

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] (formerly known as [REDACTED]), born [REDACTED] 1918 in Thessaloniki, Greece. He is the son of [REDACTED] ([REDACTED]) [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born in 1893 in Istip, Ottoman Empire (now Macedonia) and died on 22nd November 1980 in Quiriat Bialik (Kiryat Bialik), Israel. [REDACTED] was born in 1893 in Thessaloniki and died on 9th February 1943 in Athens. The Appellant has two sisters, [REDACTED], who was born [REDACTED] 1914, and [REDACTED], née [REDACTED], who was born [REDACTED] 1922. They both live in Israel.
2. The Respondent is [REDACTED] ([REDACTED]).

3. The Appellant submitted a claim form dated 15th August 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming the proceeds of a life insurance policy issued to his father in Thessaloniki (Greece) by [REDACTED].
4. The ICHEIC submitted the claim to [REDACTED]. The claim was declined due to a lack of evidence of a contractual relationship with the Appellant's father.
5. The Appellant submitted an Appeal Form to the Appeals Office dated 26th November 2003, which was accompanied by a statement of his ground for appeal and copies of documents from the claims procedure.
6. [REDACTED] responded to the Appellant's request for an appeal in a letter dated 15th December 2003. It requested that the Appeals Panel "*reject the appeal submitted with respect to this claim and to confirm [REDACTED]'s previous decision on it*" [as set out in paragraph 4].
7. On 15th January 2004 the Appeals Office informed both parties that the appeal would be on a "*documents only*" basis, unless it received a request from either party for an oral hearing within 14 days of receiving the letter.
8. On 3rd March 2004 the Appellant informed the Appeals Office that he wished to have an oral hearing.
9. The oral hearing took place by way of a telephone conference call on 5th July 2004, 9.00 (Canadian time) and was conducted in English.
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.

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 Panel Decision is made there.

THE CLAIM

11. In his claim form dated 15th August 2000, the Appellant claims the proceeds of a life insurance policy issued to his father, [REDACTED]. He names the insurer as "[REDACTED]" and claims that the policy was purchased in Thessaloniki, Greece.
12. The Appellant names his father as the insured person and his mother, [REDACTED] (née [REDACTED]) as the possible beneficiary.
13. He states that the policy was possibly purchased in Drachma during the 1920s or early 1930s, and that premiums were paid "*many times*", stopping "*may be after 1942 or 1943.*"
14. As additional information he discloses that he had a conversation with his father in 1941 in which he instructed him "*to continue*" with the insurance.
15. On the Appeal Form dated 26th November 2003 the Appellant writes: "*During May 1941 my father asked me if I wanted him to withdraw the moneys he had in the [REDACTED]*"

insurance company and I told him I quote: 'No papa, it is difficult times now, let them take care of our money.' I knew there was a bundle of papers which my father was keeping from 1928-1938 while we were living in Salonika, Greece and at Athens from 1938-1942."

16. The Appellant reiterates this evidence in two further letters to the Appeals Office dated 21st December 2003 and 25th January 2004. In the letter of 21st December he writes *"I kneel down before my father who during May 1941 at Athens Greece when I reached Home after I escaped from the German army. He told me to withdraw his life insurance funds and give me the money. To this I was stupid and refuse to accept his moneys."*
17. In a letter to the Appeals Office dated 3rd March 2004 he writes *"the only thing I can do is to put my hand on the Bible and swear that my father was having a life insurance policy with [REDACTED] for many years. As to conditions and amount I do not know"*.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. In the final decision letter, dated 18th November 2003, [REDACTED] declined the claim stating: *"On the basis of the information you provided in the claim form and following our intensive research in all the relevant internal and external archives, it has proved impossible to verify the existence of a life assurance policy taken out by Mr. [REDACTED] with [REDACTED] in Greece, even taking into consideration the 'relaxed rules of evidence' permitted under the 'Agreement'. Under the terms of the Endowments and Foundations Act and the 'Agreement', a claim should be rejected if there is no satisfactory and sufficient proof of a contractual relationship with the insurance company specified in the claim."*
19. [REDACTED] confirmed this decision in a letter to the Appeals Office dated 15th December 2003: *"The only information related to former South-Eastern European activities 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 electronical 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. This is the reason why we have to confirm the rejection of the claim..."

THE ISSUES FOR DETERMINATION

20. The main issue for determination in this appeal is whether the Appellant has met the burden of proof as set out in section 17 of the Appeal Guidelines (Annex E of the Agreement). This 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.
24. 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 that a policy was issued by the company. The Agreement ensures that "*claimants will not be unduly prejudiced by a lack of records or a presumption of payment where proof is unavailable*" (Annex B Part B Relaxed Standards of Proof for Life Insurance Policies).
25. It is plausible that the Appellant's father held a life insurance policy prior to the Second World War. The Appellant provided credible and consistent evidence that he remembers his father paying premiums on a policy bought in Thessaloniki "*many times*". He also remembers a conversation he had with his father in 1941 in which he instructed his father not to surrender the policy for his benefit due to the prevailing political climate.
26. However, the Agreement also provides that it is incumbent on the Appellant to show that the Respondent was the issuer of the policy. This has not been sufficiently established in this case. Mr [REDACTED] was unable to provide any documentation or adequate anecdotal evidence to show that [REDACTED] was the issuer apart from the one conversation he had with his father about the policy in 1941.
27. Nevertheless, the ICHEIC Memorandum of Understanding (the MOU) provides at Article 8A1 that the ICHEIC shall establish and administer a Special Fund, in particular the Specific Humanitarian Section, which "*shall provide relief to claimants who seek relief under policies that cannot be attributed to a particular insurance company [...]*". In this case [REDACTED] admits that its records of its South-Eastern European activities were substantially degraded during the war. It is therefore not surprising that the company has been unable to locate the claimed policy. As the Appellant has been successful in establishing that it was plausible that a policy existed, but not that [REDACTED] was the issuer, this case is appropriate for referral to the Humanitarian process.

IT IS THEREFORE HELD AND DECIDED

The appeal is dismissed.

Dated this 19th day of August 2005.

[REDACTED]