

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

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], born on [REDACTED] 1919 in Leipzig (Germany). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1889 in Niewoczyn, Galicia (at that time Austria-Hungary, later Poland)

and died in the concentration camp of Sachsenhausen; [REDACTED] was born on [REDACTED] 1893 in Stanislawow, Galicia (at that time Austria-Hungary, later Poland) and was deported to an unknown place, most likely Auschwitz, on 17th February 1943 where she was killed.

[REDACTED] owned a clothing material store in Leipzig.

The Appellant left Germany in October 1938 and emigrated to the United States of America.

The Appellant had a brother, [REDACTED] who died on 5th October 1997 in Cardiff, Wales (United Kingdom). His wife predeceased on 29th August 1996 in Cardiff. Information about issue of the Appellant's brother was not provided.

2. The Respondent is [REDACTED].
3. The Appellant submitted two claim forms dated 30th April 200 and 23rd May 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] issued policies of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 19th February 2004: *“Based on the information provided by you in the claim form and after our intensive research in all relevant internal and external archives the existence of a life insurance policy taken out by Mr. [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 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 23rd January 2004, in which he set out the reasons for the appeal.
6. The appeal form received from the Appellant was an incorrect appeal form in that it did not contain a declaration of consent to the adjudication of the appeal by way of arbitration in Geneva, Switzerland under Swiss federal law, a declaration of being bound to 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 to the Appeal Guidelines, a declaration waiving any right to appeal such decision as provided in the Appeal Guidelines and in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law and a declaration waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
7. The Appeals Office requested the Appellant by letter dated 24th June 2004 to sign an amended appeal form.
8. The Appeals Office received the amended appeal form on 20th July 2004. This appeal form was accompanied by a handwritten letter pointing out that the sentence in the reasons for appeal reading *“All I wanted to find out, what because of the policy, that a [REDACTED] wrote and my father paid in”* should read *“All I wanted to find out, what **became** [emphasis added] of the policy, that a [REDACTED] wrote and my father paid in”*.

9. Before having received the amended appeal form, the Appeals Office sent a copy of the “old” appeal form to the Respondent by letter dated 23rd February 2004.
10. [REDACTED] responded in a letter dated 5th March 2004 stating for reasons it had previously set out: “*Even under a very liberal interpretation of the presented facts in the claim, at least from our point of view the claim had to be rejected*”.
11. On 26th 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.
12. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
13. 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

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

Claim Form signed 30th April 2000

- a) The Appellant identifies “[REDACTED]” as the insurance company that issued a policy of life insurance to his father, [REDACTED].
- b) In section three he states that the policy was purchased in Leipzig, Germany. He identifies the agent as [REDACTED] of [REDACTED], Leipzig.
- c) In section four concerning “*documents*” he writes, “*I was too young to be included in my families finances. I left Germany in October 1938, emigrating to the U.S.A*”.
- d) In section five he indicates that the policy at issue was a “*life insurance policy*”. He provides no policy specific details.
- e) In section six he identifies the policyholder as [REDACTED], his father, who was born on [REDACTED] 1889. His father was arrested on 2nd September 1939 and was sent to Sachsenhausen concentration camp where he perished. He states that his father was a self-employed merchant and owned the company “[REDACTED]”.
- f) In section seven he identifies the insured person as his father. This page appears to have been subsequently inserted, since the following page (also section seven) has not been completed. The words “*insured person*” have been highlighted. Question 7.14 (“*Do you know of any living heirs of the insured person(s) ?*”) is answered with “*No*”.

- g) The beneficiary is identified as [REDACTED], née [REDACTED], the Appellant's mother, who was born on [REDACTED] 1893 in Stanislawow, in the province of Galicia (Austria-Hungary). She was deported to Auschwitz on 17th February 1943. Question 8.14 (“*Do you know of any living heirs of the beneficiary ?*”) is also answered with “*No*”.

In the declaration of consent accompanying this claim form the name of the insured person has not been provided. The names of the policyholder and beneficiary are consistent with those in the above-mentioned claim form.

The following documents were submitted with this claim form:

- a) Copies of the Appellant's passport from the United States of America and from his old Polish passport including a copy of visa for the United States of America, issued on 19th September 1938.
- b) A copy of a letter written to the Swiss Embassy in the United States dated 6th February 1997 asking for the address of [REDACTED]. The Appellant writes: “*My father, [REDACTED], who was a resident all his adult life in Leipzig, Germany, was insured by the [REDACTED]. His local agent was a Mr. [REDACTED]...I would like to find the address of that [REDACTED], or its successor, and thru them find out what became of the insurance policy*”.
- c) Information from “[REDACTED]” concerning the Appellant's parents.

Claim form signed 23rd May 2001

The information provided is almost the same as stated above. However, there are a few differences.

- a) In section eight, the Appellant states that there are other living heirs of the beneficiary and writes, “*my brother [REDACTED] died on 5th October 1997 in Cardiff, Wales, U.K. His wife predeceased him 29th August 1996 also in Cardiff, Wales.*”
- b) In addition, the Appellant provides comments in section eleven concerning “*further information*” and he writes: “*I have written repeatedly to the embassy of the Swiss confederation to the Chargé d'affair, to the commercial attaché. They did not reply ever, nor acknowledge receipt. I enclose copy of last letter*”.
15. In his reason for appeal received by the Appeals Office on 19th February 2004 the Appellant writes: “*For many years, I have been told, that there is no [REDACTED] but only a [REDACTED], which in Switzerland is the same, right? I wrote repeatedly to the Swiss Embassy, but NEVER got a reply. After the Ambassador was accused of pro-German anti-Semitic views, I wrote to the charge d'affairs with the same result. Now all of a sudden there is a [REDACTED] in Geneva. All I wanted to find out, what became of the policy, that a [REDACTED] wrote and my father paid in. My brother [REDACTED], who was that time 14 years old did not know what happened to the policy but of course no parents informs a 14 year old child of financial decisions. My father was murdered in KZ Sachsenhausen with the last transport NACH DEM OSTEN and never heard from again. For that reason alone, I am reluctant to believe the reply of the present [REDACTED]. I would prefer an independent agency to look into this claim*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In its final decision letter dated 19th February 2004 [REDACTED] writes: *“Based on the information that you have provided in the claim form we have intensively searched all relevant archives and records in accordance with the Agreement for information on the specific life insurance policy. Unfortunately no match occurred in our records. In this connection we have to inform you that [REDACTED] Life insurance was founded in 1987. Therefore no life insurance policies of [REDACTED] were sold before 1987. However, we have proofed you claim also for [REDACTED], which was legally the predecessor of [REDACTED] Life insurance. Unfortunately we could not find any reference regarding a life insurance policy of your father in the archives of [REDACTED]. 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 a life insurance policy. Based on the information provided by you in the claim form and after our intensive research in all relevant internal and external archives the existence of a life insurance policy taken out by Mr. [REDACTED] with [REDACTED] could not have been established, even under the ‘Relaxed Standards of Proof’ of the Agreement”.*
17. In a letter dated 5th March 2004 [REDACTED] reiterates that it has found no information in its archives of an insurance policy of the Claimant’s father, Mr. [REDACTED] (see paragraph 10).

THE ISSUES FOR DETERMINATION

18. 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.
19. There is no doubt that the Appellant and his family are Holocaust victims as defined in section 14 of the Agreement and that the Appellant could be entitled to the proceeds of a life insurance policy issued to his late father as his sole heir or one of his heirs.
20. However, 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.

21. It must be concluded that the Appellant has not met his burden of proof that [REDACTED] issued an insurance policy to his father. His evidence lacks the requisite authenticity and particularity. There is insufficient 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]. He provides some details about the policy, such as names and personal details of policyholder, insured person and beneficiary, the name of an insurance agent and place of issue. However, some of these details are slightly inconsistent (e.g. deviations in the declaration of consent and the claim form or the first name of the agent in the claim forms and in the letter dated 6th February 1997 to the Swiss Embassy). In addition, the Appellant does not explain, how he knew about the policy and how he was able to describe its details as far as known to him. Finally, he states in his claim form dated 30th April 2000: "*I was too young to be included in my families finances. I left Germany in October 1938, emigrating to the USA*".

More decisive, however, is that neither the Respondent, nor the ICHEIC found a research match in their databases. The absence of research matches must be taken into account. It also has to be taken into account that the named company ([REDACTED]) did not begin issuing life insurance policies until 1987 and no matches were found when researching the archives and records of its predecessor ([REDACTED]).

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 15th day of September 2004

For the Appeals Panel

[REDACTED]