

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]

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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] 1920 in Breslau (then Germany, later Wrocław, Poland). She is the daughter of [REDACTED] and

[REDACTED]. [REDACTED] was born on [REDACTED] 1878 in Kreuzburg (Silesia, then Germany) and died on 27th July 1964 in West Hartford, Connecticut (United States). He was a free-lance agent for several insurance companies including, among others, for the [REDACTED], until he was dismissed on 1st October 1938 for racial reasons after 22 years of service without notice and without compensation. After 9th November 1938 (the so called “Kristallnacht”) he was deported to the concentration camp at Buchenwald where he was imprisoned for a year. Later he was a slave labourer in several concentration camps until the Red Army freed him in 1945.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 17th May 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), by which she claims that “[REDACTED]” issued policies of life, fire and theft insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 16th October 2003 “*Regrettably however, we have to confirm again that there was no trace of an insurance policy of your father, neither in the files of the restitution authorities in Darmstadt nor in our archives. ... Please note that our rejection of your claim is provisional only, pending completion of the independent audits of member companies’ claims handling operations being undertaken for the ICHEIC. However, while we cannot predict the outcome of the independent audits, we do not expect it to change our findings on completed investigations, such as your father’s policies, in any but exceptional cases. We will write to you again as soon as the completion of the independent audit process allows us a final decision with respect to your claim*”. Enclosed to this letter were among other documents the Appeal Guidelines and an Appeal Form.
5. The Appellant submitted an appeal dated 11th November 2003, which the Appeals Office received on 20th November 2003.
6. The Appeals Office mailed a copy of it to the Respondent on 10th December 2003.
7. On 13th January 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.
8. On 26th January 2004 the Appeals Office received a letter from the Appellant dated 20th January 2004 with a request for an oral hearing. On 27th January 2004 the Appeals Office forwarded a copy to the Respondent.
9. On 15th February 2004 the Appeals Panel decided that there would be an oral hearing of the Appellant by setting up a telephone conference call on 15th March 2004. The Appeals Office informed both parties about this decision by letter dated the same day.
10. The oral hearing took place on 15th March 2004.
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 submitted a claims form in which she gives the following information:

- b) She asserts that “[REDACTED]” was the insurance company that issued the policies. In addition to providing the name of the company in question 3.1 she writes “*feuer [REDACTED], Breslau Schlesien, [REDACTED]*”.
- c) She states that the policies were purchased in Breslau, Germany and in answer to question 3.3 asking for information to support the search she writes, “*my father was an ‘insurance agent’ for the above-mentioned company*”.
- d) In section four regarding documents which would substantiate the claim she writes, “*my father lost everything, when he went to concentration camp (Buchenwald) and our city was bombed out. Enclosed copies of some documents which indicate that my father, as an Insurance agent, insured us for everything, life, theft, fire, etc.*”
- e) In section five which asks “*What do you know about the policy?*” the Appellant identifies the policies as life, fire and theft insurance “*as far as I can remember*” and also has circled ‘*education*’. She is unable to provide the number of the policies, but states that they were issued in German Mark for an unknown sum between 1930 and 1940s.
- f) In section six the policyholder is identified as [REDACTED], the Appellant’s father. It is stated that he was an insurance agent for the ‘[REDACTED]’ and was dismissed in 1938 because he was a Jew.
- g) The insured person is identified in section seven as [REDACTED] (now [REDACTED]) [REDACTED] (now [REDACTED]).
- h) In section eight the beneficiary is also identified as the Appellant.
- i) In section nine concerning the issue of compensation the Appellant writes, “*I, [REDACTED], receive a pension from the Wiedergutmachung für Gesundheit (health) and Reichsversicherung (social-security). I didn’t know how to go about it in reference to the Insurance claims of my father. I never received any restitution for the Insurance loss*”.
- j) In section eleven regarding ‘further information’ the Appellant writes, “*enclosed are 5 documents (copies) which hopefully will be helpful to you, in processing this claim? This is all, what I could find*”.

13. Submitted with the claim form was a partial copy of an application for compensation, signed by [REDACTED] on 11th March 1950. In this form his profession is given as “*agent for [REDACTED], Breslau*” at “[REDACTED]” in Breslau, Germany. It is stated that he was dismissed from his position on 1st October 1938 for racial reasons. He also states, “*I*

was dismissed after having worked for 22 years without any reason and no compensation on racist grounds...” He is applying for financial compensation for losses in the years 1938 to 1945 which amount to DM 28,000.

14. In her statement for grounds of appeal, received by the Appeals Office on 20th November 2003, the Appellant writes, *“I appeal herewith the decision of ‘[REDACTED]’ mainly, because, they consider my application ‘nicht verfolgungsbedingt’, which is not justified in my opinion. My father and his family was taken to Concentration- Camps, lost our home, health, money and everything else, rarely survived, and the Authorities call this ‘nicht verfolgungsbedingt’?! My father, [REDACTED] was employed from 1921 to 1938 as far as I remember? I know for fact, that he lost his job in 1938, because he was a JEW. Shortly after that, he was taken to BUCHENWALD. The above-mentioned Insurance Co. [REDACTED] mentions that my father did not take out any insurances for himself and his family, except a life insurance policy issued by the [REDACTED]. My father always told us, that he insured us in every possible way, what seems logical for an insurance agent!!! We started a claim already in 1952-1964, which the Regierungspräsident of Darmstadt denied in 1963, via letter to my lawyer [REDACTED] in Seligenstadt, who since has passed away! They quoted that this application was not ‘verfolgungsbedingt!’ I think, that this decision was also wrong, and I gave up that time to pursue the case. Since 1965 a lot of new laws had been established. In October 2002 a German law ‘Remembrance Responsibility and Future was founded, and everybody, who was a victim of the Nazi Regime should receive some restitution for all the losses he suffered...”.*

15. In the oral hearing the Appellant stated with respect to her father’s insurance policies *“ ... I am sure, I was a little girl, but I remember that he (her father) insured the whole family from top to bottom so to say that you should have no problems in case of he passed away. So I presume that he had a lot of insurances, I never saw it, I was a little girl, but that was his business. ... I attached a paper from 1953, where my mother had written to the Regierungspräsident in Darmstadt that her husband lost the job and all that and that he tried to get something at that time. But they told us there was another insurance involved, which is the ‘[REDACTED]’ or something. I don’t know about that but they found it could have been that they had another life insurance or whatever insurance with this company. ... “.* Giving comments on the result of a compensation procedure that took place in the 1950’s and 1960’s she further stated that she *“cannot imagine that my dad paid the last premiums – at least from 1943 to 1945 when he was incarcerated in the forced labour – that he sent premiums, that he paid it, because we did not have any money any more, we were chased away from our house and I cannot imagine that he paid, unless he had a friend or somebody who did this for him I cannot imagine that he paid the premiums in these last two years, if not three years”.* Finally, she asked commenting the statement of the Respondent that her father had no life insurance with the [REDACTED] *“But what about the other like fire and theft, because he kept talking that he had several insurances. I cannot imagine that a man who is an insurance agent would not insure his family as most as he could, I mean in all different region. My dad taught me, he said, when you grow up, you insure yourself for everything, fire, theft, life, because that was his attitude. That was why he became an insurance agent”.*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In the decision letter issued by the Respondent dated 16th October 2003 it writes, “...we have investigated our own archives again. Regrettably however, we have to confirm again that there was no trace of an insurance policy of your father, neither in the files of the restitution authorities in Darmstadt nor in our archives. Your claim implies that your father was insured by the [REDACTED] because of his occupation as an insurance agent for this company. According to the files of the restitution authorities in 1952 your mother declared that your father had been acting as a free agent for several companies. The correspondence retrieved from these files leads to the conclusion that your father had been working for the [REDACTED] only to a very small extent. Under these circumstances it cannot be excluded and it seems to be more likely that your father had taken out insurance with other companies. This is further supported by the fact (and as seen in the restitution files) that in 1926 he took out a life policy for you with the company ‘[REDACTED]’. We further take it from these files that the policy was still in force and paid during the war time. In any case the pure fact that your father was an agent for the [REDACTED] is not sufficient proof to assume an insurance relationship to our company and to make you eligible for compensation under the rules of the ICHEIC guidelines. We have enclosed the relevant copies of the restitution files for your information. In a separate letter we have suggested to the ICHEIC that your claim will be send as a named claim to the ‘[REDACTED]’ or its successor company and with respect to other possible insurance relations in order to increase your chances, that your father’s policies will be found”.
17. In a coversheet sent to the Appeals Office, dated 16th October 2003, with a copy of the decision letter, the Respondent writes, “we permit ourselves to draw special attention from the remuneration records attached to our letter of rejection. According to these, Mr [REDACTED] worked for several companies as an independent insurance agent. Furthermore, it is apparent from these remuneration records there was an insurance relationship with the [REDACTED] Company. Against this background, we therefore permit ourselves to suggest that you send Mrs. [REDACTED]’s application as a named claim to [REDACTED] or its legal successor, as the case may be, and also as an unnamed claim to all insurance companies in connection with possible further insurance policies”.
18. In its decision letter of 16th October 2003 [REDACTED] submitted documents from the Compensation Authorities of Darmstadt, which, however, do not specify any policy being concluded between the Claimant’s father and the Respondent. The documents are described as follows:
- a) Letter from [REDACTED] dated 3rd December 1952 to the Compensation Authorities of Darmstadt confirming that [REDACTED] acted as an independent agent for the company and was not under a permanent contract. This letter states that his regular commission earnings from the agency’s portfolio would have amounted to RM 400. This information is based on the year 1935. It rejects Mr [REDACTED]’s statements that he had an annual income of RM 5000 with the company.

- b) Letter to the Compensation Authorities of Darmstadt dated 17th January 1953 written by [REDACTED]'s wife, [REDACTED], on his behalf. In this letter she asserts that the annual income of RM 4000 did not solely consist of commission from the [REDACTED] but he also worked for other insurance companies.
- c) Letter from the [REDACTED] dated 21st November 1963 informing the Compensation Authorities of Darmstadt that they have made enquiries with the [REDACTED] in Bonn concerning a life insurance policy for [REDACTED] since he can no longer recall the details of his life insurance policy.
- d) Letter from the Compensation Authorities of Darmstadt, dated 25th August 1964, asking the [REDACTED] if the [REDACTED] has been able to confirm the existence of a life insurance for [REDACTED]. This letter continues, *“should that not be the case, experience shows that finding out whether a life assurance policy has been taken out should not be expected, since an insurance company usually takes three to four months to deal with an inquiry, and in this case, more than eight months have already elapsed.”*
- e) Letter from the [REDACTED] to the Compensation Authorities of Darmstadt dated 16th November 1964 stating that the claim with regard to a life insurance policy for [REDACTED] will not be pursued.
- f) Letter from attorney (Rechtsanwalt) [REDACTED] from Seligenstadt/Hesse to the Compensation Authorities dated 12th February 1963 concerning compensation of [REDACTED]. In this letter it is asserted that a child life insurance policy was taken out with *“[REDACTED]”* for the benefit of [REDACTED]. It is claimed that contributions were paid from 1926 until 1944. The name of the insurance agent is given as [REDACTED] of [REDACTED], Breslau. It is stated that [REDACTED] has no documents, but remembers monthly payments of RM 7 being paid.
- g) Letter from the *“[REDACTED]”* dated 19th March 1963 to the Compensation Authorities of Darmstadt regarding the compensation proceedings of [REDACTED]. In this letter the company states that the contract was not terminated for reasons of persecution, but that contributions were paid until the end of the war. The company states that compensation under the BEG does not come into consideration for this policy.
- h) Letter from the Compensation Authorities of Darmstadt to attorney (Rechtsanwalt) [REDACTED] dated 26th March 1963 regarding the compensation matter of [REDACTED]. This letter informs the lawyer that *“[REDACTED]”* has informed them that the insurance was not prematurely terminated as a result of persecution, but, that premiums were paid until the end of the war; therefore compensation under BEG does not come into consideration. It continues, *“the insurance company has further informed us that it has contacted the Insured, [REDACTED], so that it can check its liability to pay out in the case of this insurance. I shall therefore regard the claim referred to here as having been withdrawn if I fail to hear anything further from you by 1st May 1963.”*

19. The Respondent summarised in the oral hearing the scope of its investigations during the claims procedure. It concluded that the Appellant's father had a contract with "[REDACTED]", which was not for insurance but rather was an agreement establishing a relationship with the insurance company. The Respondent's representatives added that "*at the time when we made our decision to decline Ms. [REDACTED]'s claim we had disclosed the relevant copies of the restitution files for information and in a separate letter we had suggested to the ICHEIC that her claim will be sent as a named claim to the [REDACTED] or its successor company and also with respect to other possible insurance relations. In addition it should be circulated as an unnamed to all companies belonging to the ICHEIC in order to increase her chances that her father's policies will be found. ... But again, we have only found that there was an agency relation to the primary insurance company, the [REDACTED] Fire Insurance company but we have not found any trace or whatsoever that there was an insurance relationship to the life insurance company '[REDACTED] Life'. And there was no agency contract to the '[REDACTED] Life Insurance Company' either*".

THE ISSUES FOR DETERMINATION

20. The first 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.

21. According to Section 1 of the Appeal Guidelines ("*Scope of these Guidelines*") these Guidelines in their entirety apply only to appeals of decisions on life insurance policies (1.2). In reaching decisions on appeals of decision on non-life insurance policies, the Appeals Panel shall apply the rules set out in Section 2 (2) of the Agreement and in other respects shall follow these Guidelines to the extent possible, making adjustments as required.

22. 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.

23. The Panel concludes that the Appellant has not met her burden of proof, that it was [REDACTED], which issued a life insurance policy to her late father. Her evidence lacks the requisite authenticity and particularity. There is no corroborative evidence (such as letters or statements from third parties) to support the Appellant’s recollection of the existence of a life insurance policy issued by the Respondent. On the contrary, the Appellant made it clear throughout the entire claim and appeal procedures that she had no specific recollection that her father took out a life insurance policy with the Respondent. She stated *“I was a little girl, but I remember that he told us that he insured the whole family from top to bottom ... I presume that he had lots of insurances”*. The Panel is – on the other hand – convinced that this statement is true, as far as the existence of a life insurance contract is concerned. The Respondent provided written evidence that the Appellant’s father had a contract with “[REDACTED]”. However, the Respondent is not liable for insurance contracts issued by other companies.
24. The Panel also concludes that the Appellant has not met her burden of proof that there were non-life insurance policies placed with [REDACTED]. Her evidence lacks the requisite authenticity and particularity. Corroborative evidence is lacking. It is unlikely that a life insurance company issued the non-life insurance contracts claimed. As to these non-life insurance policies, the Appellant stated once again that she has no specific factual recollections that confirm her assertions. Her claim on this point depends entirely on the significance of her father’s status as an insurance agent. Mere agency status is not enough to justify the inference that specific policies were issued.

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