

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] 1925 in Levice (Czechoslovakia). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1882 in Novy Zamky (Czechoslovakia) and died on 13th June 1944 in the concentration camp at Auschwitz; [REDACTED] was born in 1893 in Novy Zamky (Czechoslovakia) and also died on [REDACTED] 1944 in the concentration camp at Auschwitz.
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim dated 20th October 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that a company she could not name issued policies of life insurance. She stated that the issuing company could have been “[REDACTED], [REDACTED], [REDACTED] or [REDACTED]”, because they were operating at that time in Czechoslovakia.
4. The ICHEIC submitted the claim to [REDACTED], [REDACTED], [REDACTED] and [REDACTED] (re [REDACTED]).
5. [REDACTED], one of the companies named in answer to question 11 as companies operating in Czechoslovakia, identified policies number [REDACTED] and [REDACTED] as policies taken out by the Appellant’s father. [REDACTED], therefore, in May 2002 made an offer to pay a total amount of US\$ 9,706 for these two policies. This amount was paid out on 27th June 2002.
6. [REDACTED], not named by the Claimant but having been sent the claim by ICHEIC, stated in its decision letter dated 29th May 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*”.
7. The Appellant submitted an appeal to the Appeals Office dated 6th June 2003, in which she set out the reasons for the appeal. The Appeals Office received this appeal on 4th September 2003. After having received a copy of the decision letter on 28th October 2003 the office mailed a copy of the appeal to the Respondent.
8. [REDACTED] responded in a letter dated 14th November 2003 and requested 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*”.
9. On 19th November 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.
10. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
11. 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

12. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
 - a) In the Claim Form she does not identify an insurance company, but states that the policy was purchased in Levice, Czechoslovakia. The type of insurance policy is identified as ‘*life insurance*’. The Appellant does not provide any specific details about the policy number, the insured sum, date of issue or date of maturity.

- b) The policyholder is identified as [REDACTED], born on 12th May 1882, who was the Appellant's father. He is also identified as the insured person.
- c) [REDACTED], née [REDACTED] born 1893, the Appellant's mother, is identified as the beneficiary.
- d) In answer to question 11 concerning 'further information' the Appellant writes, "My father [REDACTED] was a self-employed business man and owned a furniture shop in Levice, [REDACTED] and an upholstery service with 10 employees. In those times there were the following insurance companies: [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. I was only a child at that time and for this reason I do not have any information about my father's insurance policy".
13. In the 'reason for appeal of decision' the Appellant writes, "*the following policies issued by [REDACTED] (emphasis added) must be considered:*
1. *policy no. [REDACTED]*
Issued in 1920 in CSSR
Duration: 20 years
Amount: 10,000 CZK crowns + bonus
 2. *policy no. [REDACTED]*
Issued in 1920 in CSSR
Amount: 20,000 CZK Crowns
In 1940 policy was reduced for non payment of the premiums
Sum then insured was 7982 CZK Crowns.
In 1944 policy was in force for this amount.
Both policies were in force during holocaust and are therefore entitled for payment".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. In the final decision letter sent by [REDACTED] dated 29th May 2003, [REDACTED] writes, "*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.*" [REDACTED] concludes, "*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.*"
15. In a letter sent to the Appeals Panel dated 14th November 2003, [REDACTED] writes, "*we would also like to remark that the Appellant clearly states that the alleged policies would have been issued by [REDACTED], which is an insurance company totally independent from [REDACTED].*"

THE ISSUES FOR DETERMINATION

16. The only 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.
17. 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 company.
18. The Panel concludes that the Appellant has not met her burden of proof, that [REDACTED] issued an insurance policy. When trying to identify the company, which may have issued a life insurance policy on the life of her father and when referring to insurance companies at that time operating in Czechoslovakia she did not mention [REDACTED]. The file contains no indication to support the existence of a life insurance policy issued by [REDACTED]. The Appellant only stated the names of companies operating in Czechoslovakia at that time and where the life insurance policy was purchased. Actually, [REDACTED], one of the four companies named in answer to question 11 as companies operating in Czechoslovakia, found a match and identified policies number [REDACTED] and [REDACTED] as policies taken out by the Appellant’s father. [REDACTED], therefore, made an offer to pay a total amount of US\$ 9,706 for these two policies. Thus, the Appellant is correct when claiming that these two policies must be considered; but, as the Respondent acknowledges, although payments had to be made by [REDACTED], it is a totally independent company from [REDACTED].

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 8th day of April 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member
Signing on behalf of all
Members of the Appeals Panel

Abraham J. Gafni
Panel Member