

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] 1928 in Budapest (Hungary). She is the daughter of Dr. [REDACTED] and [REDACTED], née [REDACTED]. Dr. [REDACTED], a physician, was born on [REDACTED] 1898 in Szárazd (former Austria-Hungary) and died in the concentration camp at Auschwitz-Birkenau, presumably in 1944. In a verdict dated [REDACTED] 1948 the county court of Gyönk declared him as legally dead and stated his date of death as 15th August 1944.
2. The Respondent is [REDACTED] as legal successor of “[REDACTED]”.

3. The Appellant submitted a claim dated 28th January 2002 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that “[REDACTED]” issued a policy of assets insurance for Dr. [REDACTED]’s house at [REDACTED] in Gyöngy.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 27th March 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, which was accompanied by a statement setting out the reasons for the appeal.
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 3rd October 2003 the Appeals Office received the new Appeal Form, which is dated 1st September 2003, and sent a copy of this to the Respondent.
9. [REDACTED] responded in a letter dated 30th October 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 3rd 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.
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 an asset insurance policy.
- a) In the translation of the Hungarian Claim Form the Appellant identifies “[REDACTED]” as the company that issued a policy.
 - b) In section 4 relating to ‘documents’ the Appellant writes “*publication by the local authority of Tolna from its archives and records*”.
 - c) In section 5 the policy is described as having been an “*assets (house)*” policy and the Appellant writes, “*House at [REDACTED] in Gyönk (district Tolna)*”. No further details are provided by the Appellant concerning the policy number, sum insured, date of issue or date of maturity.
 - d) In section 6 the policyholder is identified as Dr. [REDACTED], the Appellant’s father, who was born on 17th May 1893 in Szárazd, Hungary and who died in 1944 Birkenau, Auschwitz. He was a ‘*district medical practitioner*’.
 - e) In section 7 the insured person is also identified as Dr. [REDACTED].
 - f) In section 8 the beneficiary is named as [REDACTED], née [REDACTED]. In answer to Q.8.13 concerning “*other living heirs of the beneficiary*” the Appellant writes, “*his children and grandchildren*”.
 - g) In answer to question 9 concerning “*compensation*” the Appellant answers ‘yes’ and writes, “*compensation annuity number: [REDACTED]*”.
 - h) In answer to question 11 regarding “*further information*” the Appellant writes, “*Dr. [REDACTED] worked as district medical practitioner in Gyönk between 1924 and 1944. The surgery, all its equipment and installation, including [REDACTED] x-ray equipment were insured. This asset insurance also included insurance for the 6-roomed house which was attached to the surgery and to all its contents*”.
14. With the claim form the Appellant submitted a Hungarian document, which according to the English translation, is from the county court of Gyönk and declares the death of [REDACTED] in Auschwitz on 15th August 1944. Furthermore, she submitted a copy of a ‘file cover’ from the archives of Szekszárd about details of where cash, deposit books, cheque receipts, bonds and other securities were placed.
15. In her reason for appeal of decision, submitted with her appeal form, the Appellant writes, “*In 1945, I could not be aware of the Hungarian economic situation. My father had been paying 100 pengos (silver florins) monthly for insurance policies between 1928 –1945, which I could not have validated. To my knowledge in 1938 the ‘[REDACTED]’ ([REDACTED]) and the ‘[REDACTED]’ ([REDACTED]) both were an affiliation of the ‘[REDACTED]’ ([REDACTED]), which that time had [REDACTED] stock. In the end of the 1940s the Bank was so called ‘[REDACTED]’ ([REDACTED]). An article dealing with this bank problem also showed up at the ‘Oak and Timbre’ English newspaper. It can be found at the archives: [REDACTED]. I hope that the [REDACTED]’s humanitarian commission will attain to back at least only a fragment of our appropriated assets from the remaining bank accounts*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In its final decision letter, dated 27th March 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 could be found, and we are therefore declining your claim”*.
17. Furthermore in a letter issued by [REDACTED] in response to the Appeal Process, dated 30th October 2003, [REDACTED] writes, *“in any case, we wish to remark that this claim seems to fall well out of the ICHEIC scope, as the Appellant clearly refers to ‘bank accounts’ when stating her grounds for the appeal”*.

THE ISSUES FOR DETERMINATION

18. The main 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 have to be applied according to section 2 (2) of the Agreement and section 1.3 of the Appeal Guidelines as the Appellant claimed the proceeds of a non-life insurance policy). Section 17 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 in the circumstances of this case that a policy was issued by the company.
20. The Panel concludes that the Appellant has not met her burden of proof, that it was “[REDACTED]”, which issued an asset insurance policy. Her evidence lacks the requisite authenticity and particularity. There is no corroborative evidence (such as letters or statements from third parties, previous attempts to get information or to collect proceeds) to

support the Appellant’s recollection of the existence of an insurance policy issued by “[REDACTED]”. The Appellant’s statement that her father bought an asset insurance policy for his surgery, its equipment and an attached 6-roomed-house from “[REDACTED]” is essentially all the information she is able to supply. In addition, she states in her reasons for appeal that her father paid 100 Pengö (silver florins) monthly for insurance policies between 1928 and 1945. Beside her own statement, there is no additional proof that a policy with the Respondent existed. The copies she provided (one copy of a file cover from the archives of Szekszárd about details of where cash, deposit books, cheque receipts, bonds and other securities were placed and one copy a [REDACTED] certificate) are not relevant to prove the existence of an insurance policy. The Appellant also was not able to establish prior attempts to contact the insurance company to ascertain whether a policy existed or to cash the proceeds. Therefore, the Appeals Panel – even by applying the Relaxed Standards of Proof – was not able to conclude that the Appellant’s burden of proof is met.

21. The Appellant also states in her reasons for appeal that “*I hope that the [REDACTED]’s humanitarian commission will attain to give back at least only a fragment of our appropriated assets from the remaining **bank accounts** (emphasis added)*”. It may be that the Appellant is claiming for money she believes was credited to a bank account. Such a claim is not within the jurisdiction of the Appeals Panel.
22. Since the Appeals Panel regards it as plausible that an insurance policy existed, even if it is not sure with which company, the Panel concludes that the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures. The Panel will inform the ICHEIC accordingly.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 1st day of August 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member