

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]

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] ([REDACTED]) [REDACTED] ([REDACTED]), née [REDACTED], born on [REDACTED] 1919 in Altdorf near Ettenheim, Baden (Germany). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED], who was self-employed, was born on [REDACTED] 1884 in Altdorf near Ettenheim and died in Lahr (Germany) on 12th November 1939. The Appellant states that he was thrown out of a moving train by Nazis. He had spent approximately one month in the Dachau concentration camp prior to his death. [REDACTED] was born on [REDACTED] 1887 in Altdorf-Ettenheim, wife was deported to the Gurs concentration camp in France and died in Auschwitz. She was declared dead on 31st December 1942 by an order dated 17th July 1950 of the “Amtsgericht Ettenheim” (the district court of Ettenheim).

The Appellant had a co-heir, [REDACTED], born on [REDACTED] 1915, who is now deceased.

2. The Respondent is [REDACTED] ([REDACTED]), as the successor of “[REDACTED]”. “[REDACTED]” had taken over portfolios of “[REDACTED]” which was the legal successor of “[REDACTED]”.
3. The Appellant submitted a claim form dated 17th April 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that “*maybe [REDACTED]*” issued policies of life insurance.
4. The ICHEIC submitted the claim to “[REDACTED]” which at that time was not yet part of [REDACTED].
5. In its decision letter dated 12th July 2004 [REDACTED] stated: “*With our letter of February 27, 2001, we contacted you on behalf of [REDACTED]. Since [REDACTED] has been taken over by [REDACTED] your inquiry is now being processed by [REDACTED] using all the registers and archives of [REDACTED] that are still in existence. We have now checked these registers and archives on the basis of the data of your inquiry. ... We regret, no entries exist in the register for Mr [REDACTED]. Regrettably, the register is no longer complete after more than 60 years. Moreover, we also searched the archives documents of [REDACTED] which are still in existence. Unfortunately, these documents contain no information concerning a contractual relationship with [REDACTED], too. Therefore, we unfortunately have no evidence for a life insurance contract concluded between your father and [REDACTED]. We hope you will understand that we cannot offer payment, since there is no evidence of an existing contract.*”
6. The Appellant submitted an appeal to the Appeals Office dated 17th November 2004 in which the reasons for the appeal were set out.
7. The Appeals Office received the appeal form on 24th November 2004 and forwarded a copy to the Respondent.
8. [REDACTED] responded in a letter dated 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 our decision on it.*”
9. On 4th January 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 appeal proceeds on a “*documents only*” basis.
11. 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

12. The Appellant has submitted the following information in the claim form relative to the claim for the proceeds of a life insurance policy.
 - a) In section three, she states that she does not know which insurance company issued the policy. She adds: “*Perhaps [REDACTED]?*”. She is unable to provide any further information.
 - b) In section four, she states that she is unable to provide any documents or statements to substantiate her claim.
 - c) In section five, she identifies the policy in question as life insurance but is unable to provide any further details.
 - d) In sections six and seven, she identifies her father, [REDACTED], as the policyholder and insured life. She states that there are no other living heirs.
 - e) In section eight, she identifies the beneficiary as “*perhaps my mother?*”, [REDACTED]. The Appellant is not aware of any other living heirs of the beneficiary.
 - f) In section nine, she states that no one has participated in any compensation/restitution procedure for this claim. When asked why not, she states: “*Because there aren’t any documents*”.
13. The Appellant sets out the reasons for her appeal as follows: “*I am sure that my parents had a life insurance as all well-to-do families had before World War 2. I only can’t remember with which company they were connected so I am asking for your help*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. [REDACTED] declined the claim for the reasons given in its decision letter dated 12th July 2004 (see paragraph 5).
15. In its letter dated 30th November 2004 [REDACTED] stated in response to the appeal: “*As November 4, 2002 [REDACTED] has been taken over by [REDACTED]. Claims referring to companies that are related to [REDACTED], such as [REDACTED], are being*

processed by us, using all the registers and archives of [REDACTED] that are still in existence. Concerning the claimant's father, Mr [REDACTED], her mother, Mrs [REDACTED] as well as herself we checked the card index register of [REDACTED] on the basis of the data which the claimant provided us with. Unfortunately we did not find an entry for these persons. The alphabetical card index register of [REDACTED] contains entries for persons who had applied for life insurance contract with [REDACTED]. Moreover, we searched the archive documents of [REDACTED] which are still in existence. However, these documents contain no information concerning a contractual relationship with the above mentioned persons too. If there is no entry in the alphabetical card index register and no information in the archive documents, we have no evidence for a life insurance contract concluded with the persons concerned and [REDACTED]. For this reason we respectfully ask the Panel to reject the appeal submitted with respect to this claim and to confirm our decision on it".

16. [REDACTED] disclosed, among others, the following documents with this letter:

- a) A letter dated 26th September 1955 from the legal representative of [REDACTED] and [REDACTED] (née [REDACTED]) to the Baden-Württemberg compensation authority. It states: "*[REDACTED] took out a life assurance policy. The insurer and the insured sum have not yet been confirmed. The premium payments were each transferred from the account of the policyholder at the present Volksbank Ettenheim to the insurer. I kindly ask that the Volksbank Ettenheim be requested to provide information regarding the insurance company who received these premium payments. The insured sum was not paid out following the death of [REDACTED] because his surviving wife was deported to Gurs. I am hereby registering the claim for compensation for damages to an insurance policy*". A hand-written note in the margin states: "*[REDACTED]?*". A hand-written note (difficult to decipher) at the bottom of the page requests investigations regarding [REDACTED].
- b) A letter dated 24th October 1955 from the Baden-Württemberg compensation office to [REDACTED] Life Insurance Company. It states: "*[REDACTED] apparently took out a life assurance policy with the former life assurance company '[REDACTED]'. The heirs do not have in their possession any pertinent documentation, and the rate of the insurance and its duration are also unknown to them. We have been informed that the life assurance company of that time "[REDACTED]" was taken over by the [REDACTED] life assurance company in the years 1935 and 1936. We kindly request that investigations be carried out, using the documentation attached, to discover whether the aforementioned person was indeed insured by your company. If this was the case, then the heirs have the right to compensation*".
- c) A letter dated 28th October 1955 from [REDACTED] life insurance company to the Baden-Württemberg compensation office. It states: "*With regard to your inquiry from 24.10 we must unfortunately inform you that we have been unable to locate any insurance policy in the name of Mr [REDACTED] or his wife [REDACTED] either in the records for the former life assurance company [REDACTED] or in our own records. We would therefore request that your clients provide us with further information, if possible the insurance policy number, or, if Mr [REDACTED] was insured as part of a syndicate policy, then the name of the group under which he was insured. If this is not possible then we will be unable to make any further progress with our investigation*".
- d) A partial decision of the Baden-Württemberg compensation office dated 22nd June 1959 in which [REDACTED] and [REDACTED] née [REDACTED] , as heirs of [REDACTED] and [REDACTED], are awarded DM 1077.17 as compensation for a life

insurance policy 638717 taken out with [REDACTED] life insurance company by [REDACTED].

- e) A partial decision of the Baden-Württemberg compensation office dated 15th July 1959. A claim by the same Claimants as in paragraph 16. e) regarding an insurance policy with the number [REDACTED] issued by [REDACTED] was dismissed as no information was available about the policy. The decision states: “*According to the correspondence from the insurance company dated 2nd January 1959 it must be assumed that the insurance policy had already ceased to exist by 23.5.1934. [...] It would not have been possible for the violent measures of the National Socialist regime to have had any effect on this policy, and compensation in accordance with the BEG does not apply*”.

THE ISSUES FOR DETERMINATION

17. The first issue for determination is whether the appeal was filed, pursuant to section 4 (3) of the afore-mentioned Agreement (see paragraph 11) and its Annex E (the Appeal Guidelines), within 120 days as specified in the Appeal Guidelines. It is concluded that the Appellant did meet this timeline.

Although the appeal form arrived on 24th November 2004 which is 135 days after the decision was made (on 12th July 2004), it cannot be determined when the Appellant received the decision letter. In light of the uncertainty as to the date the Appellant was notified of the right to appeal and because the appeal document arrived very close to the appeal deadline the appeal shall be deemed to have been filed in time.

18. The main issue for determination in this appeal is whether the Appellant has met the 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 parents were Holocaust victims and that she as their heir could be entitled to the proceeds of insurance policies.
21. However, it is concluded that the Appellant did not establish the issuance of a life or family insurance policy by "[REDACTED]" to her father. Her 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 that "[REDACTED]" issued such a life insurance policy. The Appellant does not give any details about the alleged insurance policy. In addition, she makes clear that she is uncertain about the identity of the issuing insurance company. In her claim form she writes "*Perhaps [REDACTED]?*" and in the appeal form she states: *I only can't remember with which company they were connected so I am asking for your help*". It is noted that there are letters from the 1950's in which the Baden Württemberg compensation authorities request "[REDACTED]", the company which was at that time liable for "[REDACTED]"-portfolios, to search for a policy issued to the Appellant's father [see paragraph 16 b) and c)]. Also the compensation authorities obviously did regard it as possible that "[REDACTED]" could have been the issuing company (see the handwritten remarks in the letter dated 26th September 1955 from the legal representative of [REDACTED] and [REDACTED] (née [REDACTED]) to the Baden-Württemberg compensation authority, paragraph 16 a), which obviously were made by the compensation authority). However, even as early as 1955 no information reflecting that "[REDACTED]" was an issuing company could be located. The paucity of such information, coupled with the absence of research matches (which must be taken into account even if the Respondent's databases are limited as to insurance policies issued by "[REDACTED]"), lead to the conclusion that the Appellant has not met the reduced burden of proof under the provisions of the Agreement
22. Nevertheless, the profession of the Appellant's father – he was self-employed and established financially - and the statement of the Appellant that there was more than one insurance policy as reflected in the documents of the compensation authorities [see paragraphs 16 d) and e)], lead to the further conclusion that it is plausible that there was another insurance policy, although the identity of the issuer remains unclear. Accordingly, the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures. The ICHEIC will be informed accordingly.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 5th day of May 2005

[REDACTED]