

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]. He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1883 in Brod (Austria-Hungary) and died in May 1958 in Baja (Hungary); [REDACTED] was born on [REDACTED] 1896 in Baja (Austria-Hungary) and died on 10th April 1945 in the concentration camp at Strasshof (Austria). The Appellant had a brother, [REDACTED], who was born on [REDACTED] 1927 in Baja (Hungary) and died on 11th December 2002.

[REDACTED] and [REDACTED] were deported to the concentration camp of Strasshof in Austria in 1944. From the information given in the claim and appeals procedure it is unclear, whether their children [REDACTED] and [REDACTED] also were deported.

2. The Respondent is [REDACTED], as the legal successor of “[REDACTED]”.
3. The Appellant’s brother, [REDACTED], submitted a claim dated 26th August 2002 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claimed 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. In a letter received on 13th February 2003 the Appellant informed the ICHEIC that his brother, [REDACTED], had died and submitted a copy of his death certificate. The Appeals Office received evidence that he was his brother’s successor on 30th January 2004.
6. The Appellant submitted an appeal to the Appeals Office dated 26th October 2003, in which the reasons for the appeal were set out.
7. The Appeals Office mailed a copy to the Respondent on 13th November 2003.
8. [REDACTED] responded in a letter dated 9th December 2003 and requested the Appeals Panel for reasons it had set out before to reject the appeal.
9. On 19th 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.
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's brother has submitted the following information in relation to the claim for the proceeds of a life insurance policy in his claim form
- a) The insurance company that issued the life insurance policy was identified as "[REDACTED]."
 - b) He stated that the policy was purchased in Baja, Hungary.
 - c) In question 5, which relates to specific policy details, he stated the currency of the policy was U.S dollars. He also stated that the sum insured was 1,500 U.S. dollars, with a date of issue between 1929 and 1930. Although the amount of premium paid was unknown, he stated that the payments were made on a weekly basis. Furthermore, he asserted that all premiums were paid to the best of his knowledge.
 - d) In question 6 the policyholder is identified as [REDACTED], the Appellant's father, who was born on 3rd June 1883 in Brod, Austria-Hungary. He died in Baja, Hungary in 1958. In answer to question 6.13 which asks "If the policyholder was insured by his / her employer, what was the policyholder's profession and name of employer until 1945?" the Appellant writes, "business owner – wholesale trade drygoods, [REDACTED] Brothers & Sons".
 - e) In question 7 the insured person is identified as [REDACTED].
 - f) In question 8 the beneficiary is identified as [REDACTED] née [REDACTED], the Appellant's mother, who was born on [REDACTED] 1896 in Baja (Austria-Hungary) and died on 10th April 1945 in Strasshof, Austria.
12. In the "Reasons for Appeal of Decision" the Appellant writes "*I am respectfully requesting my claim be appealed because I am certain beyond any doubt that my father had a life insurance policy with [REDACTED] an Insurance company (French). My father established my mother as the beneficiary. My mother [REDACTED]. The policy was established in the year 1929 or 1930. In 1944 the policy had to be surrendered to the Hungarian government, occupied by the Nazi forces, with the policy number. The value of the policy was established in U.S. dollars for \$1,5000. – The owner of the policy was my father [REDACTED]*".
13. In a further statement, received by the Appeals Office on 2nd January 2004, the Appellant writes, "*I respectfully request that my case be reviewed based upon the documents submitted, until now and the records that the insurance company [REDACTED] of France (main office). Should have it dates back to prior WWII*".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. In the decision letter dated 6th February 2003, the Respondent writes, "*we have carefully examined the information your 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] continues, “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. The Respondent makes further comments in a letter written in response to the Appeals process dated 9th December 2003. It states, *“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] 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 the Panel any document related to the claim at issue, because no such document is available”.*

THE ISSUES FOR DETERMINATION

16. 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 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 Appeals Panel concludes that the Appellant has not met his burden of proof, that it was “[REDACTED]” which issued the life insurance policy. His evidence lacks the requisite authenticity and particularity and there is no corroborative evidence (such as letters or statements from third parties) to support the Appellant’s recollection of the existence of an insurance policy issued by “[REDACTED]”. Although he is able to give a lot of details

about the policy (such as currency, sum insured, approximate date of issue and the names of the policyholder, insured and beneficiary) there is no explanation how he got to know these details. In addition, there is - different from another claim launched by [REDACTED] for the proceeds of an insurance policy taken out with [REDACTED] (claim number [REDACTED]) - no correspondence between [REDACTED], [REDACTED] and the New York based Attorney and Counsellor at Law [REDACTED], who represented the [REDACTED] family in the [REDACTED]-case, on the one side and “[REDACTED]”/[REDACTED] on the other side from the late 1950’s and early 1960’s, when the [REDACTED] family made attempts to cash the proceeds of life insurance policies. In such cases, in which beside a sole statement of the Appellant, there is absolutely nothing that could prove that it is plausible that a policy existed, the degree of plausibility, which is necessary to regard the Appellant’s burden of proof as being met, is not given - even by applying the Relaxed Standards of Proof.

Finally, neither the Respondent nor ICHEIC found a research match on their databases when processing the claim. The Appeals Panel is aware of the fact that the Respondent’s databases are very limited; however, it has to take into consideration that no research matches were found.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 18th day of May 2004

The Appeals Panel

Timothy J. Sullivan
Chairman
Signing on behalf of all the
Members of the Appeals Panel

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member