

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] who was born on [REDACTED] 1931 in Brno (former Czechoslovakia). He is the son of [REDACTED], who was born on [REDACTED] 1901 in Rajhrad (Austria-Hungary), and of [REDACTED] née [REDACTED] who was born on [REDACTED] 1902 in Bulíkovice (Austria-Hungary).

His father was deported to Theresienstadt on 8th April 1942 and to Auschwitz on 28th September 1944, where he later perished. His mother died on 23rd October 1987 in Brno (former Czechoslovakia).

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 6th April 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he indicates that the name of the insurance company that issued the policy(ies) to his father is unknown to him, but he writes, “[REDACTED] (?), [REDACTED] (?)”.
4. The ICHEIC submitted the claim to [REDACTED]. [REDACTED] stated in its decision letter of 10th November 2003, “*on the basis of the information given in your claims-form and after intensive research of all relevant internal and external archives the existence of a life insurance policy taken out by your father, Mr [REDACTED], could not have been established, even under the ‘Relaxed Standards of Proof’ of the ‘Agreement’.*”
5. The Appellant submitted an appeal to the Appeals Office, dated 17th December 2003, in which he set out his reasons for the appeal.
6. This appeal, received from the Appellant, was an incomplete 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. The appeal form received by the Appeals office was just the first page of an appeal form without the declarations contained in either the so-called ‘old’ appeal form (former Annex G of the Agreement dated 16th October 2002) or the amended appeal form.
7. By letter of 14th January 2004 the Appeals Office requested the Appellant to submit a complete appeal form. The completed form was signed on 21st January 2004 and received on 23rd January 2004.
8. The Appeals Office forwarded the appeal to [REDACTED] on 23rd January 2004.
9. [REDACTED] responded in a letter dated 6th February 2004, which was faxed to the Appeals Office. In this letter [REDACTED] asks the Appeals Panel to reject the appeal submitted with respect to this claim.
10. On 24th February 2004 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 receipt of the 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 his claim in the claim form dated 6th April 2000.
- a) In section three the Appellant indicates that he does not know the name of the company that issued a life insurance policy to his father, but writes, “[REDACTED] (?)” and “[REDACTED] (?)”.
 - b) In section five the insurance policy is identified as a ‘life insurance policy’. The Appellant provides no further policy details.
 - c) In section six the policyholder is identified as the Appellant’s father, [REDACTED], who was born on [REDACTED] 1901 in Rajhrad (Austria-Hungary).
 - d) In section seven the policyholder is identified as the Appellant’s father.
 - e) In section eight the beneficiary is identified as the Appellant’s mother, [REDACTED] née [REDACTED] who was born on 28th July 1902 in Bulíkovice (Austria-Hungary)
 - f) In section eleven regarding ‘*further information*’ the Appellant writes, “*my dead father, [REDACTED], was employed by the [REDACTED] Brothers’ textile factory in Brno, as a director between 1926 and 1940. The owners also had other textile factories in England. It is possible that this company insured my father. My father had two life insurances, which he regularly paid for many years. However, all documents of these policies were confiscated by the Gestapo together with money, savings books, jewellery and other items of value in 1941. My dead mother spoke about he insurance companies [REDACTED] and [REDACTED], but she could not find them after the war. Later, during the communist era there was no possibility of making a claim*”.
14. With his claim form the Appellant submitted a copy of his passport, a certificate confirming his father’s deportation to Theresienstadt and Auschwitz, a copy of his mother’s death certificate and a copy of his birth certificate.
15. In his reason for grounds of appeal the Appellant writes, “*in 1942, just before my father was locked up by the Nazis, he showed me his life insurance contracts and drew my attention to these. Both were written in German, one with [REDACTED] and the second with [REDACTED]. I can fully understand that the German insurance companies have no interest in finding documents, and as a result having to pay out insurance policies to the heirs of murdered and gassed ‘Jewish swine’ 60 years on.*”

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In the decision letter dated 10th November 2003 [REDACTED] writes, “*based on the information that you have provided in the claims-form we have intensively searched all relevant archives and records in accordance with the ‘Agreement’ for information on the specific life insurance policy.*

The internal research in our records did, however, not show any success because of the lack of specific and detailed information e.g. on the policy number. The only search criterion available to us were the names mentioned by you. The research of our list of

former insured persons and other persons who were parties to the contracts remained without any result.

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 this specific life insurance policy.

On the basis of the information given in your claims-form and after intensive research of all relevant internal and external archives the existence of a life insurance policy taken out by your father, Mr. [REDACTED], could not have been established, even under the 'Relaxed Standards of Proof' of the 'Agreement'.

According to the Foundation Law and the 'Agreement' a claim has to be denied if there is no sufficient and adequate evidence of a contractual relationship with the insurance company named in the inquiry."

17. [REDACTED] writes in response to the appeals process on 6th February 2004, "*the only information related to former activities in [REDACTED]'s possession consist of a reduced number of statistical and some technical registers sorted by policy numbers still available out of [REDACTED]'s former main archive in Berlin, which was destroyed in February 1945. These registers which contain no names of policyholders whatsoever were thoroughly analysed and recorded together with all the information obtained as a result of internal and external searches into one electronical database to perform all possible research.*

Unfortunately, with respect to the claim at issue, no supporting evidence of a contractual relationship has been either provided by the claim, 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 the impossibility to produce to the Panel any document related to the claim at issue, because no such document is available to us."

THE ISSUES FOR DETERMINATION

18. 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.

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 his burden of proof that it was [REDACTED], which issued an insurance policy to his father. His 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 [REDACTED]. The claim form reflects that the Appellant is not sure whether [REDACTED] issued a policy. He states explicitly that he does not know the name of the company that issued the policy and writes, “[REDACTED] (?), [REDACTED] (?)”. It is only in the appeal form that he notes for the first time that he had been shown the insurance policies of [REDACTED] and [REDACTED] by his father. He provides no further details about the policy other than stating that the policy was a life insurance policy. In such a case, where in addition to the uncorroborated assertion of the Appellant, there is nothing that makes plausible the existence of a policy, the necessary degree of plausibility has not been established.

Finally, neither the Respondent, nor the ICHEIC found a research match in their databases. The Appeals Panel is aware that the Respondent’s databases are very limited; however, it has to take into consideration the absence of research matches.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed

Dated this 8th day of July 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member