

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] 1953 in Haifa (Israel). He is the grandson of [REDACTED] and [REDACTED]. [REDACTED], a baker and pastry cook, was born on [REDACTED] 1888 in Eisefrey/Rhineland (Germany) and died (was declared dead) on 8th May 1945. [REDACTED] was born on [REDACTED] 1887 in Kerpen/Rhineland (Germany) and also died (was declared dead) on 8th May 1945. The

Appellant's grandparents owned two shops in Leverkusen, a bakery and a grocery store, and held a 10 % share in a cinema in Leverkusen. They were brought to a ghetto in Cologne in 1941.

The Appellant's mother [REDACTED], née [REDACTED], was born on [REDACTED] 1914 in Leverkusen/Rhineland (Germany) and died on 2nd September 1999.

His mother's sister, [REDACTED], was born in 1914. Further details about her are not given.

The Appellant has a sister, [REDACTED], née [REDACTED], who lives in Israel. She is his co-Claimant and co-Appellant, represented by the Appellant.

2. The Respondent is [REDACTED].
3. The Appellant submitted two claim forms dated 19th and 25th April 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which he claims that a company he could not name (claim form dated 19th April 2001) and, maybe (“*vielleicht*”) “[REDACTED], [REDACTED] or [REDACTED]” (claim form dated 25th April 2001) issued policies of life and/or dowry insurance. The unnamed company claim was given claim number [REDACTED]; the named company claim was given claim number [REDACTED]. The claim number [REDACTED] is the subject of this appeal.
4. The ICHEIC submitted the claim via “[REDACTED]”, the [REDACTED], to the German companies.
5. [REDACTED] stated in its decision letter dated 15th October 2003 relating to claim number [REDACTED]: *“On the basis of the information imparted by you in the Application Form and following our intensive searches in all relevant internal and external archives, no trace could be found of the existence of a life insurance policy taken out with [REDACTED] by Mr. [REDACTED], even under the “easier rules of proof” of the Agreement. Under the Foundation Law and the Agreement, a claim has to be rejected if insufficient proof exists of a contractual relationship with the insurance company named in the Application Form. We hope that you will be able to understand our decision that, in the circumstances, we are unable to offer any compensation payment”.*
6. The Appellant submitted an appeal to the Appeals Office dated 29th February 2004 from this decision and the decision made by [REDACTED] in claim number [REDACTED] (later withdrawn), in which he set out the reasons for the appeal.
7. The Appeals Office received the appeal form on 8th March 2004 and mailed a copy to the Respondent on 23rd March 2004.
8. [REDACTED] responded in a letter dated 29th March 2004 and informed the Appeals Panel that it was unable to send any documents related to the claim because the research in internal and external archives had not produced any results.
9. On 30th August the Appellant forwarded copies of documents which mainly referred to claim number [REDACTED] (appeal number [REDACTED]) which is not subject of this appeal. However, among these copies there were documents that referred to claim number [REDACTED], including a registered mail receipt (“*Aufgabeschein*”) issued by a post office in Vienna on 25th December 2003. The Appellant states that he had already sent his appeal from [REDACTED]'s decision in December 2003 to the Appeals Office's PO Box in Schiphol, the Netherlands. The Appeals Office tried to trace this mail without result. On 6th September 2004 the Appellant forwarded at the request of the Appeals Office an original

power of attorney his sister [REDACTED] had given to him to prove that he is entitled to represent her in this appeal procedure. The original document was also sent on 30th August 2004.

10. On 30th April 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 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

13. The Appellant has submitted the following information in relation to the claim for the proceeds of life or dowry insurance policies in his claim form:
 - a) In section three he acknowledges that he does not know the name of the company that issued the insurance policy, and writes: “*vielleicht (perhaps) [REDACTED], [REDACTED], [REDACTED].*”. He asserts that the policy(ies) was (were) purchased in Cologne or Leverkusen.
 - b) In section four regarding “*documents*” he states that he cannot provide copies of such documents and writes: “*My grandparents had 2 shops: a bakery and a grocery store*”.
 - c) In section five two types of policies are identified: a life insurance policy and a dowry policy.
 - d) In section six the policyholder is identified as [REDACTED] (possibly [REDACTED]), the Appellant’s grandfather, who was born on [REDACTED] 1888 in Eiserfey (Germany). His grandfather’s profession is given as baker and pastry cook.
 - e) The insured persons are identified as [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. [REDACTED] and [REDACTED] were Appellant’s grandparents. [REDACTED] was his mother and [REDACTED] was his aunt. [REDACTED] [no details as to the relationship are given] is stated as being a living heir.
 - f) The beneficiary is identified as [REDACTED].
 - g) In section eleven concerning further information the Appellant writes: “*My grandparents had two shops in Leverkusen, [REDACTED] and a 10% share in a cinema in Leverkusen. My mother, who unfortunately died in 1999, had definite views that there were insurance policies: Life insurance, Dowry insurance. It must have been*

insurance companies that had an agency or an agent in Leverkusen. Perhaps also in Cologne”.

14. In his appeal form the Appellant writes: “... [REDACTED] AG: *The [REDACTED] company mentions the name [REDACTED] in its rejection [of my application]. As I see it, I never mentioned that name, but only the names: [REDACTED] [REDACTED] and [REDACTED](a) [REDACTED] (wife). Question: How did they get that name”.*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. The Respondent denied the claim for the reasons quoted above in its decision letter dated 15th October 2003 (paragraph 5).
16. In its letter dated 29th March 2004 [REDACTED] gave further comments and answered the Appellant’s question in his appeal form as follows: “*Based on the information that the claimant has provided in the claims-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...Respecting the claimants question because of the policyholders Middle name ‘[REDACTED]’ we refer to the claims-form, Page 5 (photocopy encl.)”.*

THE ISSUES FOR DETERMINATION

17. In the light of the passage of time between the date of the decision letter (15th October 2003) and the receipt of the appeal form (8th March 2004) the issue might be presented as to whether the Appellant filed his appeal within the period provided by Section 4 (3) of the Agreement that specifies: “*Any such appeal must be filed within 120 days of the receipt of the company’s decision”.* However, it must be recognized that the Appellant apparently, as is corroborated by the registered mail receipt, had filed the appeal on 25th December 2003 which obviously was lost between Vienna and Schiphol or Schiphol and London. Therefore, the appeal is regarded as timely filed.
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. 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.
20. There is no doubt that the Appellant’s grandparents and their children were Holocaust victims and that the Appellant and his sister as heirs of their grandparents (together with [REDACTED] who is identified as another living heir) could be entitled to the proceeds of a life insurance policy taken out by the Appellant’s grandfather. However, the Appellant did not establish that a life or dowry insurance policy issued by [REDACTED] to his father existed. His evidence lacks the requisite authenticity and particularity and there is no corroborative evidence (such as letters or statements from third parties) to support the Appellant’s assumption that [REDACTED] issued life and dowry insurance policies. The Appellant makes it clear in his appeal form that he is not very sure about the company by adding the word “*vielleicht*” (probably) to his statements about the name of the issuing company, giving three possible company names (“[REDACTED], [REDACTED], [REDACTED]”) and stating “*Es müssen Versicherungen sein, die in Leverkusen eine Agentur oder einen Agenten hatten, vielleicht auch in Köln*” (“*It must have been insurance companies that had an agency or an agent in Leverkusen or maybe also in Cologne*”). In his reasons for appeal he does not give any additional information as to why it could have been [REDACTED] that issued a policy (or policies). The only reason set forth in support of his appeal is that he cannot understand why [REDACTED] searched for the name “[REDACTED]” which he thought he had not mentioned. This is not the case; [REDACTED] correctly responded that the Appellant himself had set forth this name in his claim form. Furthermore, there is no reason to believe that [REDACTED] did not do a thorough research. The paucity of information submitted by the Appellant coupled with the absence of research matches (which must be taken into account even if the Respondent’s databases are limited) lead to the conclusion that the Appellant has not met the reduced burden of proof under the provisions of the Agreement.
21. As has been noted during the appeal that the appeal procedure the Appellant’s claim (despite naming three possible companies) was only sent to [REDACTED], the ICHEIC will be informed accordingly and be asked to take further action with respect to this claim.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 19th day of October 2004

For the Appeals Panel

[REDACTED]