

## **THE APPEALS PANEL**

Established under an Agreement dated 16<sup>th</sup> 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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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

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### **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], born on [REDACTED] 1926 in Bucharest (Romania). He is the son of [REDACTED] (sen.) and [REDACTED], née [REDACTED]. [REDACTED] (sen.) was born on [REDACTED] 1891 in Bucharest and died on 27<sup>th</sup> June 1982 in Hamburg (Germany); [REDACTED] was born on [REDACTED] 1895 in Hamburg and died there on 6<sup>th</sup> December 1977. The Appellant has a brother, [REDACTED], who also lives in Hamburg.

[REDACTED] (sen.) was a German citizen whose citizenship was revoked in 1938 on the basis of the “*Gesetz über den Widerruf von Einbürgerungen und die Aberkennung der deutschen Staatsangehörigkeit vom 14.7.1933*” (Revocation of Naturalisation and Deprivation of the German Citizenship Act of 14<sup>th</sup> July 1933). His property was confiscated on the basis of the afore-mentioned act.

2. The Respondent is [REDACTED].
3. The Appellant submitted two claims dated 18<sup>th</sup> and 24<sup>th</sup> August 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]” issued policies of life insurance. The claim dated 18<sup>th</sup> August 2000 obviously was designated as against [REDACTED] by error as the attached documentation showed that the claim must be against another insurance company. This claim was assigned claim number [REDACTED]; the claim dated 24<sup>th</sup> August 2000 was assigned claim number [REDACTED] and is the subject of this appeal.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 30<sup>th</sup> July 2003: “*We refer to your inquiry regarding the life insurance policy No. [REDACTED] and [REDACTED] taken out by your father, Mr. [REDACTED], with [REDACTED] in Romania. ... In response to our enquiries the compensation authorities in Hamburg now informed us that your father applied for compensation pursuant the Bundesentschädigungsgesetz (Federal law on compensation for the victims of National Socialist persecution) on [REDACTED] 1971 – WG 3 –2407 91 – 11 - , which among others included the above mentioned policies with [REDACTED]. The compensation authorities dismissed this claim in its decision dated 10<sup>th</sup> March 1972 because of a failure to observe time limits. From the application your father completed, however, it appears that the compensation authority could not have made any other decision in the matter because, as your father states himself, the proceeds were not withdrawn by German or Romanian authorities but by the Russian occupation authorities as booty. According to the in so far identical causes of action of the BEG (Bundesentschädigungsgesetz) and the “Agreement” a compensation cannot be granted. We attach a copy of the application dated [REDACTED] 1971 and of the decision dated 10<sup>th</sup> March 1972 for your information. We are confident that you will understand our decision not to submit an offer for compensation under the given circumstances”.*
5. The Appellant submitted an appeal dated 20<sup>th</sup> November 2003, which contained the reasons for the appeal and was accompanied by copies of documents from the claims procedure. However, the Appellant did not use the appeal form and his appeal did not include the declarations required under the caption “*IMPORTANT INSTRUCTIONS TO THE CLAIMANT*” (“*WICHTIGE HINWEISE FÜR DEN ANTRAGSTELLER*”).
6. The Appeals Office received the appeal that the Appellant had sent to a post box operated by TNT International Business Reply Service in Schiphol, the Netherlands, on 18<sup>th</sup> December 2003. The Appeals Office informed the Appellant by telephone call on 13<sup>th</sup> January 2004 that he had not yet filed an appeal properly. It also sent him a blank appeal form and supplied further information on how to file the appeal properly.
7. The Appellant signed the blank appeal form and sent a fax of this the same day; the hard copy of the signed appeal form arrived on 16<sup>th</sup> January 2004.
8. The Appeals Office mailed a copy to the Respondent on 15<sup>th</sup> January 2004.
9. [REDACTED] responded in a letter dated 9<sup>th</sup> 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*”.

10. On 19<sup>th</sup> February 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.
11. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
12. The appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16<sup>th</sup> 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**

13. The Appellant submitted the following information in relation to the claim for the proceeds of a life insurance policy in his claim form:
  - a) In section 3 he names “[REDACTED]” as issuing company and states that the policy was taken out in Bucharest and had a date of maturity of 15 years after date of issue.
  - b) In section 4 he refers to copies of the policy.
  - c) In section 5 he identifies the policy number ([REDACTED]), the currency (US\$), the insured sum (2,500), the date of issue (5<sup>th</sup> June 1931) and the date of maturity (1946). He further states that no payments on the proceeds were made and answers question 5.10 (“*To the best of your knowledge, were all premiums paid ?*”) with “yes”.
  - d) He identifies his father [REDACTED], born on [REDACTED] 1891 in Bucharest, as policyholder and insured and his mother [REDACTED], née [REDACTED], born on [REDACTED] 1895 as beneficiary. In addition he gives the date of death of his father (27<sup>th</sup> June 1982) and mother (6<sup>th</sup> December 1977).
  - e) In section 9 he states that no compensation has been paid.
  - f) In section 11 he lists 8 documents (including a document showing that his father applied for a life insurance policy dated 5<sup>th</sup> June 1931 and a premium receipt dated 29<sup>th</sup> July 1933).
14. Accompanying the Appellant’s statement and his appeal form were copies of many documents, which are:
  - a) A proposal for life insurance by [REDACTED] to [REDACTED] dated 5<sup>th</sup> June 1931.
  - b) A “*premium advice*” for policy number [REDACTED] for the sum of US\$ 204.61 which was due on 20<sup>th</sup> July 1932. This was issued by the Romanian Head Office of [REDACTED].
  - c) A “*contribution account*” for policy number [REDACTED] for the sum of US\$ 204.61 which was due on 20<sup>th</sup> July 1933. This was issued by the Romanian Head Office of [REDACTED].

- d) A copy of the German Reich Gazette and Prussian State Gazette from 26<sup>th</sup> September 1938 with the list of persons whose German citizenship was revoked. Number [REDACTED] identifies [REDACTED], the Appellant's father, who was born on [REDACTED] 1891 in Bucharest.
- e) A copy of the German Reich Gazette and Prussian State Gazette from 10<sup>th</sup> March 1939. In the 3<sup>rd</sup> column it is stated that the property of [REDACTED] is to be confiscated by the German Reich.
- f) A letter from the solicitor [REDACTED] to the Finance Office in Berlin dated 21<sup>st</sup> May 1940 enquiring about the confiscation of property of [REDACTED]. This letter states, *"under the declaration of forfeit assets against [REDACTED], merchant of Bucharest, a silver casket belonging to my client, Frau [REDACTED], Bucharest, value RM 1,1216.75, was seized in error from the company [REDACTED], Bremen on January 30<sup>th</sup>, 1939. I enclose photocopies of the property of Frau [REDACTED], who is a citizen of the Reich, as follows: a) Confirmation of order from [REDACTED] to Frau [REDACTED] of 17.10.1938; b) Receipt from [REDACTED] of 09.11.1938...Should [REDACTED] already have disposed of the silver casket to another, contrary to all expectations, we reserve the right to bring an action for damages, as a seizure order against Herr [REDACTED] cannot be enforced on third party assets. ..."*.
- g) A letter dated 16<sup>th</sup> December 1940 to [REDACTED] from [REDACTED], [REDACTED]'s employer. This letter states that he ([REDACTED]) has to terminate his contractual ties with [REDACTED] due to the fact that [REDACTED]'s citizenship has been revoked.
- h) Premium advice for policy number [REDACTED] for the sum of 27,804 Lei which was due on 1<sup>st</sup> August 1945. The Bucharest office of [REDACTED] issued this.
- i) Declaration by [REDACTED] dated 19<sup>th</sup> December 1969 which states, *"I, the undersigned, [REDACTED], of Bucharest, Str. [REDACTED], 1<sup>st</sup> district, do hereby declare that I have known [REDACTED], currently resident at Bucharest, 6<sup>th</sup> district, Str. [REDACTED], for around 60 years from the time when he had to report regularly to the aliens police to be given his residence permit as an alien, that is, a citizen of Germany. I know that he was deprived of his citizenship on account of his anti-Hitler attitude, as the German embassy informed me officially and served a copy of the Reichsanzeiger on the municipal prefect of police's office"*.
- j) Letter from [REDACTED] to [REDACTED] dated 22<sup>nd</sup> December 1970 referencing policy number [REDACTED]. This letter states that the policy belonged to the former independent branch in Romania and no payments can be made under such policies under German law.
- k) Letter dated 8<sup>th</sup> February 1971 from [REDACTED] to the Federal Regulatory Office for the insurance and mortgage savings industry referencing policy number [REDACTED]. This letter states: *"from the photocopy of the certificate of insurance [REDACTED] in our possession, there was a life assurance policy for Herr [REDACTED], born [REDACTED]1891, and Frau [REDACTED], née [REDACTED], born [REDACTED]1895, technical details as follows:*

Start Date 01.08.1931  
Expiry Date 01.08.1946  
Tariff III Bm  
(Death and life policy on two associated lives)

Sum insured Lei 500,000

Annual premium Lei 39,335.

*We lost the files and technical records for our Romanian policy stock in the war. In answer to the question as to the definition of 'independent foreign insurance company, which Herr [REDACTED] raises in his letter to the Office of 18.01.1971, we would state that our company only maintained branches or establishments abroad. The organisation worked for us in Romania was not a legally independent company, but was our establishment, with Bucharest covering Romania as a whole. This was managed by representatives answering to the national government and independent of us, and was subject to Romanian law, which also governed operations in Romania. Our company in Romania was expropriated without compensation after the war. While [REDACTED]'s establishment in Romania cannot be described as 'an independent foreign insurance company', the Romanian policy base was undoubtedly an independent foreign policy stock for the purposes of § 8 of the law on settlement of claims under life and pension insurance as worded on 03.07.1964".*

This letter states that there is no possibility of making payments under this policy.

- 1) A detailed Application for compensation lodged by [REDACTED] to the Compensation Authority of Hamburg dated [REDACTED] 1971. This application makes reference to the insurance policy issued by [REDACTED] Berlin (point five, page 1) and states: "*Loss of assets through inpayments to the insurance companies [REDACTED] and [REDACTED]. The Russian occupying authorities confiscated both these policies as war booty.*" On page three of this application specific reference is made to an insurance policy taken out with [REDACTED] and the applicant, [REDACTED] writes: "*That was in 1932, that is, at a time when I was a German national and hence an alien in Romania. As a precautionary measure, I took out an insurance policy with the German company [REDACTED] for USD 2,500.00 in 1931 which was changed under the foreign exchange law as subsequently introduced to Lei Stabilizati 500,000 [Research reveals that the verb "a stabiliza" means "to confirm, to consolidate or to set". In this context it would appear to mean that the insured sum was fixed at Lei 500,000 following the introduction of the foreign exchange law]. This was followed by a policy with [REDACTED] for Lei Stabilizati 1,000,000.00. All premiums were duly paid annually up until 1945, when the Russians marched into Romania and seized German and Italian capital as war booty. I was thus deprived of all the moneys I had paid over all those years".* Also on page three, [REDACTED] recounts how he was deprived of German citizenship. He states that in 1932 he occupied the most important position on the Council of the German community. He asserts that the Party tried to recruit him for many years and ultimately used the excuse that everything he had, he owed to the Party and so he had to join. The applicant writes: "*I had had enough by this time. The national group leader at that time, [REDACTED], also reproached me on the grounds that it was a Jewish architect who had designed my house and a Jewish builder who had built it, that most of the fittings came from Jewish suppliers and finally said, 'I am talking to you now in my capacity as the national group leader.'* When I replied that I was talking as a free man, he threatened, '*[REDACTED], I will show you the results of your actions.'* And, in fact, I was deprived of my citizenship, which was announced in 1938 and the confiscation of my assets was published in the *Reichsanzeiger* in 1939." The applicant then describes how he quickly managed to obtain Romanian citizenship, and narrowly escaped the National Socialist authorities. In early 1939, the German embassy had applied to the police to hand over the

“stateless” [REDACTED] to be taken to Berlin for sentencing he had however received Romanian citizenship a few days earlier.

- m) A decision from the Compensation Authorities of Hamburg dated 10<sup>th</sup> March 1972. The application for compensation is dismissed because pursuant to article VIII of the BEG-SG of 14<sup>th</sup> September 1965 no claims can be registered after 31<sup>st</sup> December 1969.
  - n) A judgement of the regional court of Hamburg dated 30<sup>th</sup> November 1972. [REDACTED] has brought about legal proceedings to have the decision of the Senate dated 9<sup>th</sup> June 1972 (i.e. the decision of the Hamburg compensation authority) overturned. This decision states: *“The action is admissible, but unfounded. The Defendant was correct in refusing hardship payment under § 171 BEG. Article VIII para. 1 clause BEG states that no further claims under the BEG can be brought after December 31<sup>st</sup>, 1969. As Art. VIII para. 2 BEG expressly states, this also applies to hardship payments under § 171 BEG. The reasons why the Plaintiff did not apply until after December 31<sup>st</sup>, 1969, are irrelevant, as this is an exclusion period, and if it is neglected, matters cannot be restored to their former condition. The legislators allowed for any hardship which this rule might cause in any one case to enable the compensation proceedings, in which evidence was becoming increasingly difficult, to be closed”*.
  - o) A letter dated 19<sup>th</sup> March 1973 to [REDACTED] from the *“Independent Advice Centre for compensation matters of those persecuted by the Nazis”*. This letter encourages [REDACTED] to write to the Bundesrat in Bonn and present his case in the hope of having deadlines waived.
  - p) A letter dated 26<sup>th</sup> January 1977 from the *“Bundesaufsichtsamt für das Versicherungswesen”* (Federal Regulatory Office for the Insurance Industry) to the lawyers [REDACTED] and [REDACTED] in the matter of [REDACTED]’s [REDACTED]’s insurance policy with [REDACTED]. This letter confirms that [REDACTED]’s foreign portfolio in Romania was independent for the purposes of the law on settlement of claims under life and pension policies. The letter states: *“The decisive factor here is that the insurance company’s agency abroad, and the policies it held, was subject to Romanian insurance regulatory law and had to invest the cover funds provided in Romania. After the war ended, the Romanian state ordered the company not to continue trading and seized the assets in the country, which would have been used to satisfy claims under insurance policies belonging to the Romanian portfolio. The general prohibition on payment under § 8 of the law above reflects the situation which arose generally for German life assurance policies in foreign portfolios...The Federal regulatory office has failed to find any conditions required to lift the prohibition on payment in respect of the Romanian portfolio to date”*.
15. With regard to the definition of “Holocaust Victim” the Appellant writes in his statement submitted with the appeal form: *“[REDACTED]’s decision of July 30<sup>th</sup> 2003, states that one of the main conditions for any claim under the ‘Agreement’ is whether the policyholder was **victim of the Holocaust**. In its decision of July 30<sup>th</sup> 2003, what [REDACTED] means by this includes anyone who, as a result of being persecuted politically by bodies of the National Socialist regime, was deprived of their financial basis of existence, and anyone who lost or was deprived of their financial or other assets. In this respect, I can submit proofs on my father’s behalf as follows:*
- a) *German Reich’s gazette and Prussian state gazette of September 26<sup>th</sup>, 1938 (revocation of German nationality for my father) (Annex 3).*
  - b) *German Reich’s gazette and Prussian state gazette of March 10<sup>th</sup> 1939 (My father’s assets are declared forfeit to the Reich) (Annex 4).*

- c) Letter from [REDACTED], attorney at law of May 21<sup>st</sup> 1940 (**confiscation of assets** of a silver box of my mother's, under the declaration of my father's assets forfeit) (Annex 5).
- d) Statement by [REDACTED] of December 19<sup>th</sup> 1969 (application to the German consulate for my father to be repatriated to Berlin to bring him to trial there in February 1939) (Annex 8).
- e) Letter from [REDACTED] company of December 16<sup>th</sup> 1940 (immediate **termination** on account of loss of citizenship, on instructions of the Reich's ministry of Finance.) (Annex 6).

*It should be stressed that my father suffered **losses of assets and injury**, both directly and indirectly, such as for example*

**Directly** (immediately) through being stripped of his German nationality, and through his assets being declared forfeit to the Reich, and

**Indirectly** through being dismissed from the [REDACTED] company on account of his losing citizenship, on the instructions of the Reich's Ministry of Finance or the silver box being confiscated.

*During the Hitler regime, he also lived **constantly in fear** of being taken to Berlin for judgement (Annex 8), which might well have resulted in his death. I can still remember that time of fear, depression and humiliation”.*

16. In a letter dated 15<sup>th</sup> February 2004 the Appellant writes, “*I regret that [REDACTED] did not answer questions I asked in the ‘reasons for my appeal’, e.g.:*

- *acknowledge that my father was a Holocaust Victim;*
- *explain why [REDACTED] accepted premium payments from my father after the Russians had entered Romania without granting the insurance payment (maybe out of political reasons);*
- *explain why [REDACTED] did not inform my father about what was going on at the time and why [REDACTED] did not show the written evidence that the Russians confiscated the policies;*
- *inform me whether at that time there was a transfer of money of [REDACTED] on different accounts;*
- *explain why there had not been any information about the special fund of the ICHEIC-Commission (as mentioned in enclosure 17 of my appeal).*

*If [REDACTED] had taken notice of these problems, it would not have been able to dismiss my appeal because of section 2 (eligible claims) (1) (b) and (e) of the ‘Agreement’ dated 16<sup>th</sup> October 2002 as it did in its comments”.*

## **THE INVESTIGATION AND DECISION BY THE RESPONDENT**

17. In the final decision letter dated 30<sup>th</sup> July 2003 the Respondent writes: “*As you can see from the ICHEIC application form itself, one of the main preconditions for making a claim under the Agreement is whether the policyholder, the person insured or beneficiary under the policy was a victim of the Holocaust...For the purposes of this definition, such persecution also includes governmental authorities close to the National Socialist regime, such as Romania.” It continues with reference to an application for compensation which was made by the Appellant's father in 1971, but which was dismissed, as untimely (for details see above paragraph 4).*

18. [REDACTED] made further comments in its letter to the appeals Office of 9<sup>th</sup> February 2004. In this letter it writes, “*as already explained in our letter dd 30<sup>th</sup> July 2003, the Claimant is not eligible for compensation as per the rules of the ‘Agreement’ of 16<sup>th</sup> October 2002. In the present case, the preconditions as stipulated in Article 2 (1) b and e of*

*the main agreement are not fulfilled. As per the information given by himself, the policy in question was not withdrawn from the claimant's father direct or indirect by a Romanian institution affiliated to the Nazi regime. The loss of property was incurred much the more by the enforced termination of the businesses of the independent [REDACTED]Head Office in Romania by the Russian occupying forces which – in contrast to the claimant's assumptions – has so far not been compensated financially. This fact – which – moreover, is undisputed – was ascertained by the German Compensation offices as early as in the year 1971 and used to justify the denial of claims subject to the German Compensation legislation after the claimant's father had been able to file claims as a consequence of his migration to the Federal Republic of Germany. We may therefore mention, for the sake of completeness, that also the Bundesaufsichtsamt für das Versicherungswesen (Federal Regulation Office for the Insurance Business), contacted by the claimant's father, confirmed that the legislation in the Federal Republic of German did not justify a claim against [REDACTED]regarding the policy in question”.*

## **THE ISSUES FOR DETERMINATION**

19. The Agreement concerning Holocaust Era Insurance Claims dated 16<sup>th</sup> October 2002 covers, according to its introductory language, *“the settlement of individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice”*. Losses and deprivations not connected with National Socialist injustice and specifically the Holocaust are not covered by the Agreement. Therefore, the sole issue for determination in this Appeal is whether the policyholder and/or Appellant are a Holocaust victim in the sense of Section 14 of the Agreement.
20. For purposes of the Agreement, *“Holocaust victim”* means *“anyone who, as a result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime, was deprived of his/her life or freedom; suffered damage to his/her mental or physical health; was deprived of his/her economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss or damage to his/her property. For the purpose of this definition, persecution by governmental authorities of the following countries for the period in brackets until the end of the Second World War in the following countries is considered equal to persecution by the organs of the German National Socialist Regime: ... Romania (1940) ... “.*
21. The loss or deprivation of financial assets, which the Appellant's father suffered, was not the result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime or Romanian authorities during the war. It was instead the result of the political and economic developments in post-war Romania.

While it is true that the Appellant's father's assets were ordered to be confiscated by the German Reich – an act that without doubt constituted persecution by organs of the German National Socialist Regime as set out above (paragraph 20) – this did not lead to any loss of insurance policy benefits, because the Romanian state gave the Appellant's father Romanian citizenship immediately after his German citizenship had been revoked. As a consequence of this the Appellant's father was able to keep his life insurance policy and even pay the premiums until 1946, the year when the insurance matured [see paragraph 13 c)]. The Appellant explicitly states, *“[REDACTED]accepted premium payments from my father after the Russians had entered Romania”* and *“the Russians confiscated the policies”* (see paragraph 16). These statements, which are corroborated by much documentary evidence, show that the reason for the loss of the proceeds of the insurance policy was not the confiscation of the Appellant's father's assets by the German National Socialist Regime.



The Appellant incorrectly assumes that [REDACTED] received compensation for the losses suffered by the company when its Romanian branch was nationalized and thus owes compensation to him, as heir of the policyholder. [REDACTED] did not receive any compensation for these losses in Romania.

22. The Panel acknowledges that the Appellant's father suffered many injustices after his German citizenship was revoked. The Panel has no jurisdiction, however, to compensate for losses not caused by National Socialist persecution. For the reasons set out above, there were in this case no losses caused by the German National Socialist Regime or by collaborating Romanian authorities. The Panel equally has no power whatsoever to remedy the dismissal of the previous restitution claim as untimely.

**THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:**

The appeal is dismissed.

Dated this 8<sup>th</sup> day of July 2004

The Appeals Panel

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Timothy J. Sullivan  
Chairman

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Rainer Faupel  
Panel Member

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Abraham J. Gafni  
Panel Member