

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

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], née [REDACTED], who was born on [REDACTED] 1924 in Vienna (Austria). She is the daughter of [REDACTED] (also only [REDACTED] or only [REDACTED]) and [REDACTED], née [REDACTED] ([REDACTED]). [REDACTED], who ran a wholesale and retail food business in Vienna, was born on [REDACTED] 1886 in Mosty-Wielkie (at that time Austria-Hungary, later Poland, now Velikiye Mosty, Ukraine); [REDACTED]-[REDACTED] was born on [REDACTED] 1884 in Zloczow (at that time Austria-Hungary, later Poland, now Zolochiv, Ukraine). Both were deported to Litzmannstadt (Lodz) on 28th October 1941 where they died on an unknown date. On 26th June 1959 the court of civil law, Vienna - ref.: [REDACTED] -, declared them dead.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim on a “*European Insurance Policy Claim Form*” issued by the Holocaust Claims Processing Office (HCPO) of the New York State Banking Department, which was forwarded to the International Commission on Holocaust Era Insurance Claims (ICHEIC) together with a “Declaration of Consent” on 1st February 2000. In this claim form the Appellant claims that [REDACTED] issued a policy of life insurance.
4. The ICHEIC submitted the claim to [REDACTED]. In a decision letter dated 9th December 2003 [REDACTED] writes: “*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 10th February 2004, which was accompanied by a statement setting out her reasons for the appeal.
6. The Appeals Office received the appeal form on 16th February 2004 and sent a copy to [REDACTED] on 18th February 2004.
7. [REDACTED] responded in a letter dated 25th 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 24th 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. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
10. 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

11. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in her claim form:
 - a) She identifies the insurance company as “[REDACTED]” and provides the address as “[REDACTED] Düsseldorf, [REDACTED] Germany”. She states that the policy was life insurance and that it was purchased in Vienna (Austria).

- b) In section three of the claim form the Appellant identifies her father, [REDACTED] who was born [REDACTED] 1886 in Mosty-Wielke (Poland), as the policyholder. He was deported to Litzmannstadt ghetto in Lodz (Poland) in 1941 and perished between 1942 and 1944 either there, or in Auschwitz. The Appellant states that her father owned a wholesale and retail food business.
- c) Section four of the claim form is a computer print-out showing details of the Appellant's mother as the named beneficiary of the policy. She is [REDACTED], née [REDACTED], born on [REDACTED] 1884 in Zloczow (Poland). She died around 1942 in Lodz or Auschwitz.
- d) In section six regarding the “*basis for your claim*” the Appellant writes: “*I know that my father and mother perished in the holocaust. I know that my father had a life insurance policy with [REDACTED].*”
- e) In section seven concerning the “*basis for belief that a policy was not paid*” the Appellant states: “*my father and mother were persecuted as Jews and deported from Austria and were never heard from again. So naturally the policy was not paid*”.
- f) Concerning previous claims or inquiries made, the Appellant explains in section eight that she has been in correspondence with [REDACTED], special commissioner of [REDACTED], and that she has joined a class action suit filed in the United States.
- g) In section nine the Appellant states that the policy could be under the names of [REDACTED], [REDACTED] and [REDACTED].

12. The Appellant enclosed copies of the following documents:

- a) A power of attorney dated 17th October 1939 given to her by her father;
- b) A letter from the Red Cross dated 17th February 1997, which states that her parents were declared dead by the civil law court in Vienna on 26th June 1959;
- c) A letter dated 29th August 1997 to the Appellant, in which [REDACTED] from [REDACTED] explains that the company's insurance portfolio in Austria was confiscated in 1945 and asks for further details about the insurance contract;
- d) A letter dated 10th September 1997 to [REDACTED], in which the Appellant states that she does not have any documents concerning the insurance policy. She explains that she emigrated to the USA as a 15 years old in 1939 and that her parents were deported to a ghetto in Poland in 1941. She writes: “*The only thing I know about the life insurance is that sometimes I overheard conversations between my parents about life insurance with [REDACTED], and that my father wanted to be sure that his wife and daughter would be taken care of. I was born on [REDACTED] 1924 and my parents had no other children. I was born in Vienna in Austria. An elder cousin of mine confirmed years ago that she knew in Vienna that my father had life insurance with [REDACTED].*”
- e) A letter dated 12th March 1998, in which [REDACTED] clarifies that the Austrian portfolio, to which the Appellant's father's policy belonged, was put under state control in 1945. He informs her that research is ongoing.
- f) A letter dated 5th April 1999, in which the Appellant requests further news from [REDACTED].

- g) A reply dated 7th May 1999, in which [REDACTED] states that the company has been investigating but has not found any information about the policy in question. He writes: *“We can confirm that neither in the documentation in the Austrian State Archives in Vienna, nor in asset declarations forms, could any details be found under the name of [REDACTED] or under the name of [REDACTED]”*.
13. The Appellant outlines her grounds of appeal in a statement enclosed with the appeals form. She writes: *“I have submitted to [REDACTED] Insurance Company all relevant copies of documents, and a statement, that prove I am the only child of the policyholder of a life insurance taken out with ‘[REDACTED]’, my father [REDACTED]. He and my mother Eva nee [REDACTED] were owners of a wholesale egg, and retail food business in Vienna, [REDACTED] at the time of the ‘Anschluss’, March 12, 1938. My parents and I, then a 14 year old child, were arrested two days after the Nazis marched in, and imprisoned [...] While we were in jail my parents’ business and our apartment were completely ransacked and plundered of all merchandise and valuables [...] Since my father was in prison he could not of course make the so called ‘Vermögensklärung’ [property declaration] that was made by Jews in April 1938 and he had at that time nothing left to declare. I distinctly remember my father speaking about a life insurance policy he had ‘[REDACTED] [REDACTED]’. Somehow the name was fascinating to me as a child and stuck in my mind. I was born to my parents late, after they were married many years and did not expect to have children anymore. I know that my father wanted to make sure that my future would be secure should something happen to him”*. She concludes as follows: *“Yes, I am unable to prove my case by the rules and standards set by the Insurance Company. However, G’d has a fairer set of rules. I feel that those who wronged us will have to answer to a Higher Court when the “Day of Judgement” arrives ...”*.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. In its final decision letter dated 9th December 2003 [REDACTED] states: *“We refer to your inquiry regarding the life insurance policy taken out by Mr [REDACTED], with [REDACTED] taken out in Austria. [...] Based on the information that you have provided in the claims form we have intensively searched all relevant archives 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 formed 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 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 not sufficient and adequate evidence of a contractual relationship with the insurance company named in the inquiry”*.
15. [REDACTED] gave further information regarding its business in Austria in its letter of 25th February 2004. In this letter it writes, *“the only information related to former activities in Austria 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 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". The Respondent concludes "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 our 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

16. The main issue for determination in this appeal is whether the Appellant has met her 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.

17. 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.

18. The Panel concludes that the Appellant has not met her burden of proof that it was [REDACTED], which issued the insurance policy. Her evidence lacks the requisite particularity and there is no corroborative evidence (such as letters or statements from third parties) to support the Appellant's recollection of the existence of life insurance policy issued by [REDACTED]. The Appellant is only able to state the name of the company and the place at which she claims the policy was purchased, and she explains how she remembered the name of the company. This, however, is not enough to convince the Panel of the existence of an insurance contract between her father and the Respondent, especially since no additional details about the life insurance policy have been provided and neither the Respondent nor the ICHEIC found a research match in their databases. The Appeals Panel is aware that the Respondent's databases are limited; however, it does take into account the absence of research matches. The Panel is also bound by the burden of proof provision of the Agreement.

19. Nevertheless, given the financial situation of the Appellant's family - the Appellant's parents were the owners of a wholesale egg and retail food business in Vienna - and the general credibility of the Appellant, the Panel regards it as sufficiently plausible that there was an insurance policy even if it is not clear with which company.
20. 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.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 8th day of July 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member