

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],
Budapest, Hungary

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 [REDACTED] 1911 in Bajmocska, District of Nyitra (Slovakia). She is represented by her son [REDACTED]. [REDACTED]’s name from her first marriage was [REDACTED]. In the Appeal Form her representative states that the Appellant’s parents were Mr. and Mrs. [REDACTED]. Documents submitted with the claim form reflect that her parents are [REDACTED] and

[REDACTED]. The claim form also states that [REDACTED] was born in Budapest and died in 1944 in Auschwitz.

2. The Respondent is [REDACTED] as the successor of “[REDACTED]”.
3. The Appellant’s representative submitted a claim dated 15th February 2002 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), that “[REDACTED]” issued a policy of life insurance. He repeated this claim in a claim form dated 4th June 2003 and pointed out that his mother, the claimant, is 92 years old and a Holocaust Survivor.
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. On 11th September 2003 the Appellant submitted an appeal to the Appeals Office dated 4th June 2003, which was accompanied by an attachment authorizing her son to represent her in the appeals procedure.
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 or employees, except as provided under Swiss law.
7. The Appeals Office requested the Appellant by letter dated 30th September 2003 to sign an amended Appeal Form.
8. On 6th November 2003 the Appeals Office received the new Appeal Form, which is dated 8th October 2003 and mailed a copy to the Respondent.
9. [REDACTED] responded in a letter dated 2nd December 2003. It asked 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*”.
10. On 12th December 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.
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 has submitted the following information in relation to the claim for the proceeds of a life insurance policy:
- a) The claim forms identify the insurance company that issued the policy as “[REDACTED]”, and stated that the policy was purchased in Budapest, Ujpest, in Hungary. The answer to question 3.3 further states “*Ujpest, offices at [REDACTED] Street.*”
 - b) In Section 5, the policy is identified as a life insurance policy, but no specific policy details are given.
 - c) In Section 6, the policyholder is identified as [REDACTED], the Appellant’s father.
 - d) In Section 7, the insured person is identified as [REDACTED].
 - e) In Section 8, the beneficiary is identified as [REDACTED], née [REDACTED], born on [REDACTED] 1911 (name change stated as being from [REDACTED] to [REDACTED]). The name [REDACTED] is also given with the explanation that this was her name until her ‘*first marriage*’.
 - f) Further information is given in the second claim form. It is stated that the policyholder, the Appellant’s father, was born in Ujpest, Budapest, Hungary. His occupation is given as a tanner and it is stated that he worked at the [REDACTED] until 1944.
 - g) In section 11, concerning ‘*further information*’ the Appellant’s representative writes, “*I received a letter on 14th October 2002 from ICHEIC. Claim No. 000[REDACTED]. In the Second World War 600,000 Hungarian Jews died in the Holocaust. My mother is one of the survivors and I would like her case to be considered out of turn. Please take into consideration that the person in question is 92 years old*”.
14. The Appellant submitted copies of documents about personal status, including a copy of an identity card which reads in an English translation as follows: “*Family name: [REDACTED] – First name: [REDACTED] – Maiden name: [REDACTED] - Place of birth: County Nitra, locality: Bajmocska – Date of birth: [REDACTED] 1911 - ... Mother’s maiden name: [REDACTED] – Father’s name: [REDACTED]*”.
15. In his statement of appeal the Appellant’s representative writes, “*I believe my claim has been wrongfully decided. Considering the reason that my mother- though she is very old – is perfectly fresh minded, remembering absolutely clearly that her parents: Mr and Mrs [REDACTED] were the holders of [REDACTED] policy before the war and she was the beneficiary of the policy. It may be an additional info, that she cannot remember whether the policy was made out of the maiden name: Ms [REDACTED] or her husband’s name Mrs [REDACTED]*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In its decision letter dated 6th February 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 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”.

17. In its letter dated 2nd December 2003, [REDACTED] repeated what it had outlined before and confirmed its decision writing “*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] (in spite of our investigation of all the names mentioned by the Appellant) or by the ICHEIC. This is the reason why we have to confirm the rejection of this claim...*”.

THE ISSUES FOR DETERMINATION

18. The issue for determination in this appeal is whether the Appellant has met her 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. 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 that a policy was issued by the company.
20. The Panel concludes that the Appellant has not established that “[REDACTED]” issued the insurance policy upon which her claim was based. Her evidence lacks the requisite authenticity and particularity. There is no corroborative evidence to support the Appellant’s recollection of the existence of a life insurance policy issued by “[REDACTED]”. The Appellant is only able to state the name of a company and the place at which she claims the life insurance policy was purchased. No additional details are provided, not even the insured sum or the premiums.
21. The lack of adequate corroborative evidence that a life insurance policy was issued makes it unnecessary to resolve the contradictory statement about the identity of her father.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 16th day of March 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member