

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] who was born on [REDACTED] 1944 in Kfar-Saba, Israel. His grandfather is [REDACTED] who was born on [REDACTED] 1876 in Lessen, East Prussia (German Reich) and who died on 30th June 1941 in Kfar-Saba. His grandmother is [REDACTED], née [REDACTED], who was born on [REDACTED] 1880 in Posen/Poznan (at that time German Reich, now Poland) and died in 1947. His grandparents had three children: [REDACTED], [REDACTED] and [REDACTED]. The family immigrated to Palestine in 1935.

[REDACTED] died on 18th January 2000. She had two daughters, [REDACTED] and [REDACTED].

The Appellant's father [REDACTED] also died on 18th January 2000. He had three children, [REDACTED], the Appellant, [REDACTED], neé [REDACTED], and [REDACTED].

[REDACTED] died in 1991.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 20th July 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]” issued a life insurance policy.
4. The ICHEIC submitted the claim to [REDACTED]. In a decision letter dated 26th November 2003 [REDACTED] declined the claim (see paragraph 15).
5. The Appellant submitted an appeal, dated 13th December 2003, directly to [REDACTED], which was forwarded to the Appeals Office by fax on 15th December 2003. In this appeal form the Appellant sets out his reasons for the appeal.
6. The Appeals Office sent a copy of the appeal to [REDACTED] on 13th January 2004.
7. [REDACTED] responded in a faxed letter dated 9th February 2004. In this letter [REDACTED] requests that the Appeals Panel reject the appeal submitted with respect to the claim (see paragraph 16).
8. On 16th February 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.
9. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
10. 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

11. The Appellant submitted the following information in relation to his claim in the claim form signed on 20th July 2000:
 - a) He identifies “[REDACTED]” as the company that issued the life insurance policy. He states that the policy was purchased in Berlin (Germany) and provides the policy number “[REDACTED]”.

- b) In section five he repeats the policy number “[REDACTED]” and asserts that the currency of the policy was “Mark”. He indicates that the premium payments were paid on a weekly, monthly, or annual basis.
 - c) The policyholder is identified as [REDACTED], the Appellant’s grandfather, who was born on [REDACTED] 1876. He was a merchant.
 - d) [REDACTED] is also identified as the insured person in section seven.
 - e) With regard to the surname of the named beneficiary, in section eight, the Appellant writes, “*might be [REDACTED]*”. The first name of the named beneficiary was “[REDACTED]” and her maiden name was “[REDACTED]”. This is the Appellant’s grandmother, who was born on [REDACTED] 1880.
 - f) In answer to questions 6.14, 7.14 and 8.14 the following persons are identified as living heirs: [REDACTED] and [REDACTED], the Appellant’s siblings and the children of [REDACTED]; [REDACTED], the wife of [REDACTED] (deceased); [REDACTED] and [REDACTED], the daughters of [REDACTED] (deceased).
 - g) In section eleven regarding “*further information*” the Appellant writes, “*in October 1935, the policyholder immigrated to Israel. His wife, [REDACTED], the beneficiary, died in 1947. His daughter [REDACTED] died 18.01.2000. Her two daughters are [REDACTED] and [REDACTED]. His son [REDACTED] died 18.01.2000. His three children are [REDACTED], [REDACTED] and [REDACTED]. His daughter in law is [REDACTED], widow of his son [REDACTED], who died in 1991.*”
12. On the declaration of consent the named beneficiary is stated as being “*unknown*”.
13. The following documents were submitted with the claim form:

- a) A copy of the Appellant’s Israeli passport;
- b) A copy of a letter dated 27th March 1936 sent from [REDACTED] to the Appellant’s grandfather c/o Dr. [REDACTED] in Kfar-Saba, with the reference number “[REDACTED]”. This letter states, “*we hereby confirm that we have taken note of your new address. On the basis of premiums paid your insurance remains in force for a lifetime, in accordance with the conditions. A transfer of the insurance to Palestine is not possible according to the current currency regulations on insurance contract*”;
- c) A copy of a letter to the Finance Office in Berlin with regard to tax number [REDACTED]. This letter states “*my brother, [REDACTED], of [REDACTED], Berlin sent me your property tax ruling of 5/1/39 and I cannot understand this ruling. How can we pay tax on a B property that we do not possess? At any rate it was not the way it worked when I was living in Berlin. The life assurance policy was due and payable on 15.10.42 and I still have not got the faintest idea whether I am going to get hold of the money. I used up the*

Mk. 1850

lent by the [REDACTED] in Gotha for the move and I have to pay interest on it, so this amount is actually a loan and is tax-deductible.
Also the property tax declaration of January 1935 cannot be relevant because I presented you with a statement of my assets before the move in December 1935. From this amount the loan of

Mk. 1850

is also tax-deductible.

You did not respond to the notification that I refuse to pay a quota for the charge imposed on Jews. I request a waiver of quota and exemption from further property tax payments.

Because of your refusal to repay Mk. 77.50, both I and my brother, as the trustee, are incapable of paying the premium owed on the life insurance policy and the interest in full”.

14. In his reason for grounds of appeal the Appellant writes, “according to the letter dd March 27 1936 my grandfather [REDACTED] that just reached his new homeland in Palestine ask you to transfer his money (to cancel his insurance and you denied (*eine Ueberweisung der Versicherung nach Palastina ist nach den fuer Versicherungsverträge geltenden Devisenvorschriften nicht möglich*). Isn’t it an evidence that your company left the money in Germany and didn’t respect his request?”

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. In the decision letter dated 26th November 2003 [REDACTED] writes: “Based on the information that you have provided in the claims-form we have intensively searched all relevant archives and records for information on the existence of an insurance policy for Mr [REDACTED]. In accordance with the rules of the ‘Agreement’ we have neither found any evidence of this policy nor of any other insurance policies for your grandfather in our archives which, however, were nearly totally demolished during the war. Based on the copy of the letter dd March 27th 1936 submitted by you we can, inform you as follows:

The insurance taken out by your grandfather with [REDACTED] was a ‘Lebenslängliche Eisenbahn- und Dampfschiff-Unglück-Versicherung’ (“Lifetime Railway and Steamship Accident Insurance”). This insurance was a specific form of an accident insurance policy and not a life insurance contract. The insurance covers all consequences of such accidents suffered by the insured person as a passenger in railways, steamships and motorships used in public transportation by an accident happening to the means of transport itself. These contracts were taken out against a single premium payment; insurance cover is a lifetime cover.

If we can take from the statements in your claim filed with ICHEIC, your grandfather emigrated in 1935 and did not die due to an accident as per the above clauses. Therefore you are not eligible for a claim as per the rules of the ‘Agreement’, because the policy has neither been unpaid nor confiscated”.

16. [REDACTED]’s response to the appeals process, dated 9th February 2004, states, “the only information related to former activities in [REDACTED]’s possession consist of a reduced number of statistical and some technical registers sorted by policy numbers still available out of [REDACTED]’s former central archives in Berlin, which was destroyed in February 1945. These registers which contain no names of policyholders whatsoever were thoroughly analysed and recorded together with all the information obtained as a result of internal and external searches into one electronical database to perform all possible research. Unfortunately, with respect to the claim at issue, no supporting evidence of a life insurance contract has been either provided by the claimant, or found by [REDACTED] or by the ICHEIC. Therefore, the only basis of our decision as per our letter dated 26th November 2003 were the documents submitted by the claimant as to his grandfather’s accident

insurance. The claimant himself states, however, that his grandfather's death in Israel in the year 1941 was not a consequence of an accident as per the insurance clauses, so it cannot be assumed that the sum insured had been unpaid or that the policy had been withdrawn, as required in the 'Agreement' dd 16th October 2002. This is the reason why we have to confirm the rejection of the claim, and also the reason for the impossibility to produce to the Panel any document related to the claim at issue, because no such document is available to us. For the same reasons explained above, we respectfully ask the Panel to reject the appeal submitted with respect to this claim, and to confirm [REDACTED]'s previous decision on it".

THE ISSUES FOR DETERMINATION

17. 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.
18. According to Section 1 of the Appeal Guidelines ("*Scope of these Guidelines*"), "*These Guidelines in their entirety apply only to appeals of decisions on life insurance policies*" (1.2). "*In reaching decisions on appeals of non-life insurance policies the Panel ... shall apply the rules set out in Section 2 (2) of the Agreement and in other respects shall follow these guidelines to the extent possible, making adjustments as required*" (1.3). As indicated hereafter, the instant case involves "*Lifetime Railway and Steamship Accident Insurance*", and not life insurance. Accordingly, Section 2 (2) (a) of the Agreement, which provides, in pertinent part, that "A claim concerning non-life insurance is eligible for compensation, if (a) the insured event occurred while the policy was in force at the time of the event ...".
19. The Appeals Panel concludes that the Appellant has not met his burden of proof that [REDACTED] issued a life insurance policy to Appellant's grandfather. The documentation submitted by the Appellant leaves no doubt that [REDACTED] issued policy number [REDACTED] to the Appellant's grandfather. This documentation, however, does not relate to a life insurance policy but to a "*Lifetime Railway and Steamship Accident Insurance*" policy. This is clearly indicated in the policy number, which, according to [REDACTED]'s letter dated 27th March 1936, reads: "*[REDACTED], the letters 'L.-E.-U.'*" being the initials of "*Lebenslängliche Eisenbahn- und Dampfschiff-Unglück-Versicherung*" ("*Lifetime Railway and Steamship Accident Insurance*"). Such policies cover all accidents for individuals travelling by rail, steamships and motor ships. With respect to the claim at issue, there is no evidence that the insured event - an accident

occurring while travelling – ever occurred. Accordingly, the claim is not eligible for compensation under Section 2 (2) of the Agreement.

20. The Appeals Panel does note that the Appellant has submitted written documentation confirming the existence of a life insurance policy issued by [REDACTED] to the Appellant's grandfather. [REDACTED] is not, however, responsible for life insurance contracts issued by other companies.

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