

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

Fax: ++ 44 (0) 207 269 7303

Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]

CLAIM NUMBER: [REDACTED]

BETWEEN

[REDACTED]

Represented by:
[REDACTED],
Sherman Oaks, California
United States of America

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] 1915 in Worms am Rhein (Germany). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1881 in Einartshausen (Germany) and died in the concentration camp of Auschwitz in 1943; [REDACTED] was born on [REDACTED] 1891 in Reichensachsen (Germany) and also died in the concentration camp of Auschwitz in 1943. The Appellant has a sister, [REDACTED], née [REDACTED], who was born on [REDACTED] 1922 in Worms am Rhein. She was deported to the Gurs concentration camp in France. She died in 2002 and had no children.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 26th October 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 [REDACTED]. In a decision letter dated 6th November 2003 [REDACTED] writes, “*based on the information provided by you in the claims-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, which was accompanied by a statement setting out his reasons for the appeal, and copies of documents from the claim procedure. The appeal form arrived at the Appeals Office on 8th January 2004.
6. Since the statement setting out the reasons for the appeal was signed by the representative, [REDACTED], the Appeals Office asked the Appellant to submit a power of attorney. The Appellant, who has suffered from a stroke and is “*legally blind*”, sent a power of attorney with a signature in the wrong place. This was corrected by sending a new power of attorney.
7. On 23rd January 2004 the Appeals Office sent a copy of the appeal form to [REDACTED].
8. [REDACTED] responded in a letter dated 6th February 2004 and informed the Appeals Panel that it found no match in its records and that, therefore, it was not able to send any documents relating to the claim.
9. On 24th 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.
10. No request for an oral hearing has been received from either party. The Appeals Panel, however, to enable the Appellant to provide all relevant information concerning his claim, decided to conduct an oral hearing pursuant to section 8.2 of the Appeal Guidelines (Annex E of the Agreement) in view of the Appellant’s diminished capacity to express himself in writing. The Appeals Office informed both parties of the decision made on 23rd June 2004 by letter dated 24th June 2004. In addition, this letter took note of [REDACTED]’s decision not to participate in the oral hearing, and of its request for a transcript of the proceedings.
11. The oral hearing took place on 5th July 2004, 8.15 (Pacific Time) and was conducted in English.
12. 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

13. 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, the Appellant identifies the insurance company as “[REDACTED] Konzern, Colon, Germany” and states that the policy was purchased in Germany “*in app. 1923/24*”. He states here that the insurance policy was purchased in American dollars.
 - b) In section five, the Appellant identifies the type of policy as life insurance and states the sum insured to be US\$ 10,000. The date of issue is stated as “*approximately 1920*”. He says that the premiums were paid on a monthly basis until deportation to Auschwitz around 1943. The Appellant answers “*yes*” in response to the question of whether anybody has approached the insurance company about the insurance policy.
 - c) In section six the Appellant identifies his father, [REDACTED], born on [REDACTED] 1891 in Einartshausen (Germany), as the policyholder. He states that his father died in Auschwitz in 1943.
 - d) In section seven, the insured person is named as the Appellant’s father.
 - e) In section eight the Appellant states that his mother [REDACTED] (née [REDACTED]) was born on [REDACTED] 1891 in Reichensachsen (Germany) and died in 1943 in either Auschwitz or Belzig. He and his sister [REDACTED] (née [REDACTED], born [REDACTED] 1922 in Worms, Germany) are the named beneficiaries of the policy.
 - f) In section ten the Claimant gives details of his legal representative at [REDACTED] (they do not, however, represent him in the appeal procedure).
15. Attached to the claim form the Appellant submitted a copy of a letter to [REDACTED], dated 30th November 1996, which had been written in response to a letter from [REDACTED] dated 24th June 1996 (see paragraph 18 for further details). In this letter he states that his parents are listed in a book containing the names of all the Jews killed by the Nazis during the Holocaust. He further states that he encloses a copy of his birth certificate and explains that there is no birth certificate for his sister due to her deportation to the Gurs concentration camp in France. He writes that he and his sister are the only heirs of their parents. In the oral hearing the Appellant informed the Panel that his sister had passed away in 2002.
16. The Appellant further enclosed copies of two letters dated 30th October 2000 from the Claimant to the ICHEIC. In one letter the Claimant writes “*as a child of approximately 10 years of age, I remember conversations where my father discussed insurance policies in Germany...*”. He continues with a description of his father’s textile business and its proceeds, which were deposited into Swiss bank accounts. In the other letter the Appellant explains that his sister had decided not to participate as a co-claimant since she did not wish to be reminded of her experiences during the Holocaust
17. In a letter dated 30th December 2003 the Appellant’s representative, [REDACTED], sets out the grounds for the appeal and writes, “*Mr [REDACTED] is aware and agrees that no records for this policy exist due to a lot of documents being destroyed by the nazis prior to the war. A few facts to help explain why Mr [REDACTED] remembers the policy being*

taken out with him as beneficiary is as follows: [REDACTED], at age 40, in the early 20's purchased a life insurance policy from [REDACTED] Konzern for \$10,000 American dollars, as the mark was worthless at the time. [REDACTED], part owner of [REDACTED], [REDACTED] retail stores, was a very successful business and could easily afford to pay the premium on this policy. [REDACTED] left Germany in 1933, for obvious reasons. Both his father's stores and home were ransacked and all valuable taken and all documents destroyed, which is why no record of the policy exists. In fact the records from Worms/Rhein recorded that the Nazis murdered his parents in 1943 and no claim was made on the policy at that time due to the circumstances of the war. Because of the above, and the knowledge that [REDACTED] has of this policy, he requests that his claim be reconsidered and an offer from the Insurance Company should be offered".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. [REDACTED] states in a letter to the Appellant, dated 24th June 1996, "*our records do not show any life insurance in the names of Mr [REDACTED] or Mrs [REDACTED] [REDACTED]. We are willing, of course, to investigate this matter further if you are able to let us have some written record whatsoever containing a few details that would allow us the identification of the insurance policy, if any*".
19. In response to the Appellant's letter of 30th November 1996, [REDACTED] states in a letter, dated 14th January 1997, "*we very much regret to advise that the information you supplied in your above letter did not help with the identification of any life insurance that you believe was taken out. Without any document whatsoever relating to the insurance it will not be possible to trace the insurance you referred to*".
20. In the decision letter dated 6th November 2003 [REDACTED] writes "*we refer to your inquiry regarding the [REDACTED] insurance policy taken out by your father [REDACTED] [...] Based on the information provided by you in the claims-form and after our intensive research in all relevant internal and external archives the existence of a life insurance policy taken out by [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*".
21. In a letter dated 6th February 2004, in response to the appeals process, [REDACTED] reiterates that it has searched "*all relevant archives and records in accordance with the Agreement for information on the specific life insurance policy*" and states, "*unfortunately no match occurred in our records*". External archives of German compensation and restitution authorities were also researched but nothing was found concerning the claim at issue. [REDACTED] concludes, "*we are not able to send any documents relating to this claim*".

THE ISSUES FOR DETERMINATION

22. 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.
23. 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.
24. The Panel concludes that the Appellant has not met his burden of proof that it was [REDACTED], which issued an insurance policy to his father. Although the Appellant has provided some details about the policy (such as insured sum, approximate date of issue, policyholder, insured person and beneficiary), the source of this information is not sufficiently clear. During the claims process, in a letter dated 30th October 2000, the Appellant, without naming an insurance company, had written, “*as a child of ten he remembers conversations where my father discussed insurance policies in Germany*”. During the oral hearing, however, he mentioned for the first time that he had a conversation with his father and for this reason can recall the name of the company. In such a case where, besides the not very specific statement of the Appellant, there is nothing else to make plausible the existence of a policy, the necessary degree of plausibility as to the existence of an insurance contract issued by a specific insurance company cannot be established – even by applying the Relaxed Standards of Proof. The Panel, furthermore, had to take into consideration the fact that no research matches were found by the Respondent or the ICHEIC in their databases.
25. Since the Appeals Panel regards it as plausible that an insurance policy existed, even if it is not sure with which company, the Panel concludes that the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures. The Panel will inform the ICHEIC accordingly.

Appellant:[REDACTED]
[REDACTED]

Appeal No.: [REDACTED]

Claim No.:

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed

Dated this 26th day of July 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member

