

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]

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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

ING. [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 Ing. [REDACTED], born on [REDACTED] 1924 in Olomouc (Czechoslovakia, now Czech Republic). He is the grandson of [REDACTED] and the son of [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1872 in Zywiec (Austria-Hungary, now Poland) and died on 13th November 1957 in Olomouc. [REDACTED] was born on [REDACTED] 1902 in Chropyne (Austria-Hungary, now

Czech Republic) and died on 12th May 1992 in Horovice (Czech Republic). The Appellant is the only grandchild of [REDACTED].

[REDACTED] was in the concentration camp of Theresienstadt (Terecin) between 7th March 1945 and 9th May 1945.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 28th November 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 13th January 2004 *“On the basis of the information given in your claims-form and after intensive research of all relevant internal and external archives the existence of a life insurance policy taken out by Mr. [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 that you will understand our decision not to submit an offer under the given circumstances”*.
5. The Appellant submitted an appeal to the Appeals Office dated 9th February 2004, which was accompanied by an attachment setting out the reasons for the appeal.
6. The Appeals Office received the appeal on 12th February 2004 and mailed a copy to the Respondent on 17th February 2004.
7. [REDACTED] responded in a letter dated 24th February 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”*.
8. On 23rd March 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. The Appellant responded in a letter dated 2nd April 2004, in which he wrote: *“Thank you for your letter of 23rd March 2004. You ask that I request an oral hearing with you. Unfortunately, I am not able to travel to England or to Germany for this. I am retired and I receive a small pension and cannot afford such costs. Therefore, I ask you to make a final decision in terms of my letter of 15th March 2004. ...”*.
10. After having received this letter on 30th April 2004 the Appeals Office informed the Appellant by phone that he obviously misunderstood the Appeals Office’s letter dated 23rd March 2004 and explained to him that making a decision does not depend on having had an oral hearing. It further informed him that the oral hearing also could be conducted by telephone conference call and that in this case there will be no travel expenses.
11. In a letter dated 18th May 2004 the Appellant requested an oral hearing.
12. On 17th June 2004 the Appeals Panel decided that there would be an oral hearing via telephone conference call on 7th July 2004, 10.30 (CET) and that the interview would be conducted in German. The Appeals Office informed both parties of this decision by letter dated 18th June 2004.

13. The oral hearing took place on 7th July 2004. It was conducted in German and translated by an interpreter into English.
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 in his claim form:
 - a) In section three he identifies the insurance company that issued a policy as “[REDACTED] [REDACTED]’ [REDACTED].” He states that the policy was purchased in [REDACTED], Olomouc.
 - b) In section four concerning “documents” the Appellant writes: *“In 1946 (on 10th January) my grandfather, [REDACTED], asked the “[REDACTED]”, which had its office in the Hotel [REDACTED], [REDACTED], Olomouc, to claim the repayment of his life assurance policy, confiscated by the Gestapo in September 1940. He received a negative response. The insurance policy had not been found in the German archives”.*
 - c) In section five the policy is identified as a *“life insurance policy, mature upon survival in 1944”*. The Appellant asserts that the policy was taken out in 1922 for an insured sum of 30,000 Czech Crowns and had a maturity date of 1944. He states that he is not aware of any payments out of the insurance policy and writes, *“payment to THE GERMAN government AS JEWISH PROPERTY following the confiscation of the policy.”* He states that a single premium payment was made for the amount of 30,000 Czech Crowns. He asserts that [REDACTED] approached the “[REDACTED]” regarding the policy in 1945 and 1946.
 - d) In section six the policyholder is identified as [REDACTED], the Appellant’s grandfather, who was born on [REDACTED] 1872 in Zywiec, Poland.
 - e) In section seven the insured person is identified as the Appellant’s grandfather.
 - f) In section eight the beneficiary is identified as the Appellant’s grandfather.
16. In a statement sent with the claim form the Appellant writes: *“My grandfather, [REDACTED], born Zywiec, Poland, on [REDACTED] 1872, was sent to Theresienstadt concentration camp for being a Jew on 07.03.1945. After World War One, in Olomouc, Czechoslovakia, he took out a life policy with [REDACTED] insurance, [REDACTED], [REDACTED] branch, in the sum of Kc 30,000 (thirty thousand Kc), then, later in the same period for Kc 20,000 with [REDACTED] insurance, personally at their head offices in Vienna, which according to the evidence was subsequently transferred to the branch at Olomouc, [REDACTED] ([REDACTED], senior insurance inspector). He inherited the money to pay for this from his parents, and thought this investment would be something to fall back on in his old age. In 1939, in July, on the instructions of the Reichsprotektor von Neurath, he had to register these two policies, along with other assets, with the*

- [REDACTED], Olomouc branch, [REDACTED]. In May 1940, he was informed that he was to keep the policies for the time being and wait until he was ordered to hand them over when the German authorities instructed. In September 1940, the Gestapo searched his house, as the neighbours had accused him of listening to enemy radio from London and going out without wearing the Jewish [REDACTED] in the evenings. During this house search, as well as other documents, his Jewish (religious) books, radio, golden wedding ring and two life assurance policies i.e. the policy with [REDACTED] Berlin and [REDACTED] were confiscated. He did not report to the Gestapo office in Olomouc that these items had been seized, out of fear. As he subsequently learned, the Gestapo handed over his confiscated property to the assets office of the Reichsprotector. In December 1945 and on 10.1.1946, he asked the [REDACTED] (whose office was in Olomouc at the time,
17. -+-+ Str.) to apply for the Germans to release his confiscated property and both life assurance policies from confiscated Jewish property. He had not had anything back by the time he died in 1957”.
18. In his appeal form the Appellant writes: “I enclose a detailed explanation of the basis of my claim. The insurers above have exhausted all the resources and opportunities in what remains of the archives to find the alleged details of this life assurance policy. As Herr [REDACTED], special agent for the [REDACTED] insurance companies, informed me in his letter of 27th September 2000, the only source of information for the existence of a policy are some war registers which are sorted by policy number. The registers do not contain any names or policy data however”.
19. In a letter received by the Appeals Office on 23rd March 2004 the Appellant writes: “...As I have already informed you in previous documents, both life assurance policies were confiscated with other things from my grandfather, [REDACTED], who lived in Olomouc as a Jew, in September 1940 during a search of his home by the GESTAPO, and he never got them back...The value of the two policies in 1940 was as follows: 1. The [REDACTED], policy, Application No. [REDACTED] (this is the ICHEIC claim number) = 40,000 crowns; in the currency of the Protectorate of Bohemia and Moravia up to 1938, 40,000 Czech crowns. 2. [REDACTED] ([REDACTED] from 1937 onwards) policy application number. [REDACTED] (this is the ICHEIC claim number) = 20,000 crowns; in the currency of the Protectorate of Bohemia and Moravia up to 1938, 20,000 Czech crowns. My proposal for a financial settlement for both policies is 60,000 contemporary Czech crowns or 2000 Euros”.
20. A further statement was received from the Appellant on 20th May 2004. In this statement he repeats his assertion that his grandfather had two life insurance policies with [REDACTED] [REDACTED] and [REDACTED]. Furthermore, he corrected the discrepancy over the insured sum for the life insurance policy allegedly taken out with [REDACTED] [REDACTED], and states (again) that the policy value was Kč 30,000 and not Kč 40,000 as previously mistakenly quoted.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

21. In a letter dated 27th September 2000 the Respondent advised the Appellant: “I have received your enquiry about a life insurance contract, which is supposed to have been made between [REDACTED] and Mr. [REDACTED]. Due to the war years and the 50 years that have passed since, our abilities to offer information on old policies are extremely limited and most of the time impossible. This is especially the case with policies, which were issued in foreign branches. Such a branch was the management for Czechoslovakia with its seat in Prague. The branch not only issued the policies but, in accordance with the Czech state, also managed them itself...Due to the independent administration of the Czech branch in

Prague we do not possess any document in our own archives relating to policies issued in Czechoslovakia. The only sources of information relating to the existence of a contract are some registers. These registers can only be sorted by policy numbers. They do, however, not contain names or dates of issue. You will understand that in these circumstances and against this background it is not possible for us to assist you in your inquiry after a life insurance policy held by Mr. [REDACTED]...

22. In a letter dated 8th January 2004 the Respondent informed the Appellant “*in the scope of our research we found out that documents on the insurance policy are available in external archives and files*”.
23. In its decision letter dated 13th January 2004 the Respondent writes, “*...based on the information that you have provided in the claims-form we have intensively searched all relevant archives and records in accordance with the ‘Agreement’ for information on the specific life insurance policy. The internal research in our records did, however, not show any success because of the lack of specific and detailed information e.g. on the policy number. The only search criterion available to us were the names mentioned by you. The research of our list of former insured persons and other persons who were parties to the contracts remained without any result. 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 the relevant external archives contain any reference regarding this specific life insurance policy. On the basis of the information given in your claims form and after extensive research of all relevant internal and external archives the existence of a life insurance policy taken out by Mr. [REDACTED] could not have been established, even under the ‘Relaxed Standards of Proof’ of the Agreement*”.
24. The Respondent commented further in its letter dated 24th February 2004. In this letter it writes, “*the only information related to former activities in Czechoslovakia 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 main archive 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 electronic database to perform all possible research. 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 [REDACTED] or by the ICHEIC. This is the reason why we have to confirm the rejection of this 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*”.

THE ISSUES FOR DETERMINATION

24. The first 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.
25. 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.
26. The Panel has concluded that the Appellant has met his burden of proof in that his evidence has the requisite authenticity and particularity. From the commencement of these proceedings he has proved many details about the life insurance policy taken out by his grandfather with the Respondent such as the exact place where the policy was purchased, the insured sum and the date of maturity. Although in the course of the claims procedure there were contradictory statements as to whether the insured sum was Kč 30,000 or Kč 40,000, ultimately the lower amount was again claimed as the proper amount and the higher amount was indicated as having been provided in error. In addition, the Appellant was familiar with other very specific details about the insurance contract, such as 1) the one-sum-payment on the premiums in consequence of an inheritance that was made when the policy was taken out, 2) what occurred subsequently, including the registration of the policy in July 1939, 3) subsequent instructions relating to the policy issued in May 1940 and, 4) the confiscation of the policy in September 1940 when the Gestapo searched the house of the Appellant’s grandfather. Finally, the Appellant had detailed knowledge about attempts of his grandfather to obtain the proceeds of the policy immediately after the end of the Holocaust in December 1945 / January 1946 by contacting the “[REDACTED]” in Olomouc for help in applying for the release of his confiscated property. Based upon the details the Appellant could remember, his age at the end of the Holocaust (21 years) and his consistent explanations from the initiation of his claim in writing to his oral statements in the hearing on 7th July 2004, the Panel concluded that the Appellant’s assertions that his grandfather took out an insurance policy with the Respondent; that this policy provided an insured sum of Kč 30,000; that the policy was paid in a one-sum-premium payment; and, that the policy matured in 1944 were plausible in the sense of the relaxed standards of proof.
27. The Appellant, as the only grandson of his grandfather, is entitled to the proceeds of the policy and there are no doubts that the members of the [REDACTED] family were Holocaust victims as defined in section 14 of the Agreement.

VALUATION

28. The valuation of a claim includes pursuant to section 1.2 and 1.3 of the Valuation Guidelines (Annex D) two phases - the first is the assignment of a base value to a policy; the second is the application of appropriate multipliers to the base value to produce the current value.

29. The base value of a policy, according to section 1.2 of the said Guidelines, is the value that the policy would have had at the date of the insured event, which in this case is the maturity date in 1944. The value at that time was Kč 30,000.
30. No deductions, as mentioned in section 3.3. of the said Guidelines, need be made, because there is no valid suggestion that premiums were not fully paid until the date of the insured event. The premiums were paid as a one-sum-premium payment when the policy was issued.
31. The value of the policy in Czech Crowns corresponds, according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.024 laid down in Step 1 of Schedule 2 of the said Annex, to the value of US\$ 720.
32. Pursuant to Step 2 of Schedule 2 of the said Annex, this dollar value must be multiplied by 11.286 resulting in a value to the end of 2000. This is US\$ 8,125.92 by the end of 2000.
33. According to Step 3 of Schedule 2 of the said Annex, additions must be made to the dollar value up to the end of 2000 for the subsequent years. These interest rates have been agreed upon in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC issued after consultation with the Foundation and the [REDACTED] as the other parties to the Agreement (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 %; 2004: 5.0 % according to the month, in which the decision is made, plus two months, i.e. 10/12 of 5.0 %), which results in the amounts of US\$ 8,564.71968 for 2001, US\$ 8,992.955664 for 2002, US\$ 9,420.12105804 for 2003 and US\$ 9,812.626102125 for 2004.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

1. The appeal succeeds.
2. [REDACTED] shall pay the Appellant the sum of US\$ 9,812.63 no later than the last day of the second month following the month of the decision, which is [REDACTED] 2004.

Dated this 1st day of August 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member