundation and ICHEIC valuation standards. We have undertaken to do this exclusively on humanitarian grounds, even though [REDACTED] has no legal obligation with respect to such policies, because all our branches and subsidiaries in Eastern Europe were expropriated after the war. 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. Unfortunately we have to inform you 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*”.
16. Further comments are made by the Respondent in its letter of 3rd March 2004.

THE ISSUES FOR DETERMINATION

17. The main issue for determination in this appeal is whether the appeal was filed, pursuant to section 4 (3) of the afore-mentioned Agreement (see above paragraph 12) and its Annex E (The Appeal Guidelines), within the time line of 120 days.

This is not the case out of the following reasons:

- a) Pursuant to section 7.2 of the Appeal Guidelines a Claimant wishing to file an appeal shall sign the Appeal Form, which was sent to the Appellant together with the Respondent’s decision letter. However, the appeal, dated 9th June 2003 and received in the Appeals Office on 3rd July 2003, was filed without using this appeal form and also did not contain the declarations as required in this appeal form.
- b) In addition, there are certain doubts whether this first (“*incomplete*”) appeal was filed in time. Between the date of issue of the decision letter, which was 6th February 2003, and the date of (first) receipt of the appeal in the Appeals Office, which was 3rd July 2003, are 148 days. Since, however, this first “appeal” was filed by using the address of the International Business Reply Service of TNT in Rotterdam, where no notation of date of receipt was made, a precise determination, as to when the Appeal arrived there, cannot be made. Therefore, this first “appeal” cannot be regarded as outside the 120 days time limit.
- c) After having noticed that no Appeal Form was used by the Appellant the Appeals Office informed the Appellant’s representatives on 28th August 2003 about the situation, confirmed the telephone conversation the same day by fax and added the new

Appeal Form which the Contracting Parties to the Agreement had changed after the Respondent had issued his decision letter.

- d) In spite of the fact that the Appeals Office had sent the “*new*” appeal form on 28th August 2003 and once again had informed the Appellant’s representatives that this appeal form must be signed and returned within 120 days, the appeal was filed only on 4th February 2004 and arrived at the Appeals Office on 16th February 2004. Since the 120 days started running on 28th August 2003 and expired on 29th December 2003 at the latest this is clearly out of the timeline. This timeline is binding for the parties to the appeal as well as for the Appeals Panel.
19. Since the appeal was filed too late and has to be dismissed because of this anyhow, there is no need and no room to deal with the substance of the appeal. Nevertheless it might be of interest for the Appellant that the Appeals Panel is not convinced that the claim were justified. It is not plausible that an insurance contract with the Respondent existed. The documents presented as proof of such an insurance contract do not make reference to an insurance or insurance company. The Serbian word “[REDACTED]” in the caption of the copy of an “insurance” [quotation marks added] document for a loan [see above paragraph 14 a)] and also used in the other documents submitted by the Appellant has two meanings: it can mean “*insurance*” but also “*security*”. In the given case the appropriate translation rather would seem to be “*security*”, signifying that a mortgage right was given as a security for a loan received by a bank; this matches with the content of the documents whereas the other meaning (“*insurance*”) does not.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 8th day of July 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member