

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] 1920 in Fürth (Germany). He is the grandson of [REDACTED], who was born on [REDACTED] 1860 in Stordorf (Germany) and died on 13th September 1942 in Fürth.

The Appellant's parents are [REDACTED] and [REDACTED], née [REDACTED]. Further details about their biographies are not given.

The Appellant has a brother, [REDACTED], born on [REDACTED] 1921.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 24th August 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]”([REDACTED]) issued a policy of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 14th July 2003 *“based on the information provided by you in the claims form and after the intensive research in relevant internal and external archives the existence of a life insurance policy taken out by [REDACTED] with [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. We are confident you will understand that under the given circumstances a claim has to be denied”*.
5. The Appellant submitted an appeal to the Appeals Office dated 27th August 2003 in which the reasons for the appeal were set out and which was accompanied by copies of further documents.
6. The Appeals Office received the appeal on 8th October 2003 and forwarded a copy to [REDACTED] as the Respondent on 22nd October 2003.
7. [REDACTED] responded in a letter dated 21st November 2003 and requested the Appeals Panel for reasons it had set out before to reject the appeal.
8. Since in the appeal form the Appellant writes: *“Weitere Dokumente kann ich auf Anfrage möglicherweise einreichen”* (I am maybe able to provide further documents on request) the Appeals Office inquired as to what type of documents the Appellant meant. The Appellant then sent a copy of a letter dated 1st February 1951 from Dr. [REDACTED], Director Equity Claims Section, to Frau [REDACTED], URO Munich, in which a life insurance taken out with [REDACTED] was mentioned. *“Number [REDACTED]”* was stated as being the reference number. This copy arrived at the Appeals Office on 28th April 2004 and the Appeals Office forwarded a copy of this letter to [REDACTED].
9. [REDACTED] responded by letter dated 5th May 2004: *“The document in question shows that Mr. [REDACTED] had applied for restitution in Germany after the war – among other – with regard to a life insurance policy with [REDACTED]. This fact was unknown to us so far. The policy number remains unknown. The number [REDACTED] is not the policy number but the number of the respective restitution file”*.
10. On 7th June 2004 [REDACTED] copied the Appeals Office on a request for further information it had made to the *“Oberfinanzdirektion München – Landesentschädigungsamt”* (the Bavarian state compensation office) dated 1st June 2004 about a compensation procedure *“[REDACTED]”* concerning a claim made by [REDACTED]/[REDACTED].
11. In a letter dated 1st July 2004 [REDACTED] informed the Appeals Office that its *“research at the different authorities for compensation will unfortunately need some time as it is necessary to research at several archives”*.

12. In a further letter dated 23rd August 2004 [REDACTED] disclosed the results of its research (for further details see paragraph 20). The Appeals Office forwarded a copy of this letter to the Appellant and advised him that if he wished to comment he could do so until 15th September 2004. No comments were made.
13. On 24th November 2003 the Appeals Office had informed both parties that the appeal will be decided 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.
14. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
15. 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

16. 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 the life insurance policy.
 - b) He states that the policy was purchased in Fuerth, Germany and that the “*probable name of the agent*” was “[REDACTED] – Fuerth [REDACTED]”.
 - c) In section five, which relates to specific policy details, the Appellant states that the currency of the policy was either RM (Reichsmark) or SFR (Swiss Franks). He also states that the premiums were all paid to the best of his knowledge. With regard to why the payments were stopped he writes, “*probably because of Nazi policy*”.
 - d) In section six the policyholder is identified as [REDACTED] or [REDACTED], the Appellant’s grandfather, who was born on [REDACTED] 1860 and died on 13th September 1942. In answer to question 6.13 which asks “*If the policyholder was insured by his / her employer, what was the policyholder’s profession and name of employer until 1945 ?*” the Appellant writes, “*possibly through the Firma of [REDACTED] Öl und Fettwarenhandel. [REDACTED], Fürth/B.*” In answer to question 6.15 concerning living heirs of the policyholder the Appellant writes, “*[REDACTED] ... [REDACTED] ... and [REDACTED]*”.
 - e) In section 7 the insured person is identified as [REDACTED]. The answer to question 7.14 concerning heirs of the insured person refers to question 6.15.
 - f) In section 8 the Appellant does not specifically identify the beneficiary, but writes, “*probably heirs of policyholder or policyholder.*” Question 8.14 concerning living heirs again makes reference to question 6.15.

- g) In section 11 regarding “*other information*”, the Appellant writes again, “*the life insurance policy was issued by the [REDACTED]*”.
17. The Appellant sets out the reasons for his appeal as follows: “*A late family member informed me in February 1951 that allocated at No. [REDACTED] in Bad Nauheim among other claims of my grandfather [REDACTED] also claims connected with a life insurance against [REDACTED] had been filed. Therefore the following fact must be concluded:*
- 1) *Either the insurance sum was paid out to my grandfather or*
 - 2) *The proceeds were not paid out.*
- In any case the statement that there is no such life insurance must be wrong. Attached a copy of my grandfather’s signature that confirms that I am his grandson and a copy of his death certificate. I am maybe able to provide further documents on request”.*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. In the decision letter dated 14th July 2003, the Respondent writes, “*based on the information that you have provided in the claims form we have thoroughly searched all company archives and records for information on an insurance policy on [REDACTED]. We have also searched for the name of the insurance agent, [REDACTED], you mention in your claim. Unfortunately no match occurred in our records. 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 those archives contain any reference regarding a life insurance policy in the name of [REDACTED].*”
19. The Respondent makes further comments in a letter written in response to the Appeals process dated 21st November 2003. It states: “*1. In his claims form Mr [REDACTED] had declared the policy number as unknown (see Section 5.2 of the claims form). In his appeal he now declares to know the policy number from a relative who told him about the policy in 1951. The declared number is [REDACTED] is not likely to be a [REDACTED] policy number. Nevertheless we checked our records with the number, but no match occurred. 2. In his claims form Mr [REDACTED] denies having any documents substantiating his claim (see Section 4.1) while now in his appeal he mentions being able to produce more documents if necessary. We would like to point out that according to the Agreement Annex B Section A, A1 the claimant must produce all relevant documents in connection with his claim. We are still of the opinion that based on the presently available information of the existence of a life insurance policy taken out by [REDACTED] with [REDACTED] could not be established, even under the Relaxed Standards of Proof of the Agreement. Of course, we would look into the claim again, if there will be other documents substantiating the claim”.*
20. In its letter dated 23rd August 2004 [REDACTED] summarized the result of its research with restitution authorities as follows: “*At the Munich Federal State compensation office, a compensation case was found on application by [REDACTED] and [REDACTED] (formerly [REDACTED]) as heirs of [REDACTED]. Compensation was paid for [REDACTED] life assurance policy number [REDACTED] of [REDACTED] [REDACTED] (see LEA Munich ruling, July 24th, 1961). Neither the LEA Munich nor the State archives at Nuremberg were able to confirm the existence of a [REDACTED] life assurance policy for [REDACTED]. The letter of February 1st, 1951, entered in the appeal by Herr [REDACTED] mentions reparation proceedings conducted under the names [REDACTED] and [REDACTED], which again involved a [REDACTED] life assurance policy. It would appear that this is Herr [REDACTED]’s life insurance policy no. [REDACTED], for which compensation was subsequently paid (see item 1 above)”.*

Attached to this letter were copies of the following documents:

a) A letter dated 2nd June 1961 from [REDACTED] to the Bavarian state compensation office in which information was given about the policy number [REDACTED] held by [REDACTED].

b) A draft of a “*Bescheid*” (ruling) of the Bavarian state compensation office dated 24th July 1961 that reads: “*On application by the heirs, being [REDACTED] (formerly [REDACTED]), born Fürth, [REDACTED]1919 ... [REDACTED] (formerly [REDACTED]), born Fürth, [REDACTED]1926 ... as the heirs to [REDACTED], born 06.02.1892, died at Mainstockheim for compensation for losses under a policy other than social security ... The heirs to the estate of [REDACTED] are awarded compensation for losses under a policy other than social security of DM 1,275.00 ... The documents to hand show that the testator took out a life assurance policy no. [REDACTED] with [REDACTED] life assurance company. As the testator was a Jew for the purposes of NS racial doctrine, it may be taken as certain that the policy was terminated as a result of racial persecution. On 02.06.1961, [REDACTED] life assurance company stated that the testator had taken out life insurance starting on 15.07.1926. This policy was terminated by being redeemed in 1939. The insurers have calculated the losses as follows:*

<u>Policy no. [REDACTED]</u>		
Sum insured		RM 12,000.00
Plus profits		<u>RM 50.00</u>
	Subtotal	RM 12,050.00
...		
Converted under § 128 BEG		DM 1,205.00
Less redemption value	DM 383.00	
Less unpaid premiums	DM 243.00	
War and loss of interest levy	<u>DM 72.00</u>	<u>DM 698.00</u>
	Balance	DM 507.00
Plus long standing saver's Compensation	DM 720.00	
Plus 4 % interest for the period 01.11.53-01.09.54	<u>DM 48.00</u>	<u>DM 768.00</u>
		DM 1,275.00”

c) A letter from the Nuremberg State Archives dated 10th August 2004 by which [REDACTED] is informed that “no further indications of any existing life assurance policy were found in the reparations files of the Bavarian state compensation office, other than the life assurance policy of Herr [REDACTED], known to you already”.

d) A letter from the Bavarian state compensation office dated 24th June 2004 stating: “There is no record of any policy in respect of [REDACTED], born 16.02.1960”.

THE ISSUES FOR DETERMINATION

21. 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.
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 in the circumstances of this case that a policy was issued by the company.
23. There is no doubt that the Appellant as one of the heirs of his grandfather could be entitled to the proceeds of an insurance policy and that all family members living during the Holocaust Era were Holocaust victims. However, the Appellant did not establish that a life insurance policy issued by [REDACTED] to his grandfather [REDACTED] existed. 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 that [REDACTED] issued a life insurance policy to his grandfather. His statements about the details of the policy are tentative and there are gaps in his recollection, which is not surprising after so many years. He, therefore, must rely on probability rather than certainty of knowledge.

The only written evidence forwarded by him turned out to be a claim for a policy not held by his grandfather [REDACTED], but by [REDACTED] whose relationship to the Appellant was not made entirely clear. In addition, [REDACTED] proved by retrieving the BEG-documentation described above [paragraphs 20 a) – d)] that this claim was covered by a decision of a German compensation authority. Had the Appellant claimed the proceeds of this policy, the Respondent could have established a valid defence in accordance with the Agreement. According to Section 17.3 of the Appeal Guidelines the Appellant is not entitled to payment from Foundation funds if ;

- 17.3.4 the policy (or policies) in question are considered to have been covered by a decision of a German restitution or compensation authority in accordance with section 2 (1) (c) of the Agreement.

Appellant: [REDACTED] No.: [REDACTED]	Appeal No.: [REDACTED]	Claim
--	-------------------------------	--------------

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 20th day of October 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member