

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], who was born on [REDACTED] 1925 in Berlin (Germany). The Appellant was born [REDACTED]. Upon the marriage of her mother to [REDACTED], by whom she was adopted, she became [REDACTED]. She later

changed her name to [REDACTED]. On 22nd February 1947 she married [REDACTED] and became [REDACTED]. She is now married to [REDACTED].

Her mother is [REDACTED] (formerly [REDACTED]), née [REDACTED], who was born on [REDACTED] 1892 in Brieg (Germany) and who died on 2nd January 1991 in Portland (U.S.A).

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim dated 22nd May 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that “[REDACTED]” issued a policy of life insurance.
4. The ICHEIC submitted the claim to [REDACTED]. In a decision letter of 10th November 2003 [REDACTED] writes, “*nor could we find, on the basis of the information you provided and after our intensive search of all internal and external files in question, anything to indicate the existence of a life insurance policy which Frau [REDACTED] took out with [REDACTED] for crafts, commerce and trade, even under the “relaxed standards of proof” laid down under the Agreement*”.
5. The Appellant submitted an appeal to the Appeals Office, dated 17th November 2003, in which she set out the reasons for the appeal. The Appeals Office received this appeal on 25th November 2003. After having received a copy of the decision letter on 9th December 2003 the office sent a copy of the appeal to [REDACTED].
6. [REDACTED] responded in a letter dated 16th December 2003 (see paragraph 14).
7. On 15th January 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.
8. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
9. 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

10. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.

- a) In section three of the claim form, the Appellant identifies the company that issued the policy as “[REDACTED]” and asserts that the policy was purchased in Berlin, (Germany). The type of insurance policy is identified as “*life insurance*”. The Appellant does not provide any specific details about the policy number, the insured sum, date of issue or date of maturity.
- b) The policyholder is identified as [REDACTED], née [REDACTED], born on [REDACTED] 1892, who was the Appellant’s mother.
- c) The insured person and named beneficiary are identified as the Appellant.
- d) In answering question nine of the claim form, “*Have you or anybody else participated in any compensation / restitution procedure for this claim?*”, the Appellant writes, “*my mother and father received some restitution “Deutsche Wiedergutmachung”. I do not know how much was paid to them by the German Government. My parents are deceased now. As you know, a child only receives a “restitution payment” of \$2000 and an invitation to visit Berlin, Germany if you were born there, which I did*”.

11. The following documents were submitted by the Appellant with her claim form:

- a) Two copies of the Appellant’s birth certificate.
- b) A copy of her mother’s marriage certificate to [REDACTED] dated 31st August 1940.
- c) A copy of the certificate confirming her adoption by [REDACTED], dated 25th March 1942.
- d) A copy of her mother’s death certificate.
- e) A copy of the Appellant’s driver’s license.
- f) A copy of the Appellant’s marriage certificate to [REDACTED] dated 22nd February 1947.
- g) A copy of the Appellant’s marriage certificate to [REDACTED]., dated 17th August 1991.

12. In her reasons for appeal the Appellant writes, “*I hereby appeal against the ruling by the [REDACTED] group, as my ICHEIC claim no.[REDACTED] was dismissed, as the research for a life assurance policy for crafts, retail and trade of my deceased mother could not be found. That doesn’t surprise me at all! This is not a life assurance policy for my mother, and also looking under the name [REDACTED] makes no sense at all, as my*

mother's name was [REDACTED], until she remarried after we came to America. This is my own life assurance policy, but I can't see my name mentioned anywhere in [REDACTED]'s findings, which I do not understand, and I have already written to the [REDACTED] on that account, but had no answer until today's ruling dismissing my application. For years, my mother used to tell me, until she died in 1991, having lived the last 10 years of her life with me, until the age of 98 ½, that she had taken out a life assurance policy in Berlin for DM 10,000 in my name with [REDACTED], after my father died quite suddenly of a massive heart attack in 1930. How could I have remembered the name [REDACTED] so accurately otherwise? So what I am looking for is nothing more than my own life assurance, which was never paid out on, as my mother and I emigrated from Germany in February 1939...I do not understand why the [REDACTED] has dealt with this matter this way at all, as I answered everything clearly and truthfully in my application form, which was apparently verified but researched completely incorrectly, unfortunately. I can only hope that the Commission accepts my appeal and bears in mind, even if I cannot produce any written evidence, unfortunately, as we lost everything when we emigrated from Germany and fled with absolutely nothing”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

13. In the decision letter dated 10th November 2003 [REDACTED] writes, “*unfortunately searching our documents proved fruitless. There were no references to any life assurance policy for your mother, either in our central names file, the Berlin files or in our electronic client data. The search was conducted for your names you gave, as follows [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]. We also searched outside (i.e. public) archives of the German compensation and reparations authorities to see whether the policy for which you have now applied for compensation may have already been the subject of any previous compensation or reparations processings...No reference was found to the policy concerned in any of the outside archives in question. Nor could we find, on the basis of the information you provided and after our intensive search of all internal and external files in question, anything to indicate the existence of a life assurance policy which Frau [REDACTED] took out with [REDACTED] AG for crafts, commerce and trade, even under the “relaxed standards of proof” laid down under the Agreement”.*

14. In a letter dated 16th December 2003 [REDACTED] writes, “*according to the first page and the information in Section 6 of the application, Mrs [REDACTED] (later, [REDACTED] and [REDACTED]) was stated to be a party to a contract [with us] (POLICYHOLDER)...Parallel with this, we searched through all documents and archives still existent in our Company (central card index of names, East data file, Berlin inventory and electronic data bank), which list policyholder's names. As a precaution in our search (in accordance with the regular practice in our Company), we also looked for any other names, which might possibly be mentioned (insured persons and beneficiaries). The result was negative with regard to all the names given. The names searched for were: [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. We informed the Claimant of this in a letter dated 10.11.2003, of which a copy is attached as Enclosure 3.*

With this letter, we rejected the claim in due form. One day later, namely 11.11.2003, we received a letter from the Claimant, of which a copy is attached as Enclosure 4 in which she indicates that our search was defective, since her mother was not party to the contract – as was stated in the written claim – but rather, she herself was the policy owner. We tried to clear up this misunderstanding in a letter dated 13.11.2003, of which a copy is attached as Enclosure 5, and at the same time, we again made it clear that we had taken into consideration in our search all the names entered in the application.” With this letter the Respondent sent the following documents:

- a) A copy of a letter dated 27th October 2003 from [REDACTED] to the Appellant informing her that the processing of the claim would take more time.
- b) A copy of the decision letter issued by the Respondent dated 10th November 2003 (see paragraph 13).
- c) A copy of a letter dated 6th November 2003 from the Appellant to [REDACTED] in which the Appellant states, *“thank you for your letter dated 27.10.03, which I have just received. I enclose a copy of your letter herewith, because I am beside myself to learn from it that you are searching your archives for life assurance for my later mother, [REDACTED], later [REDACTED], on the basis of my Application Form, which was sent to ICHEIC. You have made a big mistake by doing this, because my mother told me up to her death that she had taken out 10,000 DM of life assurance for me with [REDACTED] many, many years ago.”* With this letter is a copy of the decision letter of [REDACTED], dated 27th October 2003, upon which she has inserted handwritten comments, stating that it was not a life insurance for her mother but for herself.
- d) A copy of a letter dated 13th November 2003 from [REDACTED] to the Appellant, which states, *“we greatly regret the disagreements which have occurred. Your letter had not yet reached us when we sent you our statement of 10.11.2003, so we were unable to deal with it at that time. You stated in your application form that your mother was the policyholder, that is to say, that she was a party to the contract [with us] that was being searched for. Our search therefore had to be directed towards a contract concluded by your mother. Our letter of 10.11.2003, informing you that no indications had been found of any contract concluded by you mother, must surely have come to hand in the meantime. We were also unable to find any reference to the conclusion of a contract by you yourself in any of our documents, either as a contracting party or an insured person. Searches were made for every name given by yourself. It is thus not correct that we did not pay attention to the matter.”*
- e) A copy of the claim form and all the documents submitted by the Appellant with her claim form (see paragraphs 10 and 11).

THE ISSUES FOR DETERMINATION

15. The only 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.
16. 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.
17. The Panel concludes that the Appellant has not met her burden of proof that [REDACTED] issued an 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 a life insurance policy issued by [REDACTED]. She gives very few details about the policy other than to identify the place where it was sold. It is only during the appeals process that the Appellant mentions for the first time that the insured sum was DM 10,000 (Reichsmark must be meant) and that the policy was taken out after the death of her father in 1930. It is not implausible that the Appellant’s mother took out a life insurance policy for her daughter following the death of her husband, but beside her own statement there is nothing to prove that a policy with the Respondent existed. Therefore, the Appeals Panel – even by applying the Relaxed Standards of Proof – was not able to conclude that the Appellant’s burden of proof was met.

Finally, neither the Respondent nor the ICHEIC found a research match in their databases with regard to all names provided by the Appellant for the policyholder, insured person and beneficiary, including the Appellant’s names. The Respondent confirmed this in its letter dated 13th November 2003, in which [REDACTED] wrote “*Searches were made for every name given by yourself*” (the German version “Nach allen zu Ihrer Person angegebenen

Namen wurde geforscht” makes it even clearer that all names of the Appellant were investigated).

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
Signing on behalf of all the
Members of the Appeals Panel