

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], born on [REDACTED] 1927 in Thessaloniki (Greece). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was presumed to have been born in 1890 and died on 21st March 1943 in Auschwitz.
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim dated 14th March 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED] (?)” issued policies of insurance.
4. The ICHEIC sent the claim as an “unnamed claim” (claim no. [REDACTED]) to several insurance companies and, at the same time, submitted the same claim (under claim no. [REDACTED]) to [REDACTED]. In a decision letter dated 3rd February 2004 [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 Mrs. [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.”*
5. The Appellant submitted an appeal to the Appeals Office dated 28th February 2004, in which he set out his reasons for the appeal.
6. The Appeals Office received the appeal form on 17th March 2004 and sent it to [REDACTED] on 23rd March 2004.
7. [REDACTED] responded in a letter dated 2nd 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 [REDACTED]’s previous decision on it.”* In this letter it also mentioned that its investigations are made by checking all names and birth dates mentioned in the claim forms including deviating spelling, errors in the transfer of names *“(like [REDACTED] or [REDACTED])”* or deviating pronunciations.
8. 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.
9. On 19th May 2004 the Appeals Office received a letter from the Appellant with a request for an oral hearing. By letter dated 19th May 2004 the Appeals Office acknowledged receipt of that request and informed [REDACTED].
10. [REDACTED] responded in a letter dated 2nd June 2004, in which it repeated that that it has no indications of a contractual relationship with Mrs. [REDACTED] and that it could not but repeat this in a telephone conference call. It continued: *“Should the Claimant be of the opinion to be in the possession of further information to justify his claim, we may therefore advise him to submit these to the Appeals Office in writing, possibly together with relevant documents – to enable us to come to a decision by means of a procedure in writing.”*
11. On 17th June 2004 the Appeals Panel decided that there would be an oral hearing of the Appellant via telephone conference on 7th July 2004, 11.15 (Israel Time). The Appeals Office informed both parties of this decision by letter dated 18th June 2004.
12. The oral hearing took place on 7th July 2004. It was conducted in Greek and German and translated by an interpreter into English.
13. Independent of the appeals process the competent ICHEIC body has already awarded the Appellant a humanitarian payment of US\$ 1,000 with regard to the above mentioned “unnamed claim” no. [REDACTED].
14. 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

15. The Appellant submitted the following information in relation to the claim for the proceeds of an insurance policy in his claim form:

- a) In section three regarding the company that issued the policy he writes, “[REDACTED]?” and also crosses “*don’t know.*” He states that the policy was purchased in “*Saloniki, Macedonia, Greece*”. In answer to Q 3.3 concerning “*other information which might support the search*” the Appellant writes, “*the name of the collector of the payments was [REDACTED].*”
- b) In section four concerning “*documents*” the Appellant writes, “*mother took to Auschwitz all papers concerning the insurance.*”
- c) In section five the type of insurance policy is not identified by the Appellant and he writes, “*I don’t know.*” He asserts that he is not aware of any payments resulting out of the insurance policy. Furthermore, he states that the mode of payment of the premiums was either weekly or monthly and that all premiums were paid until the German occupation. Finally he states that payments stopped because of the Nazi occupation.
- d) The policyholder is identified as [REDACTED], née [REDACTED], the Appellant’s mother, who was possibly born in 1890. She died on 21st March 1943 in Auschwitz.
- e) No information is provided about the insured person or beneficiary.
- f) In section eleven regarding “*further information*” the Appellant writes, “*As a nine-year-old boy, I remember a man who would come to our house once a month; he would announce: “[REDACTED]”. My mother would address him by the name [REDACTED] and would give him money. He would take from his case, which was full of beige-coloured policies, cut off with scissors a numbered coupon from a policy, and give it to my mother. This is what I saw several times.*”

16. In a statement submitted with the appeal form the Appellant writes:

“1) The name of my mother is [REDACTED], and not [REDACTED] as the insurance company [REDACTED] did the research and informed me they have not found my mothers live policy, this is absurd.

2) Myself as a little boy of eight years old, played with other friends near my home, my mother called me to come and to cut with scissors the coupon of the insurance policy every time (once in a week) when the Collector (Mr [REDACTED]) came to collect the payment of the insurance policy, that made me proud before the other children, to cut with scissors the weekly coupon, because my mother was the only one with insurance life policy in the neighbourhood.

3) Two of those children, are WITNESSES because they remember exactly, the scissors and the coupon, the cutting in the middle of a play, and they still live today.

4) My opinion is that the all research has been done completely, with wrong name, from the beginning until the end of the research, and I have not the possibility to explain this to the insurance company, because of this phrase from her letter of decision ‘please do not

hesitate to contact us if you have any further questions regarding the investigation of your claim, or the decision rendered.”

17. In the oral hearing the Appellant described how he arrived at the concentration camp in Auschwitz and why he is unable to provide any documentary evidence.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. In the decision letter dated 3rd February 2004 [REDACTED] writes, *“based on the information 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. 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 former 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 Mrs. [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.”*
19. [REDACTED] made additional comments in its letter of 2nd April 2004 to the Appeals Office, *“the only information related to former activities in Greece 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 February 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. 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. Unfortunately no match occurred in our records due to the lack of detailed and specific information in the claims-form as to, e.g., the policy number. Our only search criterion were the names of the members listed in the claims-form. All investigations in the still available lists with names of former policy holders and persons involved in insurance contracts did not produce any results even under consideration of all names and birth dates mentioned in the claims-form and deviating spellings, errors in the transfer of names (like [REDACTED] or [REDACTED]) or deviating pronunciations. This is the reason why we have to confirm the rejection of this claim, and also the reason for the impossibility to product to the Panel any document related to the claim at issue, because no such document is available to us.”*
20. In the oral hearing the representatives of [REDACTED] stated that they know from former colleagues that [REDACTED] did not collect premiums in the way described by the Appellant (i.e. by cutting coupons).

THE ISSUES FOR DETERMINATION

21. 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.
22. 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.
23. The Panel concludes that the Appellant has not established that [REDACTED] issued the insurance policy upon which his claim was based. 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 recollection of the existence of a life insurance policy issued by [REDACTED]. The claim form reflects the Appellant’s uncertainty regarding the name of the insurance company. When asked to identify the insurance company that issued the policy the Appellant crosses the “*don’t know*” box and writes “[REDACTED]?” In setting up an additional claim, number [REDACTED], as an unnamed claim the ICHEIC also identified the ambiguity regarding the name of the company. In the claim form the Appellant does not indicate the type of policy taken out by his mother, but writes, “*I don’t know*”. Further, he provides no additional details about the policy other than the place of purchase and the name of the person who came to collect the payments. However, according to the company’s statements about the way it collected premiums this description makes it doubtful whether [REDACTED] was the company with which a contractual relationship existed. In such a case, where in addition to the uncorroborated assertion of the Appellant, there is nothing that makes plausible the existence of a policy, the necessary degree of plausibility has not been established.

Finally, 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 has to take into consideration the absence of research matches.

Appellant: [REDACTED]
No.: [REDACTED]

Appeal No.: [REDACTED]

Claim

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