

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

Fax: ++ 44 (0) 207 269 7303

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] 1919 in Carskoje Sielo (Russia). He is the son of Dr. [REDACTED] and [REDACTED], née [REDACTED]. Dr. [REDACTED] was born on [REDACTED] 1883 in Krzyszkowice (Poland) and died there on 3rd March 1941; [REDACTED] was born on [REDACTED] 1895 in St. Petersburg (Russia) and died on 20th October 1944 in Iłza (Poland). The Appellant’s studies at the Warsaw Polytechnic were interrupted in September 1939, because the German authorities occupying Poland closed all high schools and universities. In 1944/45 the Appellant was interned in German POW camps for seven months.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 5th June 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 submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 20th March 2003 “*based on the information you provided and our search, no evidence was given as to the status of “Holocaust victim” according with the ICHEIC definition; therefore we are declining your claim*”.
5. The Appellant submitted an appeal to the Appeals Office dated 15th September 2003, which was accompanied by an attachment setting out the reasons for the appeal.
6. The Appeals Office received this appeal on 21st October 2003; however, it was only a copy of the appeal.
7. In a letter dated 7th November 2003 the Appeals Office made the Appellant attend that the original of a signed hardcopy must be sent.
8. The Appellant responded in a letter dated 17th November 2003 and informed the Office that he had sent the original signed hardcopy to an address given by the company in its decision letter in Rotterdam (The Netherlands). He enclosed a copy of a Registered Mail Receipt showing that this form was sent on 16th September 2003. On 24th November 2003 the Appeals Office informed the Appellant by calling him that until then no signed hardcopy had arrived and suggested to re-send a copy of the appeal form directly to the London address of the Appeals Office.
9. On 8th December 2003 the Appeals Office received this copy, which the Appellant had signed once again on 1st December 2003.
10. The Appeals Office mailed a copy to the Respondent on the same day.
11. [REDACTED] responded in a letter dated 7th January 2004 and requested the Appeals Panel for reasons it had set out before to “*reject the appeal submitted with respect to this claim and to confirm [REDACTED]’s previous decision on it*”. [REDACTED] further questioned that the appeal had been filed within the timeline of 120 days after receipt of the decision letter.
12. On 13th 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 the date after receipt of this letter.
13. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
14. 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

15. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
- a) The Appellant identified [REDACTED] as the company that issued a life insurance policy to his father.
 - b) A copy of the policy issued by [REDACTED] was submitted with the claim form. This policy, number [REDACTED], was issued to the Appellant's father Dr. [REDACTED], born on [REDACTED] 1883 for the insured sum of 15,000 Gold Zloty. The beneficiary was [REDACTED], née [REDACTED], the Appellant's mother. The yearly premium of 1557.36 Gold Zloty was to be paid in quarterly instalments of 389.34 Gold Zloty from 1st January 1934 for a period of 10 years. On the back of the policy is a note which was typed on 17th February 1942, which states, "*due to the death of the insured on 3rd March 1941 the undersigned company paid on 17th February 1942 to Mrs. [REDACTED] born [REDACTED], against her receipt dated on the same day, the sum of 3000 zloty in gold (three thousand zloty in gold) as a downpayment of the liability derived from policy nr. [REDACTED], according to the Directive of the Governor General of 13th June 1941 regarding the life insurance – daybook of directives nr. [REDACTED]*".
 - c) The Appellant asserts in section four that he has copies of 30 premium receipts (originals) and will send copies of required.
 - d) [REDACTED] of the law firm [REDACTED] in New York City has been identified as the Claimant's representative in the claims procedure.
 - e) In section eleven regarding further information the Appellant writes, "*as stated by the insurance company on page 2 of the policy the company paid only 20% of the coverage because of the directive of the German governor. The insurance company states also that the payment was made in Zloty in Gold, which is incorrect because the Polish state didn't exist then, being occupied by the German and Russians, and the Zloty in Gold guaranteed by the Polish national bank didn't exist. My mother was paid in the German occupation currency, which was worthless on the international market. The market value of this currency was about 500 zloty per one gold dollar*".
16. With the appeal form the Appellant submitted a letter dated 10th April 1946 from [REDACTED]. This letter states, "*referring to your visit on April 3, 1946 we regret very much to inform you that we were advised by our Head office in Triest to let you know the following: the life insurance policy No. [REDACTED] of our company in Warsaw, issued to Dr. [REDACTED] born 1883, shares exclusively the fate of all insurance policies which, due to the known government measures in Poland, will be liquidated according to the still to be determined settlement. The place where your policy is to be settled (liquidated) is Warsaw and due to the gold clause the Zloty should be, as per information from our Head office,*

described (defined) according to the general insurance conditions. We regret very much that we cannot give you any hope to be paid in Swiss Francs. Please pick up the policy, handed to us, at your convenience returning our receipt of this policy dated April 3 1946”.

17. In a statement submitted with his appeal form the Appellant addresses the “*Holocaust victim definition*” and asserts that he was deprived of his economic livelihood because his studies at the Warsaw polytechnic were interrupted in September 1939 because the German authorities occupying Poland closed all high schools and universities. He writes, “*this was strictly a racial persecution of Poles because in the Western European countries occupied by the Germans, particularly those who had puppet Nazi regimes, the high schools and universities were open. As a result...I lost seven years of my professional career and earnings*”.
18. In an additional statement dated [REDACTED] 2003, which was attached to the appeal form, the Appellant refers to his loss of earnings as a result of not being able to study during the German occupation. He refers to the payment of the policy upon the death of his father in 1941 and writes, “*my mother presented his [he husband’s] death certificate and policy to [REDACTED] office in Warsaw and was paid only 3000 zloties, in the currency established by the German occupation administration, because of the directive of the Governor General of the occupied Poland allowing lonely a downpayment of 20% on all insurance policies. This is stated in a not on the policy. According to this note my mother was paid 3000 zloties in gold which was incorrect because the zloty in gold (900/[REDACTED]32 gram of pure gold), was guaranteed by the Polish state when the policy was underwritten, did not exist when this payment was made*”. He describes his life under the German occupation and states that he resisted the Germans and was taken as prisoner of war by the Germans on 27th September 1944.
19. The Appellant provides additional comments in his letter dated 14th January 2004 in which he addresses the racial persecution suffered by the Poles.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

20. The Respondent in a letter dated 20th November 2002 made a request for further information regarding the definition of “Holocaust victim”.
21. In its final decision letter of 20th May 2003 issued by [REDACTED] it writes, “*unfortunately we have to inform you that, based on the information you provided and our search, no evidence was given as to the status of ‘Holocaust victim’ according with the ICHEIC definition.*”
22. In a letter to the Appeals Panel dated 7th January 2004 the Respondent writes, “*as far as the contents of our decision are concerned, we wish however to point out that the declarations made by the Appellant – both in his letter dated January 27, 2003 and in his statement of grounds for appeal – clearly show that he and his family were victims of World War II, rather than Holocaust victims properly said. This conclusion is supported by the following facts:*
 - *The financial losses (among which the family home burned down because of war events) and the personal damages (among which the delay in education) suffered by the Appellant were normal consequences of World War II and its hard circumstances, in no way related to any proper Holocaust-related persecution.*

- *The death of both the Appellant's father and the Appellant's mother were not caused by Holocaust-related facts, his father having died of a natural disease and his mother having been killed by an Allied air-bombing.*
- *The same Appellant had the normal status of Prisoner of War.*
- *Should the Appellant's family have been really persecuted in any way, it would have been completely impossible for them to cause the policy value after the policyholder's death, and the same policy would have been probably confiscated. The same partial payment was caused by law provisions of general application, rather than by any alleged persecutory measures".*

THE ISSUES FOR DETERMINATION

23. The first issue for determination is whether the Appellant filed his appeal pursuant to section 4 (3) of the Agreement that provides: *"Any such appeal must be filed within 120 days of the receipt of the company's decision"*.

The appeal is deemed to be filed within the 120 days time limit. The Appellant indicated to the Appeals Office that he is appealing the decision for the first time by sending a copy of his appeal form dated 15th September 2003, on which he had added *"[REDACTED] letter arrived on 27th May 2003"*. This indication arrived at the Appeals Office on 21st October 2003. The originally signed appeal form was sent to a post box in the Netherlands where the dates of receipt of such appeal forms were not noted. This form was never forwarded from the Dutch post box to the appeals Office. However, the Appellant could prove that he had sent the originally signed appeal form to the Dutch post box on 16th September 2003 by presenting the copy of a Registered Mail Receipt issued by the United States Postal Services. 16th September 2003 is the 112th day after receipt of the decision letter. In favour of the Appellant it must be assumed that his appeal reached the Dutch post box within the next 8 days remaining before the timeline expired, because a later arrival cannot be established in the absence of recording the dates of receipt there. After he was asked by the Office on 7th November 2003 to send the originally signed appeal form once again he signed the copy and sent it to the London address of the Office; this appeal form arrived on 8th December 2003 and was, thus, without doubt within a 120-day-timeline beginning on 7th November 2003.

24. The main issue for determination is whether the Appellant is a Holocaust victim in the sense of the Agreement.
25. The Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002 covers, according to its introductory language, *"the settlement of individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice"*. Losses and deprivations not connected with National Socialist injustice and specifically the Holocaust are not covered by the Agreement. Therefore, the sole issue for determination in this Appeal is whether the policyholder and or Appellant are a Holocaust victim in the sense of Section 14 of the Agreement.
26. For purposes of the Agreement, *"Holocaust victim"* means *"anyone who, as a result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime, was deprived of his/her life or freedom; suffered damage to his/her mental or physical health; was deprived of his/her economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss or damage to his/her property. For the purpose of this definition, persecution by governmental authorities of the following countries for the period in brackets until the end of the Second World War in the*

following countries is considered equal to persecution by the organs of the German National Socialist Regime: ... Poland (1939) ...”.

27. The loss or deprivation of financial assets, which the Appellant suffered, was not the result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime during the war. It was instead the result of the political and economic developments at that time everybody had to deal with in Poland. As universities were closed in general this was not to exclude certain students for racial, religious political or ideological reasons, because all students (Poles and non-Poles) were affected. Payments made on liabilities for insurance policies issued in Poland pursuant to the “*Directive of the Governor General of 13th June 1941 regarding the life insurance*” were made pursuant to legal provisions of general application. All policyholders, insured or beneficiary (Poles and non-Poles) were affected. The Appellant’s imprisonment was not the result of racial, religious, political or ideological persecution but because he of his membership in the “*Armia Krajowa*” (Home Army). Finally, there was no persecution of the Poles in the sense of the “*Holocaust victim*”-definition as set out in the glossary of the Agreement. Poles were not systematically persecuted because they were Polish or as a “*race*” as were Jews, people of Romany origin, Jehovah’s Witnesses, Communists, Homosexuals or others, who were killed, incarcerated in concentration camps or ordered to live in ghettos, deprived of their economic livelihood, their assets and property or their right to vote. By stating this the Panel does not neglect that the Appellant and his family - as millions of other Poles did - suffered very hard from the occupation of their country by National Socialist Germany, however, for reasons set out above, this does not qualify the Polish nation as such as Holocaust victims.

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