

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]

Represented by:
Prof. Dr. jur. [REDACTED],
Berlin (Germany)

APPELLANT

AND

[REDACTED]

RESPONDENT

DECISION

[REDACTED] 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] ([REDACTED]), born on [REDACTED] 1923 in Berlin (Germany). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED], a civil servant at the municipal authorities who was dismissed in 1933, was

born on [REDACTED] 1873 in Berlin and died there between 1943 and 1944 in a hospital on [REDACTED] after he was arrested and incarcerated in the concentration camp in Sachsenhausen beginning in 1941; [REDACTED] died in 1924. The Appellant's stepmother [REDACTED] died in 1932.

In February 1939 the Appellant left Germany and fled via Vienna, Prague and Trieste to Israel.

The Appellant's father had a sister, [REDACTED], who was deported to Auschwitz and gassed.

The Appellant's mother had a sister, [REDACTED], who was not married and had no children. She took care of the Appellant after his stepmother [REDACTED] had died. She was working for her father, [REDACTED], who was an accountant at "[REDACTED]". She fled from Berlin to Brussels (Belgium), was arrested there by the Gestapo and deported to Auschwitz, where she also was gassed in 1942.

The Appellant is the only survivor of his family.

2. The Respondent is [REDACTED].
3. The Appellant submitted two claim forms dated 28th May and 28th June 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] or [REDACTED] might have ("*It maybe [REDACTED], [REDACTED], I cannot remember*") issued policies of life insurance to his father [REDACTED] and to his aunt [REDACTED].
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 30th December 2003: "*On the basis of the information given by you on the claim form and after our own intensive research in all relevant internal and external archives the existence of an insurance policy with [REDACTED] concluded by your aunt, Ms. [REDACTED], and your father, Mr. [REDACTED], could not be found even taking into consideration the "relaxed rules of evidence" agreed in the "Agreement". According to the Foundation Law and the "Agreement" a claim is to be refused if there is insufficient, inadequate proof of a contractual relationship with the insurance company named in the claim. We hope you will understand our decision that we are unable to offer any compensation payment in the given circumstances*".
5. The Appellant submitted an appeal to the Appeals Office dated 17th February 2004, in which the reasons for the appeal were set out and which was accompanied by copies of documents issued by the German Red Cross.
6. The Appeals Office received the appeal form on 20th February 2004 and mailed a copy to the Respondent on the same day.
7. [REDACTED] responded in a letter dated 16th March 2004 and reiterated its reasons for denial by referring to its letters dated 18th and 30th December 2003. In addition, it forwarded copies of all documents that had been sent during the claims procedure.
8. On 25th March 2004 the Appeals Office 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.
9. No request for an oral hearing has been received from either party. The appeal proceeds on a "*documents only*" basis.

10. On 5th August 2004 the Appellant's representative, Prof. Dr. jur. [REDACTED], at the request of the Appeals Office provided a power of attorney.
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.

In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel's general decision dated 6th July 2004 this appeal was assigned to [REDACTED].

The seat of the Appeals Panel is Geneva, Switzerland and the Decision is made there.

THE CLAIM

12. The Appellant has submitted the following information in relation to the claim for the proceeds of life insurance policies in his claim forms:

Claim Form dated 28th May 2000

- a) With regard to the name of the insurance company that issued the policy the Appellant writes, "*It may be [REDACTED], [REDACTED]. I can't remember.*" The name of [REDACTED] has been highlighted. It is asserted that the policy was purchased in Berlin. In answer to question 3.3 concerning information, which might support the search the Appellant writes: "*She worked for her father [REDACTED], who was the auditor for [REDACTED]*".
- b) In section four regarding "*documents*" the Appellant writes: "*She fled from Berlin to Brussels, Belgium where she was caught by the Gestapo and transported to Auschwitz where she was gassed to death*".
- c) In section five the policy is identified as a "*life insurance policy*". The Appellant does not provide any specific policy details.
- d) In section six the Appellant identifies the policyholder as [REDACTED], his aunt, who was born in Berlin, Germany and was gassed in Auschwitz in 1943. It is again asserted in question 6.13 that [REDACTED] worked as an auditor for her father for the company (hotel ?) "*[REDACTED]*" in [REDACTED], Berlin. In question 6.14 it is stated that [REDACTED] was the sister of the Appellant's mother who died in 1924 and that [REDACTED] brought the Appellant up.
- e) In section seven the insured person is identified as the Appellant's aunt.
- f) In section eight the beneficiary is identified as the Appellant.
- g) In section nine the Appellant indicates that someone has participated in compensation proceedings and writes, "*BEG-NR. 300141. I have a monthly pension of DM 760*".
- h) In section eleven regarding "*further information*" the Appellant writes "*I was born in Berlin, [REDACTED]. My mother [REDACTED] née [REDACTED] died in 1924. My father was living in [REDACTED], then in [REDACTED], then [REDACTED]. My*

father was first arrested in January 1940 or November 1939 and sent to Oranienburg. After several months he was released and then arrested in about 1941 and sent to Sachsenhausen. My father was released, seriously ill, from Sachsenhausen in 1943 and died in the hospital in [REDACTED], Berlin. I lived with my mother's sister, my aunt [REDACTED] until I was five. Then after my grandparents' death (Berlin, [REDACTED]) I came to the sister of my stepmother [REDACTED], [REDACTED]. My aunt [REDACTED] was not married, she moved then to the west side of Berlin to [REDACTED] and then fled to Brussels, Belgium. She was caught there by the Gestapo and transported to Auschwitz where she was gassed. I know that my aunt [REDACTED] had a life insurance but I don't know with which insurance company".

With this appeal form the Appellant sent copies of his birth certificate and passport and of a letter dated 3rd January 1971 issued by the Polish Red Cross that contains information about the circumstances of [REDACTED]'s death.

Claim Form dated 28th June 2000

- a) In section three the Appellant states that he does not know the name of the company that issued the policy and writes, "*it may be [REDACTED], [REDACTED]. I can't remember*". It is asserted that the policy was purchased in Berlin, Germany.
- b) In section four regarding 'documents' the Appellant writes, "*I left Germany in February 1939 and had no contact with my father as he was already being held in Oranienburg*".
- c) In section five the policy is identified as a "*life insurance policy*"; the Appellant provides no specific policy details.
- d) In section six the policyholder is identified as [REDACTED], the Appellant's father, who was born on [REDACTED] 1873 in Berlin. He died in a hospital in the [REDACTED] between 1943 and 1944. He was a civil servant at the municipal authorities and was dismissed in 1933.
- e) In section seven the insured person is identified as the Appellant's father.
- f) In section eight the beneficiary is identified as the Appellant.
- g) In section nine the Appellant again indicates that someone has participated in compensation proceedings.
- h) In section eleven regarding further information the Appellant gives the information as quoted above about himself and his father. To the policy of his father he writes: "*... I know that my father had life insurance, but I don't know which insurance company*". He continues: "*I myself fled from Berlin in February 1939, via Vienna – Prague – Trieste to Israel. All my blood relatives were either killed in concentration camps or ghettos or have died. My father's only sister, [REDACTED], was transported from Berlin to Auschwitz and gassed*".

With this appeal form the Appellant sent copies of his birth certificate and passport.

13. In the reason for appeal received by the Appeals Office on 20th February 2004 the Appellant writes: "*My father, [REDACTED], worked in the Municipal Council in Berlin and was insured with [REDACTED]. He was born on [REDACTED] 1873, so would already be over 100 years, so there will no longer be any documents. My aunt [REDACTED] was born in Berlin in 1902 and according to the confirmation from the Court was declared dead on*

8th May 1945, enclosed is confirmation from the Red Cross. My aunt was an accountant at [REDACTED] in Berlin and was insured with [REDACTED]. I am my aunt's only heir as no one else is still alive. My aunt lived at the address [REDACTED]".

The following documents were submitted with the appeal form:

- a) A letter dated 17th February 2004 from the Appellant's representative informing the Appeals Office that he is now representing the Appellant. In addition, he informs that proofs of inheritance can be forwarded.
- b) A copy of a letter dated 10th November 1969 from the German Red Cross regarding information on [REDACTED] who was born on 28th February 1899 in Berlin and whose date of death was declared dead by the District Court of Berlin-Schöneberg as having been 8th May 1945. It is stated that it is not sure whether the afore-mentioned person is the Appellant's aunt.
- c) A copy of another letter dated 25th February 1971 from the German Red Cross regarding [REDACTED]. It states that she was transported from Malines Camp to Auschwitz on 15th August 1942.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. [REDACTED] writes in its decision letter dated 30th December 2003: *"We refer to your enquiry concerning the life insurance policies that may have been concluded by your aunt Ms [REDACTED] and your father Mr [REDACTED] with [REDACTED] in Berlin, Germany. On the basis of the information provided by you in the claim form and in compliance with the 'Agreement' and its rules we have made a thorough search in all the relevant archives and records for indications of the specific insurance policies. Unfortunately the searches in our records have been without success. You couldn't yourself produce any documents proving the existence of a policy. According to the general rules of evidence laid down in the 'Agreement' it must then be checked whether other (non-documentary or unofficial/other documentary) proof or explanations either individually or in combination are sufficient to act as proof. You stated that your aunt and father had life insurance, you didn't however know where. Simply citing the names of [REDACTED] and [REDACTED] could not provide us with any decisive reference. Moreover a search was made in the external (i.e public) archives of the German compensation and restitution authorities to find out whether the policies on the basis of which you are now applying for compensation, had possibly already been the subject of previous compensation and restitution proceedings...No reference to the policies in question could be found in any form in any of the relevant external archives"*. [REDACTED] continues as quoted above (paragraph 4).

THE ISSUES FOR DETERMINATION

15. 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.
16. There is no doubt that the Appellant and his family are Holocaust victims and that the Appellant could be entitled to proceeds of insurance policies taken out by his father and his aunt.
17. However, it is concluded that the Appellant has not established that [REDACTED] issued the insurance policies upon which his claims were based. 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] to his father or to his aunt. The claim form reflects the Appellant's uncertainty regarding the name of the insurance company. When asked to identify the insurance company that issued the policies the Appellant explicitly states in his claim forms: *"It may be [REDACTED], [REDACTED], I cannot remember"* and *"I know that my father / my aunt [REDACTED] had life insurance, but I don't know which insurance company"*. In the claim form the Appellant only describes the type of policy taken out by his father and his aunt (life insurance policies), but he provides no additional details about the policies other than the place of purchase and the names of the persons holding the policy and being insured or beneficiary. It is noted that the Appellant changed his statements in the appeal form, in which he wrote *"My father / my aunt ... was insured with [REDACTED]"*. However, he offers no explanation as to why his previously qualified statement (*"... but I don't know which insurance company"*) now became unqualified. 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 absence of research matches has to be taken into consideration.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 9th day of September 2004

For the Appeals Panel

[REDACTED]