

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

DR. [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 Dr. [REDACTED], born on [REDACTED] 1928 in Cluj (Kolozsvár, Romania). He is the son of [REDACTED], who was born on [REDACTED] 1893 in Singeorgiu de Padure (Austria-Hungary, later Romania) and died on 26th October 1962 in Jerusalem. [REDACTED] was employed from 1st January 1922 until 7th January 1948 at the Cluj General Agency of “[REDACTED]” in Bucharest as General Secretary. From October 1944 until December 1944 he was a forced labourer; in December 1944 he was imprisoned by the Gestapo in Hungary and released on 13th January 1945.

2. The Respondent is [REDACTED] as successor of “[REDACTED]”.
3. The Appellant submitted a claim dated 28th April 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]” issued a policy 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 submitted an appeal to the Appeals Office dated 1st June 2003, in which he set out the reasons for the appeal. This form arrived in the Appeals Office on 14th August 2003.
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 26th August 2003 to sign an amended Appeal Form.
8. On 30th October 2003 the Appeals Office received the new appeal form, which is dated 10th October 2003 and mailed a copy to the Respondent. The claim number, which is quoted on this appeal form is [REDACTED] and should correctly read [REDACTED]. This mistake was caused by an error of the Appeals Office.
9. [REDACTED] responded in a letter dated 25th 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*”.
10. On 26th 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.
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) In the Claim Form he identifies the insurance company as “[REDACTED] Cluj-Kolozsvár subsidiary of [REDACTED]”. He states that the policy was purchased in Cluj, Romania in 1922.
 - b) In response to question 3.3 (“*other information which might support the search*”) the Appellant writes, “*being General Secretary of the [REDACTED], subsidiary of the insurance company [REDACTED], he always had life insurance. He worked in this capacity 1.1.1922 – 7.6.1948*”.
 - c) In section 4, which asks if the Appellant can provide copies of any document substantiating the claim, he writes, “*certificate of 9.06.1960 delivered by the General Director [REDACTED] of the [REDACTED] Insurance Company*”.
 - d) In section 5 the Appellant indicates that the policy in question was a life insurance policy, but does not provide any specific details regarding the policy’s terms.
 - e) In section 6 the Claimant identifies the policyholder as [REDACTED], his father, born 5th March 1893 in “*Singeorgul de Padure, Romania*”.
 - f) In section 7 the Appellant’s father is identified as the insured person.
 - g) In section 8 the Claimant’s father is identified as the beneficiary.
 - h) The questions asking “*Do you know of any other living heirs of the policyholder / insured person(s) / beneficiary ...*” (questions 6.15, 7.14 and 8.14) are answered with “*no*”.
 - i) In section 9 asking for former compensation procedures the box “*no*” is ticked.
 - j) In section 11 concerning ‘*further information*’ the Appellant writes, “*1) enclosed: certificate from the Insurance Company [REDACTED] of 9.06.1960. 2) photocopy of driving licence 3) photocopy of identity card*”.
14. The Appellant submitted a letter in German dated 9th June 1960 sent to his father from [REDACTED], a former General Director of “[REDACTED]”, called [REDACTED] by the Appellant. The letter reads: “*I hereby confirm that you were employed from 1 January 1922 to 7 January 1948 at the Cluj General Agency of [REDACTED] in Bucharest as General Secretary. I give this declaration in my capacity as former Director General of the above-mentioned institution, where I myself was also employed at the Bucharest headquarters until nationalisation of the above-mentioned company.*”

A further paragraph on the bottom of the same letter signed on behalf of [REDACTED] reads “we also confirm that, according to the lists we have, that Mr [REDACTED] was employed during the above-mentioned period in Cluj (Rumania) in the services of [REDACTED], which company belonged to our group”.

15. On the (old) appeal form, which was received by the Appeals Office on 14 August 2003, the Appellant writes as the reason for his appeal “my father [REDACTED] was employed in [REDACTED] who is the sister company of [REDACTED] from 1 January 1922 till June 7, 1948 as General Secretary. He had life insurance by the company. Included is a letter from the general director [REDACTED]”.
16. A further submission was received from the Claimant on 5th January 2004 in which he writes, “I received your letter dated 26 Nov 2003. My answer is that my father, [REDACTED], was employed as the first secretary of ‘[REDACTED]’ which is sister insurance of ‘[REDACTED]’. Anexed was before the letter from Director Mr [REDACTED] who confirmed that my father was working from 1 Jan 1922 till 1 June 1948 and had life insurance. I don’t know why in two and a half year you cannot resolve this case”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. The Respondent states in the final decision letter dated 6th February 2003, “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”. The Respondent concludes, “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”.
18. Furthermore, the Respondent states in a letter dated 25th November 2003 in response to the appeals process, “no supporting evidence of a contractual relationship has been either proved by the Appellant, 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. On the other hand, while we do not question the employment relationship of the Appellant’s father with [REDACTED], this relationship cannot be construed as implying the existence of any supposed insurance contract”.

THE ISSUES FOR DETERMINATION

19. The main issue for determination in this appeal is whether the Appellant has met his 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.
20. The Appellant has succeeded in establishing with sufficient plausibility that between 1st January 1920 and 8th May 1945 a life insurance issued by “[REDACTED]” existed. There is no doubt that the Appellant’s father is a Holocaust victim and that the Appellant as the only living heir is entitled to the proceeds of the insurance policy.
21. 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.
22. The Panel has concluded that the Appellant has met his burden of proof in that his evidence has the requisite authenticity and particularity and, in addition, is to an important extent backed by written evidence. The Appellant’s father was, as is proven by written evidence and is explicitly undisputed by Respondent, General Secretary of the Cluj branch of “[REDACTED]” for more than a quarter century. While it is, contrary to the statement of the Appellant dated 5th January 2004, not true that the letter written by the former Director General [REDACTED] on 9th June 1960 (see above paragraph 16) not only confirmed his activities for the company but also the existence of a life insurance policy, it is, and this is the decisive point for the Panel, very unlikely and contrary to all experience that such a person would not have a life insurance contract with the insurance company by which he was employed. Under the given circumstances, the long lasting employment with the insurance company makes sufficiently plausible the existence of such a policy. The Respondent limited itself to saying that the employment of the Appellant’s father “*cannot be construed as implying the existence of any supposed insurance contract*”. This might be true in a literal sense, but it is not enough to disprove the plausibility of the existence of an insurance contract between someone who for many years was employed by an insurance company selling life insurance, a point not even discussed by the Respondent.

VALUATION

23. In determining the present value of the policy, the existence of which was established under the relaxed standards of proof, the Appeals Panel had, since the value of the policy cannot otherwise be determined, to calculate according to the rules laid down in the Valuation Guidelines (Annex D of the Agreement). Under section 7.1 of the Valuation Guidelines where a claimant satisfies ... that a policy existed, which was unpaid, and names the company that issued the policy, but the amount of the policy – as it is the case here - cannot be determined, the offer of the company shall be based on a multiple of three times (3X) the average value for policies in the respective country (shown in Schedule 3 of the said Annex). According to the same provision the appropriate multipliers then have to be applied but the payment offered shall not exceed US\$ 6,000 per policy (capped amount).

24. For Policies issued in Romania between 1920 and 1945 the average value set out in Schedule 3 of the said Annex is Lei 60,638, which has, according to Schedule 3 and section 7.1 of the said Annex, to be multiplied by 3 to get the base value of Lei 181,914.
25. This value in Lei corresponds according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.00509 laid down in Step 1 of Schedule 2 of the said Annex to the value of US\$ 925.94226.
26. According to Step 2 of Schedule 2 of the said Annex this dollar value has to be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$ 10,450.18434636 by end 2000.
27. According to Step 3 of Schedule 2 of the said Annex additions have to be made to the dollar value up to the end of 2000 for the subsequent years. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC which had been consulted with the Foundation and the [REDACTED] as the other parties of the Agreement (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 %; 2004 %: 5.0 % according to the month, in which the decision is made, plus two months, i.e. 2/12 of 5 %), which leads to the amount of US\$ 11,014.49430106344 for 2001, US\$ 11,565.219016116612 for 2002, US\$ 12,114.56691938215107 for 2003 and US\$ 12,417.43109236670484675 for 2004.
28. This total amount of US\$ 12,417.43 of the policy in question is, according to section 7.1 of the said Annex, subject to a capped amount of US\$ 6,000. The Respondent therefore has to pay the amount of US\$ 6,000.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

1. The appeal succeeds.
2. [REDACTED] shall pay the Appellant the sum of US\$ 6,000 no later than the last day of the second month following the month of the decision, which is 30th June 2004.

Dated this 1st 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