

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 [REDACTED] 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] ([REDACTED]), born on [REDACTED] 1926 in Kajdano (at that time Czechoslovakia, now Ukrania). He is the son of [REDACTED] and [REDACTED]. [REDACTED] was presumably born in 1903 in Holubina (at that time Austria-Hungary, later Czechoslovakia) and did not survive the Holocaust. [REDACTED], née [REDACTED], who was born in 1910 in Kajdano, was also killed under the National Socialist Regime. The [REDACTED] family had five children, the Appellant, his two brothers [REDACTED], born in 1928, and [REDACTED], born in 1930, and his two sisters [REDACTED], born in 1936, and [REDACTED], born in 1938. His siblings also perished in the Holocaust in 1944. The Appellant is the only survivor.

[REDACTED] was working for the “[REDACTED]” and also was an insurance agent for “[REDACTED]”.

2. The Respondent is [REDACTED] as legal successor of [REDACTED].
3. The Appellant submitted two claim forms, using a “*Questionnaire for Holocaust/Insurance information*” (issued by the Florida Department of Insurance) and an ICHEIC claim form, to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]” issued policies of life insurance and dowry insurance.

The “*Questionnaire*” has a “*received stamp*” of 16th June 1998; The ICHEIC claim form has a “*received stamp*” dated 22nd March 2001.

4. The ICHEIC submitted the claims to the “[REDACTED]”, for “[REDACTED]” (Czechoslovakia) and to “[REDACTED]” for “[REDACTED] Reichenberg”.
5. [REDACTED] as legal successor of [REDACTED] stated in its decision letter dated 9th March 2004: “... *we unfortunately have no evidence for a life insurance contract concluded between your above mentioned relatives or yourself and [REDACTED]. We hope you will understand that we cannot offer payment, since there is no evidence of an existing contract*”.
6. The Appellant submitted an appeal to the Appeals Office dated 17th March 2004, which was accompanied by an attachment setting out the reasons for the appeal and the original of the above mentioned (paragraph 5) decision letter.
7. The Appeals Office received the appeal on 23rd March 2004 and mailed a copy of it to the Respondent.
8. [REDACTED] responded in a letter dated 21st April 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 our decision on it*”.
9. On 30th April 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.
10. On 17th May 2004 the Appeals Office received a letter dated 9th May 2004 from the Appellant with a request for an oral hearing and informed the Respondent by sending him a copy of this letter the same day.
11. On 17th June 2004 the Appeals Panel decided that there would be an oral hearing of the Appellant by setting up a telephone conference call on 5th July 2004, 9.15 (Eastern Time), the interview to be conducted in English. The Appeals Office informed both parties about this decision by letter dated 18th June 2004.
12. The oral hearing took place on 5th July 2004.
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.

The seat of the Appeals Panel is Geneva, Switzerland and the Panel 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 form:

- a) In section three of the claim form regarding the name of the company he writes, “[REDACTED]. A Czech ins. company. Maybe affiliates with another insurance company”. He states that the policy was purchased in Czechoslovakia.
- b) In section five the Appellant is unclear as to the number of policies, but alleges that there was a life insurance policy for his father and dowry/education insurance policy(ies) for his sisters. He asserts that the currency of the policy was Czech crowns and the date of issue was in the 1930’s. In answer to question 5.8 concerning the “mode of payment of the premium” the Appellant writes: “The life insurance premium on my father [REDACTED] and the dowry insurance for my 2 sisters was paid semi-annually.” The Appellant asserts that all premiums were paid to the best of his knowledge and states that they were stopped because his father was incarcerated by the Hungarian government.
- c) In section six the policyholder is identified as [REDACTED], the Appellant’s father. The Appellant believes that his father was born in 1903.
- d) In section seven the insured person is identified as the Appellant’s father and the Appellant’s sisters, [REDACTED] and [REDACTED] [REDACTED].
- e) In section eight the beneficiary is identified as the Appellant.
- f) In section eleven regarding “further information” the Appellant provides the names of two witnesses who were with him on the “death march”.

15. In the “*Questionnaire for Holocaust/Insurance Information*” the Appellant identifies the family business/occupation as “insurance representative”:

- a) In answer to question 6 regarding the business name and location he writes, “[REDACTED] in Budapest”.
- b) In answer to question 7 regarding any recollection of insurance from that period he writes, “life insurance for himself. Life insurance for his children”.
- c) In answer to question 11, which asks, “Do you recall any family financial advisors or people in the community (for example rabbi, banker, attorney, or civic leader) who might have been aware of others’ financial affairs or who served as a consultant when people needed help with personal finances?”, he writes, “[REDACTED] or [REDACTED] lawyer”.
- d) In answer to question 12 which asks whether the Appellant can recall any other family discussions of insurance issues, he writes, “discussions with uncles in the family”.

16. There are two statements in the claim file:

- a) A letter dated 30th October 1999 from the Appellant stating that his father purchased the policies in Holubina, Czechoslovakia. He states that the beneficiaries of the life insurance policy were his mother and his siblings. He also states that there were two other insurance policies for his sisters, [REDACTED] born in 1930 and [REDACTED] born in 1936. It is stated that both sisters died in Auschwitz in 1944.
- b) A letter dated 8th March 2001 from the Appellant stating that the first claim relates to a life insurance policy taken out by his father, and the second claim relates to a dowry and education policy purchased for his father's daughters, [REDACTED] and [REDACTED].
17. In a statement that was submitted with his appeals from the Appellant writes: *“The reason for my appeal is as follows: The dates of my and my family birthdays as listed in the decision are wrong. Therefore, I will be listing the correct birthdays...[the Appellant lists his relatives and provides dates and places of birth]...The facts are and based on my undisputable personal knowledge, that my father [REDACTED] was an employee of the [REDACTED]. The bank to the best of my knowledge was a subsidiary of the Insurance Company, or the owner of the Insurance Company, which may have been listed under the same name. My father [REDACTED] procured through the [REDACTED] ‘DOWRY’ insurance policies for my sisters [REDACTED] and [REDACTED]. That fact that my father procured the DOWRY policies for my sisters, I know without any doubt. I do not know for a fact whether my father procured Life Insurance policies on his own life, nor my mother’s or on my, or my brother’s lives. However, knowing my father, who was a very insurance conscious person, I believe, that he may have procured life insurance policies on his own life, and on the life’s entire family. My entire family perished in the Holocaust, and I am the sole survivor. Therefore, it is respectfully requested that the Honorable Appeals Court, review the facts as presented, and diligently search out the facts and arrive at a just decision”.*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. In its decision letter dated 9th March 2004 [REDACTED] writes: *“The International Commission has forwarded your inquiry concerning a life insurance contract concluded prior to 1945 to us because [REDACTED] has been taken over by [REDACTED]. Claims referring to companies that are related to [REDACTED], such as [REDACTED] Reichenberg, are being processed by us, using the registers and archives of [REDACTED] that are still in existence...We regret, no entries exist in the register for Mr [REDACTED], [REDACTED], Mrs [REDACTED], Mrs [REDACTED], Mrs [REDACTED], Mr [REDACTED], Mr [REDACTED] and Mr [REDACTED], née [REDACTED]. Regrettably, the register is no longer complete after more than 60 years. Moreover, we also searched the archive documents of [REDACTED] which are still in existence. Unfortunately, these documents contain no information concerning a contractual relationship with Mr [REDACTED], Mrs [REDACTED], Mrs [REDACTED], Mrs [REDACTED], Mr [REDACTED], Mr [REDACTED] and Mr [REDACTED], née [REDACTED], too. Therefore, we unfortunately have no evidence for a life insurance contract concluded between your above-mentioned relatives or yourself and [REDACTED]. We hope you will understand that we cannot offer payment, since there is no evidence of an existing contract”.*

THE ISSUES FOR DETERMINATION

19. 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.
20. 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. While the Appellant’s assertions as to the existence of dowry insurances for his sisters have sufficient plausibility this is not the case with regard to a life insurance policy for his father. The Appellant’s own explicit uncertainty fortifies the Panel’s conclusion that the requisite plausibility has not been established. However, for all insurance policies in question, dowry as well as life insurance, the Panel concludes that the Appellant has not met his burden of proof that it was a predecessor company of [REDACTED], the Respondent, which issued the insurance policies. On this critical point his evidence lacks the requisite authenticity and particularity. There is no corroborative evidence (such as letters or statements from third parties) to support the Appellant’s recollection of the existence of insurance policies issued by the predecessor of [REDACTED]. The claim form reflects that the Appellant himself is not sure whether [REDACTED] (nowadays [REDACTED]) issued the policies. He writes, “[REDACTED], a Czech company. Maybe affiliates with another company”. Furthermore, he provides very little specific policy information in the claim form other than to identify the country in which the policy was purchased and to assert that the policy was issued in the 1930’s. Neither the Respondent nor the ICHEIC found a research match on their databases with regard to the relevant names provided by the Appellant in his claim form and with his appeal form. This is not sufficient to establish the existence of insurance contracts with a predecessor company of [REDACTED].
22. Since the Panel is convinced that certain policies existed (even if it is not sure with which companies) the Panel concludes that the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures upon final consideration and dismissal of all his possibly outstanding named company claims related to the same information within the ICHEIC process. The Panel will inform the ICHEIC accordingly.

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

Appeal No.: [REDACTED]

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 8th day of July 2004

The Appeals Panel

Timothy J. Sullivan
Gafni
Chairman

Rainer Faupel
Panel Member

[REDACTED] J.
Panel Member