

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], born on [REDACTED] 1914 in Hungary. He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1887 in Kosiky nad Iplom (Ipolg Keszi), Slovakia and died in the concentration camp in Auschwitz in 1944; [REDACTED], née [REDACTED], was born on [REDACTED] 1897 and also died in the concentration camp in Auschwitz in 1944.
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim dated 15th April 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]” issued a policy of life insurance.
4. The ICHEIC forwarded the claim to the Respondent. [REDACTED] stated in its decision letter dated 8th September 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. The Appellant submitted an undated appeal to the Appeals Office. This letter arrived in the Appeals Office on 30th October 2003.
6. In a letter dated 3rd November 2003 the Appeals Office notified the Appellant that he must file his appeal by using a correct appeal form and sent him such a form.
7. On 13th November 2003 the Appeals Office received a corrected, dated and signed appeal form. A copy was mailed to the Respondent.
8. [REDACTED] responded in a letter dated 9th December 2003 and asked the Appeals Panel to “*reject the appeal submitted with respect to this claim and to confirm [REDACTED]’s previous decision on it*”.
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 has submitted the following information in relation to the claim for the proceeds of a life insurance policy:
 - a) The Appellant identifies ‘[REDACTED]’ as the insurance company that issued a policy.
 - b) He states that the policy was purchased in Budapest, Hungary. In answer to question 3.3, which asks the Appellant for other information that might support the search, the Appellant writes “*5000\$ life insurance premium was paid*”.
 - c) In section 5, the Appellant identifies the policy as having been a ‘*life insurance*’ policy, in the currency of “*5000\$*”, which was purchased in 1932. He further states that premium payments were made annually.
 - d) The Appellant also states that all premiums were paid to the best of his knowledge.

- e) In answer to question 5.11, which asks whether the company had been previously informed about claims under this policy, he writes *“In 1946 I tried to write to letters to the insurance company in Budapest [REDACTED]. No answer”*.
 - f) In section 6, the policyholder is identified as the Appellant’s father, [REDACTED], born 24th December 1887. His profession is given as ‘farmer’.
 - g) In section 7 the insured person is named as the Appellant’s father.
 - h) In section 8, the beneficiary is identified as the Appellant’s mother, [REDACTED], née [REDACTED], born 15th May 1897 in Hungary. In the Declaration of Consent the Appellant identifies himself and not his mother as the beneficiary.
 - i) Appellant’s parents died in Auschwitz in 1944.
 - j) In Section 9 concerning the issue of compensation, the Appellant marks ‘no’ and writes, *“for this claim was not compensation. I applied only for my deportation. I was in force labour camp 2 (two) year”*.
13. The above (paragraph 5) mentioned statement, which the Office received on 30th October 2003, reads, *“I wish to appeal your decision of the [REDACTED]. Declining my claim, for the policy issued in Czechoslovakia to Mr. [REDACTED], my father. He had a five thousand dollar life insurance. I do not mentioned before, the agent from the ins. company who made the contract his name was [REDACTED]. Maybe this helps. Please reconsider the whole case”*.
14. In the appeal form, received on 13th November 2003, the Appellant writes, *“[REDACTED], my father, had a (5) five thousand \$ life insurance. Before he was deported he told me about this insurance policy and tell me the name agent from the ins. company who made the contract. His name was [REDACTED]. After the war I try to get the money but the company said the archives are no longer in their possession. This is the truth. The agent office was in Czechoslovakia.”*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. In a provisional decision letter dated 28th June 2002 the Respondent writes, *“we have carefully examined the information you 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. Unfortunately we must 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”*.
16. In the final decision letter of 8th September 2003, [REDACTED] concludes that its provisional decision was correct and denies the claim.
17. In a further statement in response to the appeal process, dated 9th December 2003, the Respondent 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*

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. We also thoroughly investigated the name indicated by the Appellant as supposed insurance agent, without finding any record”.

THE ISSUES FOR DETERMINATION

18. The 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 [REDACTED] was the issuing company. 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 a life insurance policy issued by [REDACTED]. The Appellant’s recollections are somewhat vague and sometimes contradictory. In the claim form he states that the policy was purchased in Budapest, Hungary. In the appeals form he states that the policy was issued in Czechoslovakia and for the first time names the issuing agent as [REDACTED], who had an office in Sahy (Czechoslovakia). The Appellant was not able to produce any corroborative evidence for his statement made in the claim form that in 1946 he wrote to the insurance company in Budapest “[REDACTED]” and that he did not receive an answer. Finally, he identifies the beneficiary in the claim form as his mother and in the Declaration of Consent as himself. In addition neither the Respondent nor ICHEIC found a research match with regard to the persons named as policyholder, insured and beneficiary or to the insurance agent. All these uncertainties create a substantial doubt that undermine the assertions upon which an award may be based.

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