

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] 1939 in Arad, Romania. He is the only son of Dr. [REDACTED] ([REDACTED]) [REDACTED] and [REDACTED] ([REDACTED], [REDACTED]) [REDACTED], née [REDACTED]. Dr. [REDACTED] was born on [REDACTED] 1905 in Covasna (Kovaszna), Austria-Hungary, and died on 6th March 1984 in Arad. [REDACTED] was born on [REDACTED] 1914 in Şeitín, Austria-Hungary, and died on 3rd January 1988 in Arad.
2. The Respondent is [REDACTED] ([REDACTED]).

3. The Appellant submitted a claim form dated 10th October 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]” issued a policy of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 26th March 2004: *“based on the information that you have provided in the claims-form we have searched intensively in our records and in relevant archives for information on a life insurance policy taken out by Mr. [REDACTED]. In accordance with the rules of the ‘Agreement’ we have found corresponding evidence in our company files and are able to confirm the existence of policy No. [REDACTED] as part of the former portfolio of [REDACTED] in Romania ... we have been able to find out ... that the a/m had been taken out on 01.04.1937 on the life of Mr [REDACTED] with an insured sum of Lei 100,000.00. A quarterly premium of Lei 1,137.00 had been agreed upon. Maturity date was 01.04.1960. Article 2 (1) e of the ‘Agreement’ between the ICHEIC, the Foundation and the [REDACTED] stipulates, however, that a claimant is only eligible for compensation if the policyholder, the insured person or the beneficiary was a Holocaust victim. [The definition of the Holocaust Victim is then provided]. For Romania, this was fixed to the year 1940. In your ICHEIC claim you mentioned that your father never quitted Romania, he deceased there on 06th March 1984. Neither in your claim form, nor in your answer to our letter dd 05th March 2004 in which we asked you to complete your previous statements by giving further details regarding the issue we can find any reference as to a possible termination of the policy prior to 1945 or a confiscation by German or Hungarian authorities. Also, you did not provide any evidence for your statement. It is neither known to you nor us whether, and if so, in which form there were any arrangements on the part of the Communist regime after 1945. In view of all these facts you are not eligible for compensation under the rules of the ‘Agreement’ as the policy had not been confiscated or disposed of prior to 1945 even if, as is to be supposed, the insured sum had not been paid out to your father due to the seizure by the Communist regime. We are confident that you will understand our decision not to submit an offer for compensation under the given circumstances”*.
5. The Appellant submitted an appeal to the Appeals Office dated 26th April 2004, which was accompanied by an attachment setting out the reasons for the appeal.
6. The Appeals Office received the appeal form on 10th May 2004 and mailed a copy to the Respondent on 11th May 2004.
7. [REDACTED] responded in a letter dated 7th June 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 15th June 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. 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.

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

11. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in the claim form:

- a) The question "*Was the policyholder and/or insured and/or beneficiary a victim of the Holocaust ?*" is answered with "yes".
- b) In section three he identifies the company that issued the policy as "[REDACTED]". He asserts that the policy was purchased in Arad, Romania. He states that he has attached a photocopy of the insurance policy and two premium receipts issued by the company.
- c) In section five he identifies the insurance policy as a life insurance policy and quotes the policy number [REDACTED]. He asserts that the policy was for the insured sum of 100,000 + 100,000 Romanian Lei "*according to the appendix*". According to his information the policy was taken out on 4th April 1937 and the date of maturity was April 1960.
- d) In section six the policyholder is identified as [REDACTED], the Appellant's father, who was born on [REDACTED] 1905 and who died on 6th March 1984.
- e) In section seven the insured person is identified as the Appellant's father.
- f) In section eight the beneficiary is identified as [REDACTED] née [REDACTED], the Appellant's mother, who was born on [REDACTED] 1914 and died on 3rd January 1988.
- g) In section eleven regarding "*further information*" the Appellant writes, "*at the time of birth of the policyholder the policyholder the Village of Covasna was part of Hungary, and it was spelt Kovaszna. My parents were born during the period when Transylvania was part of Hungary. Their names had been adapted into Romanian thus My father [REDACTED] had become [REDACTED]. My mother [REDACTED] had become [REDACTED]. In Hungary there is a custom of the wife completely acquiring the husband's name thus becoming [REDACTED]. Please find attached the following:*
Insurance policy for [REDACTED]
Appendix
Birth and death certificate for [REDACTED]
Birth certificate of [REDACTED]
Marriage certificate [REDACTED] and [REDACTED]
Death certificate [REDACTED]
Birth certificate [REDACTED]
ID [REDACTED]
The date of birth entered wrongly on the policy as [REDACTED] 1905 is corrected afterwards under the signature of the representative of the insurance company, as [REDACTED] 1905. Photocopies of two premium payments receipts ...".

12. Copies of the following policy documentation were submitted by the Appellant among the other documents listed above:
- a) An appendix for the insurance company [REDACTED] for the amount payable of Lei 100,000 in addition to the value of the life policy;
 - b) An insurance policy number [REDACTED] issued to the Appellant's father;
 - c) Two premium receipts: one dated 1st July 1937 for policy number [REDACTED]. Policyholder is Dr. [REDACTED]. The amount of premium paid was 1137 Lei; one dated 1st October 1937 for the amount of 1137 Lei. Policyholder is Dr. [REDACTED] and the policy number is [REDACTED].
13. In a letter dated 17th February 2004 the Appellant states: *“My father [REDACTED] lost his job. We must to leave our flat because was taken. My father had summon for compulsory work. Both my grandparents [REDACTED] and [REDACTED] was forced to leave their property (house and shop) in the Ineu village because was taken. My uncle [REDACTED] died in a detachment for obligatory works. His wife [REDACTED] and his daughter [REDACTED] were murdered in Auschwitz (They lived in Viseul de Sus – temporary belonging to Hungary)”*.
14. In a statement submitted with the appeal form the Appellant writes, *“I cannot accept the argumentation of ‘[REDACTED]’ through which it rejects my claim for a compensation to the policy number [REDACTED] which my father, [REDACTED], had to the [REDACTED] in Romania. Their requirement concerning the proof with documents of the withdrawal or confiscation of the policy by the German, Romanian or Hungarian authorities does not take into consideration, the situation in which the Jewish persons got during the racial persecution period, when the policy had become a nonsense. Which German bank dealt with the withdrawal of a policy from a Jew, who anyway will find his end at Auschwitz, like the wife [REDACTED] and the daughter [REDACTED] of my Uncle [REDACTED] who, in his turn, died in the work detachments. It was the will of fate that my father, my mother and I didn't have the same end. Anyway, as I have already motivated at the [REDACTED] requirement, my father suffered a lot of hardships of the racial laws. We were kicked out of our home, he lost his job, he had convocation to forced labour, my grandparents [REDACTED] and [REDACTED] were forced to move from the village of Ineu to Arad and the both families were taken the houses and the shops that provided their existence.*

“IT IS OBVIOUS THAT IF [REDACTED] EXPECTS DOCUMENTS CONCERNING THE CONFISCATION OF THIS KIND OF POLICIES, THEY WILL NOT HAVE MANY COMPENSATIONS TO PAY.

“THE AFFIRMATION OF [REDACTED] THAT THE COMMUNIST REGIME MIGHT HAVE PAID A COMPENSATION TO MY FATHER, ON ACCOUNT OF THE POLICY IN QUESTION, IT IS FALSE, ANYWAY THEY SHOULD PRESENT THE PROOF OF A PAYMENT IN THIS FORM”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. [REDACTED] denied the claim for reason set out above (paragraph 4).
16. [REDACTED] made further comments in the letter dated 7th June 2004 in which it writes: *“As already stated in our letter dd 26th March 2004 we cannot take from the claimant's explanations that there had been a property withdrawal by German or Romanian authorities prior to 1945. Also the Appeal's justification does not allow this conclusion.*

Thus, the prerequisite for a claim as per Article 2 (1) of the 'Agreement' of 16th October 2004 is not accomplished for the case in question".

17. Before making its decision, [REDACTED] had informed the Appellant by letter dated 5th January 2004 that it had found out *"that documents on the insurance policy are available in external archives and offices"* and that it hopes *"that these documents will give further details that will help us to handle your claim"*. In a further letter dated 9th February 2004 it requested *"in the interest of an appropriate handling of your inquiry ... to complete your previous statements [in the claim form about the Holocaust victim issue] by explaining in detail the living situation of your family from 1940 until the end of the war and let us have copies of any documents that might be available with you not yet submitted to us. Here we are mainly interested in evidence and information on a possible confiscation of property and the policy by German or Romanian bodies prior to the end of the war"*. The Appellant answered in a letter dated 17th February 2004 (see paragraph 14).

THE ISSUES FOR DETERMINATION

18. The main issues for determination are whether the Appellant and his family are Holocaust victims and whether the loss of the proceeds of the insurance policy was related to the Holocaust.

The Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002 covers, according to its introductory language, *"the settlement of individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice"*. Section 2 of the Agreement defines eligibility of claims as follows: *"(1) A claim concerning a life insurance policy is eligible for compensation, if (a) the claim relates to a life insurance policy in force between January 1, 1920 and May 8, 1945 and issued or belonging to a specific German company and which has become due through death, maturity or surrender; and (b) the insurance policy was not paid or not fully paid as required by the insurance contract or was confiscated by the German National Socialist Regime or by the government authorities as specified in the definition of Holocaust victim in section 14 ... (e) the policy beneficiary or the policyholder or the insured life, who is named in the claim, was a Holocaust victim ..."*.

For purposes of the Agreement, *"Holocaust victim"* means *"anyone who, as a result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime, was deprived of his/her life or freedom; suffered damage to his/her mental or physical health; was deprived of his/her economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss or damage to his/her property. For the purpose of this definition, persecution by governmental authorities of the following countries for the period in brackets until the end of the Second World War in the following countries is considered equal to persecution by the organs of the German National Socialist Regime: ...Hungary (1939), Romania (1940)..."*.

Thus, only losses and deprivations connected with National Socialist injustice and specifically the Holocaust are covered by the Agreement.

19. Initially, the only indication that the members of the [REDACTED] family are Holocaust victims was the answer the Appellant gave in section 1 of the claim form (*"Was the policyholder and/or insured and/or beneficiary a victim of the Holocaust ?"*) which was "yes" [see paragraph 11 a)]. At the request of [REDACTED] he gave further details in a letter dated 17th February 2004 (see paragraph 13). Considering this additional information, it must be concluded that the [REDACTED] family, indeed, was persecuted by the National Socialist Regime or by Romanian governmental authorities after 1940.

20. Although [REDACTED] correctly points out in its decision letter that losses and deprivations not connected with National Socialist injustice and specifically the Holocaust are not covered by the Agreement, [REDACTED] has not established that this was the case here. On the contrary, [REDACTED] states: “*It is neither known to you nor us whether, and if so, in which form, there were any arrangements on the part of the Communist regime after 1945*”. Given that the Appellant stated - although as [REDACTED] correctly pointed out without giving additional evidence (which on the other hand in most of the cases is very hard to give as persecuting National Socialist or Romanian authorities normally did not give receipts to persons whose assets were seized) - that his family was persecuted by the German National Socialist Regime and/or the Romanian authorities after 1940, it must be concluded in favour of the Appellant that the family also lost other assets than their flat.

VALUATION

21. The valuation of a claim includes pursuant to Section 1.2 and 1.3 of the Valuation Guidelines (Annex D of the Agreement) two phases - the first is the assignment of a base value to a policy; the second is the application of appropriate multipliers to the base value to produce the current value.
22. The base value of a policy, according to Section 1.2 of the said Guidelines, is the value that the policy would have had at the date of the insured event, which in this case is the maturity date on 1st April 1960. The value at that time was Lei 100,000.00.
23. The value of the policy in Romanian Lei corresponds, according to Section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.00509 laid down in Step 1 of Schedule 2 of the said Annex, to the value of US\$ 509.00.
24. Pursuant to Step 2 of Schedule 2 of the said Annex, this dollar value must be multiplied by 11.286 resulting in a value to the end of 2000. This is US\$ 5744.57 by the end of 2000.
25. According to Step 3 of Schedule 2 of the said Annex, additions must be made to the dollar value up to the end of 2000 for the subsequent years. These interest rates have been agreed upon in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC issued after consultation with the Foundation and the [REDACTED] as the other parties to the Agreement (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 %; 2004: 5.0 %; 5 %; 2005 according to the month, in which the decision is made, plus two months, i.e. 10/12 of 5.0 %), which results in the amounts of US\$ 6,054.78 for 2001, US\$ 6,357.52 for 2002, US\$ 6,659.50 for 2003, US\$ 6,992.48 for 2004 and US\$ 7,283.83 for 2005.

IT IS THEREFORE HELD AND DECIDED:

1. The appeal succeeds.
2. [REDACTED] shall pay the Appellant the sum of US\$ 7,283.83 no later than the last day of the second month following the month of the decision, which is 31st October 2005.

Dated this 12th day of August 2005

[REDACTED]