

## THE APPEALS PANEL

Established under an Agreement dated 16<sup>th</sup> 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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THE APPEALS OFFICE, PO BOX 18230, LONDON EC1N 2XA, UNITED KINGDOM

Fax: ++ 44 (0) 207 269 7303

Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

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### 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 Vienna (Austria). She is the daughter of [REDACTED], an author, composer and concert pianist, who was born on [REDACTED] 1877 in Vienna (Austria) and died in December 1944 in the Ghetto of Theresienstadt.
2. The Respondent is [REDACTED].

3. The Appellant submitted several claims on a form issued by the Washington State Insurance Commissioner to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that, among others, “[REDACTED]” issued a life insurance policy.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 5<sup>th</sup> September 2003 (which is erroneously dated “2002”), “*based on the information provided by you in the claim form and after our intensive research in all relevant internal and external archives the existence of an insurance policy taken out by Mr. [REDACTED] with [REDACTED] could not have been established, even under the ‘Relaxed Standards of Proof’ of the Agreement*”.
5. The Appellant submitted an appeal dated 9<sup>th</sup> September 2003 to the Respondent, which arrived there on 17<sup>th</sup> September 2003 and was forwarded to the Appeals Office that received it on 3<sup>rd</sup> October. In this appeal she sets out the reasons for the appeal and submits copies of several documents.
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 16<sup>th</sup> 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 10<sup>th</sup> October 2003 to sign an amended Appeal Form.
8. On 23<sup>rd</sup> October 2003 the Appeals Office received the new Appeal Form, which is dated 14<sup>th</sup> October 2003, and mailed a copy to the Respondent.
9. [REDACTED] responded by letter dated 6<sup>th</sup> November 2003 (for more details see below paragraph 20).
10. On 28<sup>th</sup> 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 16<sup>th</sup> 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 she gives, “[REDACTED], Vienna, Austria, [REDACTED], Berlin, Germany and [REDACTED], Basel, Switzerland” as names of insurance companies that she believes might have issued a policy.
  - b) In section four regarding “known facts” the Appellant states, “Life insurance with [REDACTED] (assumed), [REDACTED] – Berlin Branch – Business Insurance (assumed).” The Appellant asserts that the coverage was sold in Berlin. In answer to the question “Why do you believe coverage existed ?” the Appellant writes, “liability for damages”.
  - c) In section seven concerning other relevant information the Appellant writes, “Mr. [REDACTED] was a very well known Pianist, Author, Composer and Concert Conductor and very well off with expensive items (antiques, oil paintings etc.)
14. With the claim form the Appellant submitted copies of her Austrian passport, her driver’s licence and her identity card from the United States of America.
15. Also on the claim file are two letters dated 1<sup>st</sup> September 2000 and 13<sup>th</sup> December 2000, which were sent from the “Stadtinformation Magistratsabteilung” (Municipal Information Department of Vienna) regarding entries in the “Zentralgewerberegister” (Central Trade Register) for [REDACTED], the Appellant’s stepfather.
16. In her reasons for appeal the Appellant writes, “see page 1 shows A. [REDACTED] as the policyholder. See page 2 shows A. [REDACTED] as the policyholder, with ‘valid’ and ‘declined subject to audit’. Requesting audit!!! See page 3 shows A. [REDACTED] as legally-valid policyholder; policy active and released for payout (per ICHEIC). Requesting payout.”
17. The three documents submitted with the Appellant’s appeal form were:
  - a) An extract from the ICHEIC website with the highlighted names of “[REDACTED], Wien and [REDACTED], Prag VII, Tschechoslowakei.” (neither the place of issue, nor the insurance company is listed with these names);
  - b) A copy of a letter sent to the Appellant from the ICHEIC dated 30<sup>th</sup> January 2001 concerning claim number 70342 for the policyholder [REDACTED], the Appellant’s stepfather (at the bottom of this letter the Appellant inserted a typed note and states, “per ICHEIC monthly report the Policy with [REDACTED] has been finalized and found ‘valid’ but was being ‘declined subject to audit’”);
  - c) A copy of a letter dated 23<sup>rd</sup> April 2002 sent from the Claims Resolution Tribunal to the Appellant, advising her that her claim was still being researched. At the bottom of this letter the Appellant writes, “Returned with the comments that according to the ICHEIC’s notification the aforementioned claim, [REDACTED], my father, was recognised as the legally-valid policyholder, and his name is listed on the Internet as an injured party under the Swiss Bank Settlement. His valid policy is, therefore, active and released for payout (per ICHEIC).”
18. On 26<sup>th</sup> November 2003 the Appeals Office received a further statement from the Appellant. This statement was accompanied by a letter dated 13<sup>th</sup> November 2003 from the

Claims Resolution Tribunal in Switzerland informing the Appellant that a match had been found “for one of the names submitted in your claim form”. The Appellant’s statement reads: “Returned with the following information: The letter of [REDACTED] is incorrect and as a proof I am enclosing a letter of CRT, received today. It shows, that a match was found in their records, but does not state with which Insurance Carrier. The undersigned, former Secretary of the Austrian Government, worked the last few years as Claimadjuster and Insurance Inspector for [REDACTED] and is familiar with methods by Ins. Comp.”.

## **THE INVESTIGATION AND DECISION BY THE RESPONDENT**

19. In its decision letter of 5<sup>th</sup> September 2003 [REDACTED] writes, “based on the information that you have provided in the claim form we have intensively searched all relevant archives and records in accordance with the Agreement for information on the specific insurance policy. Unfortunately no match occurred in our records. In this connection we have intensively checked all our archives and records. Let us explain this point a little bit more detailed. Your claim was submitted to [REDACTED] life insurance although the coverage of the policy was liability for damages. Therefore we have proofed your claim for [REDACTED], which is the non-life insurer of the [REDACTED], Germany. Unfortunately we could not find any reference to a policy or to correspondence with your father. In addition external (i.e. state-run) archives of German compensation and restitution authorities were researched in order to ascertain, if the policy on which you are claiming was part of a decision of previous restitution and compensation proceedings...None of the relevant external archives contain any reference regarding an insurance policy. Based on the information provided by you in the claim form and after our intensive research in all relevant internal and external archives the existence of an insurance policy taken out by Mr. [REDACTED] with [REDACTED] could not have been established, even under the ‘Relaxed Standards of Proof’ of the Agreement.”
20. In a response submitted to the Appeals Office, dated 6<sup>th</sup> November 2003, the Respondent writes, “in the ICHEIC claim form Mrs. [REDACTED] has answered the questions concerning the coverage as liability for damages. The claim was submitted to [REDACTED] life insurance as German predecessor of The [REDACTED] insurance, Vienna. Although Mrs. [REDACTED] has asked for a non-life insurance, we have checked all our records of life insurance policies in regard to this matter, but we could not find any documents or non-documentary evidence of an insurance contract. But also in the non-life sector we could not find any other document or statement to substantiate the existence of an insurance contract. Therefore in accordance with the relaxed standards of proof for insurance policies, we have rejected the claim of Mrs. [REDACTED]. Mrs [REDACTED] explains the reason for the appeal especially on the basis of the three attached documents. Unfortunately page 1 of the attached documents only mentions [REDACTED] as insurance company, but there is nothing said of the The [REDACTED] or [REDACTED] insurance. Page 2 is a letter of ICHEIC to Mrs. [REDACTED] and only tells that the claim of Mrs [REDACTED] was submitted to the insurance company. Page 3 of the attached documents is a letter of the Swiss Bank Settlement Insurance Claim Process and only shows a statement of Mrs. [REDACTED], in which she says that the name of Mr. [REDACTED] is on the ICHEIC list. In our opinion these documents even under the relaxed standards of proof of insurance policies are not sufficient to substantiate the existence of an insurance contract.”

## **THE ISSUES FOR DETERMINATION**

21. The 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 1<sup>st</sup> January 1920 and 8<sup>th</sup> 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.

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 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 the insurance policy. Her evidence lacks the requisite authenticity and particularity; there is no corroborative evidence (such as letters of statements from third parties) to support the Appellant’s recollection of the existence of life insurance policy issued by [REDACTED]. The claim form reflects that she was not sure whether [REDACTED] issued the policy. She writes “*life insurance policy with [REDACTED] (assumed)*”. She gives very few details about the policy other than the place where the policy was sold. The documents she submitted do not prove the existence of a contract between her father and the Respondent. The extract from the ICHEIC-website [see above paragraph 17 a)] is a list of names, which are not necessarily identical with the name of a policyholder, insured or beneficiary. The surname [REDACTED] is – a common name. If this surname appears on this list with a matching given name, such as [REDACTED], may not be assumed that is the claimant’s ancestor. The copy of the letters sent by the ICHEIC and the CRT [paragraphs 17b) and 17c)] are not written evidence that proves the existence of a policy. The Appellant’s [REDACTED] comments on these letters are based on a misunderstanding of the meaning of lists published on the Internet by ICHEIC and other organisations that deal with insurance- or bank account-claims. Those lists are not proof of the existence of insurance- or bank account-claims; they are only an “instrument” for matching, which gives hints but no dispositive facts.

Finally neither the Respondent nor ICHEIC found a research match on their databases when processing the claim. Although the Appeals Panel is aware of the fact that the Respondent’s databases are very limited; it must not fail to note that no research matches were found.

**Appellant:** [REDACTED]

**Appeal No.:** [REDACTED]

**Claim No.:** [REDACTED]

**THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:**

The appeal is dismissed.

Dated this 18<sup>th</sup> day of May 2004

The Appeals Panel

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

\_\_\_\_\_  
Rainer Faupel  
Panel Member

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Abraham J. Gafni  
Panel Member