

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]

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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], née [REDACTED], born on [REDACTED] 1922 in Cologne (Germany). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born in Cologne on [REDACTED] 1891 and died in Bridgeport (USA) on 20th April 1955. [REDACTED] was born in Nidda (Germany) on [REDACTED] 1899.

The Appellant's father was, from 1930 to 1935, a freelance representative and, since 1936 until the end of 1938, a co-owner of a business called "*Rudolf Salberg Nachf.*" in Frankfurt am Main (Germany). As a result of the National Socialist persecution of Jews, he was forced to give up his business. In March 1939 he and his family immigrated to the United States of America.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 26th March 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that "[REDACTED]." issued a policy of dowry or education insurance. The Appellant describes this policy in several ways. However, it is clear that she is seeking compensation for "her" insurance, i.e. for a dowry or education insurance policy.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 16th July 2004: "*We refer to your inquiry regarding the [REDACTED] insurance policy taken out by your father, Mr [REDACTED], either for himself or for you (in this case it would have been a dowry or education policy) 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. ... None of the relevant external archives contain any reference regarding a life insurance policy of Mr [REDACTED] or of [REDACTED]. Based on the information provided by you in the claims-form and after our intensive research in all relevant internal and external archives, the existence of a life insurance policy taken out by Mr [REDACTED] with [REDACTED] could not be established, even under the 'Relaxed Standards of Proof' of the Agreement. ... We are confident that you will understand our decision not to submit an offer under the given circumstances*".
5. The Appellant submitted an appeal to the Appeals Office dated 5th October 2004 in which the reasons for the appeal were set out.
6. The Appeals Office received the appeal form on 11th October 2004 and mailed a copy to the Respondent.
7. [REDACTED] responded in a letter dated 21st October 2004 and requested the Appeals Panel for reasons set out in this letter (for details see paragraph 16) to reject the appeal.
8. On 16th October 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 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/dowry insurance policy in the claim form:

- a) In section three, she identifies the company that issued the policy as “[REDACTED]” She states that the policy was purchased in Cologne, Germany. Under ‘other information’, she writes: “*Don’t know, I was a small child at the time of purchase*”.
- b) In section four, she states that she can provide copies of correspondence to substantiate her claim. She adds: “*Prior correspondence to this claim*”.
- c) In section five, she identifies the policy as one of life insurance and underlines the option “*dowry or education*”. She states that the premium was a single payment of “2000” (no currency mentioned). She adds that not all premiums were paid and that payment was only made once. Asked why payments stopped, she writes: “*(see correspondence)*”. She is not aware of any payments resulting from the insurance policy.
- d) In section six, she identifies the policyholder as [REDACTED] / [REDACTED]. She does not know of any other heirs of the policyholder, and adds: “*This policy was specifically purchased for me*”.
- e) In sections seven and eight, she states that she was the insured person and beneficiary. She adds that it was a policy for schooling and/or marriage.
- f) In section nine, she states that she does not know whether anyone has participated in any compensation/restitution procedure for this claim.
- g) In section eleven, under “*other information*”, she states: “*Don’t know. I was just 80 years old and hope to get some money due to me before I die. Let me know if you need any other information*”.

12. The claim file also contains copies of the following documents:

- a) A draft decision of the Wiesbaden compensation authority dated 24th September 1956. [REDACTED], as sole heir of [REDACTED], is awarded DM 1,159.79 in a BEG compensation procedure (BEG = “*Bundesentschädigungsgesetz*”, the German Federal Law on Compensation for the Victims of National Socialist Persecution). Life insurance policies are not mentioned in this draft. The compensation is awarded in respect of special charges which the testator had to pay during Nazi persecution.
- b) A decision of the Wiesbaden compensation authority dated 17th January 1957. [REDACTED], as sole heir of [REDACTED], is awarded DM 4,983.00 in a BEG

compensation procedure. There is no mention of life insurance policies. This compensation is awarded in respect of losses incurred in a professional context.

- c) A decision dated 13th September 1960 by the compensation authority in Wiesbaden. [REDACTED], as beneficiary of [REDACTED], is awarded in a BEG compensation procedure compensation of DM 239.37 as a result of losses pertaining to insurance policy no. [REDACTED] taken out by [REDACTED] on the life of [REDACTED] with [REDACTED].
- d) A draft decision dated 13th September 1960 by the compensation authority in Wiesbaden. The widow [REDACTED], as sole heir of [REDACTED], is awarded in a BEG compensation procedure compensation of DM 190.56 as a result of losses pertaining to insurance policy no. [REDACTED] taken out with [REDACTED].
- e) A settlement reached following a court case between [REDACTED] (Claimant) and the regional state of Hesse. The Claimant, [REDACTED], is granted further compensation of DM 2,793.00. The settlement is dated 31st October 1962 and has nothing to do with insurance policies.
- f) A draft decision dated 6th April 1966 by the compensation authority in Wiesbaden. The claimant, [REDACTED], is awarded a further DM 17.49 compensation as a result of losses pertaining to emigration costs.
- g) Correspondence between the Appellant and [REDACTED] dated 12th October 1997 and 17th November 1997 and an agreement between [REDACTED] and [REDACTED] in which [REDACTED] expresses its willingness to donate US\$ 2,000.00 to a charitable organisation of the Appellant's choice under the following conditions: *"1. Dr [REDACTED] fully accepts that, as far as is known at present, she and her family are not entitled to any claims against [REDACTED] resulting from a life insurance contact. [REDACTED] is offering this payment voluntarily, without obligation and as a gesture of goodwill. 2. If, despite the thorough research already undertaken, [REDACTED] should come into possession of documents indicating entitlement to a claim, it will pay the dues in full to the entitled persons"*. This agreement was signed by Dr. [REDACTED] and [REDACTED] in 1997.
- h) A letter dated 10th December 1997 in which [REDACTED] informs [REDACTED] that the above-mentioned donation of US\$ 2,000.00 should be made to the *"[REDACTED] Foundation for International Health"*.
- i) Various letters to and from the Holocaust Claims Processing Office of the State of New York Banking Department (HCPO). In a letter to [REDACTED] dated 7th June 1999, the HCPO sets out [REDACTED]'s claim regarding her dowry and student insurance policies taken out by her father with [REDACTED]. It requests advice on whether any records exist. In its response dated 17th June 1999, [REDACTED] expresses its surprise at [REDACTED]'s claim through the HCPO. It refers to the ex gratia payment of US \$ 2000 which was agreed *"despite the fact that no evidence could be established that there had been a contractual relationship with [REDACTED]"*. A hand-written note, presumably by the Appellant, states: *"This was a policy for my parents (life)"*. A letter from the HCPO to [REDACTED] dated 10th January 2000 states: *"A review of the file reveals that you believe the \$ 2000 inadequately represented the amount due to you for dowry and education insurance purchased for your benefit. However, [REDACTED]'s offer was not predicated on the existence of an actual policy, nor was it meant to represent compensation for such a policy, but rather a good faith gesture to acknowledge the suffering of the Jewish people"*. A letter to the HCPO from [REDACTED] dated 17th January 2000 states: *"Yes, I did accept \$2000 as an ex gratia*

offer. However, I still hope that either the Germans or the Swiss will find additional papers showing that I did have a policy. When we left in 1939 we left without policies or money; as you may know, we had to leave everything behind. Mine was not a life insurance policy, but a children's policy that should have been paid to me at age 21 (1943)".

13. The Appellant sets out the reasons for her appeal as follows: *"While my claim number has been consistently correct it only speaks of my father's life insurance. My policy was a dowry-education policy and was separate from my fathers. The search for my policy has gone on for so many years, and I do appreciate your efforts. I do hope that there will be some finality to it soon. Please excuse my belated answer to your letter, but I have been in the hospital with a knee replacement and a lengthy after therapy"*. The Appellant appears to have been confused with regard to the decision she wanted to appeal as she stated that she was appealing a decision made by the "[REDACTED] ICHEIC 16-10-02" (which, in fact, is the date the Agreement was signed, see paragraph 10).
14. After having received copies of documents submitted by [REDACTED] (see below sub 16 ss.) relating to its license to sell dowry policies, the Appellant wrote on 21st March 2005: *"It is very difficult for me to understand the legal language in both English and German. Because of this I cannot add much after reading the 81 pages you sent. Would it help at all if I would send you my birth certificate or a copy of my marriage licence (7-11-42?) I would like to comply and bring this matter to an end. How can I help ?"*. The Appellant subsequently faxed a copy of her marriage licence to the Appeals Office on 4th April 2005. It records the marriage between [REDACTED] and [REDACTED] on 11th July 1942.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. [REDACTED] declined the claim for the reasons given in its decision letter dated 16th July 2004.
16. In response to the appeal, [REDACTED] wrote in a letter dated 21st October 2004:

"It was with great disappointment that we had to learn that Ms. [REDACTED] filed an appeal against our decision. Ms [REDACTED]... neither produced documentary nor anecdotal evidence for the existence of a contractual relationship with [REDACTED]. [REDACTED] was confronted with research requests from the side of the [REDACTED]/[REDACTED] family several times. ... [REDACTED] conducted extensive research regarding this case already in 1997 and settled the case with a payment to a humanitarian organisation chosen by Ms [REDACTED]. ... We honestly do not understand why we are constantly asked to answer questions regarding this claim

- *We have a signed agreement with the [REDACTED]/ [REDACTED] family in which Ms [REDACTED] declares that 'ihre Familie nach heutigem Wissensstand der [REDACTED] gegenüber keine Ansprüche aus einem Lebensversicherungsvertrag haben' [translation: "according to what is known today, her family has no claims against [REDACTED] resulting from a life insurance contract"]*.
- *We could find evidence for the existence of a policy at Baloise.*
- *We also could found prove for various compensation proceedings in which policies were compensated but no policy of [REDACTED] was mentioned.*
- *We found asset declarations documents from the 30s not mentioning [REDACTED] policies.*
- *According to the claims form [REDACTED] had a dowry policy. [REDACTED] got a license to sell dowry insurances only 1939. According to the General Policy Conditions*

the insured person must not be older than 12 years at the beginning of the contract. Ms [REDACTED] was 17 years old in 1939. We will provide you with copies from the Archive Gönlitz in the near future. We have mandated a company to get copies of the official RAV-license.

- *We found several tax documents not mentioning a life insurance policy with [REDACTED]. We think that the outlined argumentation leaves no room for the assumption that the [REDACTED]/[REDACTED]family had a policy with [REDACTED]. We therefore kindly ask you to reject the Appeal”.*

[REDACTED] enclosed with this letter over 300 pages of documents in German-language which show in details how Jewry in Germany was persecuted and deprived of its assets by the National Socialist bureaucracy. These documents contain copies from tax-files, including asset declarations, emigration applications and declarations made with regard to emigration applications, and correspondence from the restitution and compensation procedures. Among these documents is an affidavit dated 28th November 1955 in which the Appellant’s mother, [REDACTED], states: “*He (i.e. the Appellant’s mother’s husband [REDACTED]) had a life insurance policy issued by [REDACTED] of which I do not know the insured sum*”. There is also a letter dated 24th June 1955 from [REDACTED] in which it informs the Appellant’s mother: “*Our head office in [REDACTED] sent us your letter dated 15th of this month. We regret that we must inform you that also we in our registers cannot find the life insurance policy you mentioned. It is true that Mr. Kaufmann was employed at our head office in Cologne at that time, however, it cannot be excluded that he made insurance contracts also with other companies. ...*”. In a letter 13th September 1960 (which apparently was written by the compensation authorities to the URO, the “*United Restitution Organisation*”) the compensation authority asks the URO: “*As to the two insurance policies issued by [REDACTED] we will issue a decision soon. In your letter dated 4th March 1958 it is stated that there was also an insurance policy issued by [REDACTED]. Has this statement been wrong or did a third insurance policy exist with this Company ?*”. The URO answered in a letter dated 1st November 1960 or 1962 (which, however, is very difficult to read as the copy is of poor quality): “*In answer to your letter dated 13th September 1960 we refer to our application dated 15th March 1956 in which sub No. 8 we ... [unreadable]. If another research is necessary we kindly ask to inform us ... [unreadable]*”. The application to which the “*URO*” referred in this letter was a claim for an insurance policy allegedly issued by [REDACTED] made in a letter dated 15th March 1956. In a letter dated 29th November 1962 the compensation authority again asked whether further claims are filed on which a decision has not been made yet. The URO finally answered in a letter dated 16th January 1963: “*In answer to your query dated 29th November 1962 we inform you that according to the documents we received there are no further claims*”.

17. [REDACTED] sent the documentation about the history of its dowry insurance policy business which started in 1939 (see paragraph 14 and 16) as an electronic document which the Appeals Office printed and forwarded to the Appellant on 14th March 2005.
18. [REDACTED] wrote again to the Appeals Office on 24th January 2005 after it had received the documents found during the ICHEIC database search (see paragraph 18). It stated: “*The material which ICHEIC has found in its research database confirms [REDACTED]’s decision. Therefore we have nothing to add to our letter of October 21, 2004*”.

THE INVESTIGATION BY THE APPELS OFFICE

19. The ICHEIC staff members responsible for matching issues referred to a “*possible match for [REDACTED] and [REDACTED] with [REDACTED] and [REDACTED]*”. The supporting documents for the match were:
- a) Tax declaration in the name of [REDACTED] for 1938. Under insurance policies, a reference is made to [REDACTED]. The words “*life insurance*” and “*health insurance*” have been underlined.
 - b) Letter dated 20th February 1938 from [REDACTED] to the Frankfurt am Main tax office (accompanying his tax declaration). In this letter, he mentions his life insurance policy no. [REDACTED] with [REDACTED]. He indicates an annual premium for 37 (presumably 1937) of RM 450.40. He also mentions a life insurance policy for [REDACTED] with the same company (policy no. [REDACTED]) with a premium of RM 211.60.
 - c) Letter dated 21st July 1938 from [REDACTED] life insurance company to the Frankfurt am Main tax office. It states that [REDACTED] née [REDACTED] has received the surrender value for her life insurance contract no. [REDACTED] with this company. The sum was RM 245.10 and RM 201.79 was paid out. The company states that it is providing this information because it believes that the policyholder is a non-Aryan and intends to emigrate shortly.
 - d) A Jewish asset declaration list completed by [REDACTED]. Under entitlements resulting from insurance policies, reference is made to policy [REDACTED] with [REDACTED].
20. On 17th January 2005 the Appeals Office forwarded copies of these documents to the parties to the appeal. [REDACTED] replied in a letter dated 24th January 2005 informing the Appeals Office “*the material which ICHEIC has found in its research database confirms [REDACTED]’s decision*”.

THE ISSUES FOR DETERMINATION

21. 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 [or dowry/education] 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. There is no doubt that the Appellant and those of her family living at that time were Holocaust victims and that the Appellant could be entitled to the proceeds of insurance policies which were confiscated or taken away by other means.
24. However, it is concluded that the Appellant did not meet her burden of proof that it was [REDACTED] which issued a dowry insurance policy.
25. First, [REDACTED]’s business history does not support the Appellant’s statement that [REDACTED] was the company which issued a **dowry or education** insurance policy for her. [REDACTED] proved that it did not issue dowry insurance before 1939. This follows clearly from the documentation [REDACTED] sent as an electronic document and which the appeals Office forwarded to the appellant on 14th March 2005 (see paragraph 17). Consequently, [REDACTED], in its letter dated 21st October 2004 (see paragraph 16) argued that “*According to the General Policy Conditions the insured person must not be older than 12 years at the beginning of the contract. Ms [REDACTED] was 17 years old in 1939*”.
26. Second, regardless of [REDACTED]’s business history and of greater significance is that the few details the Appellant could give about her alleged dowry insurance policy issued by [REDACTED] are not corroborated. 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], in fact, issued such a dowry insurance policy. On the contrary, the written evidence from the restitution and compensation procedures in the 1950’s and 1960’s [see paragraph 12c) and d)] and from the tax files of the 1930’s [see paragraph 19] supply a clue only as to the existence of various other insurance policies which, however, were not issued by [REDACTED] but by “[REDACTED]” and “[REDACTED]”.
27. Documents in which mention of or reference to an insurance policy allegedly issued by [REDACTED] appear are the letter from the URO dated 15th March 1956 and the affidavit dated 28th November 1955 (see paragraph 16 at the end). However, this policy is explicitly described as a life insurance policy taken out for [REDACTED], and not as a dowry insurance taken out for his daughter [REDACTED], née [REDACTED], the Appellant. In addition, it is highly probable that the reference to a [REDACTED] policy was given in error. As early as 1955 [REDACTED] informed the Appellant’s mother in a letter dated 24th June 1955 (see paragraph 16 at the end) that it had not been able to retrieve any insurance policies issued to the Appellant’s father. Furthermore, the policies issued by “[REDACTED]” which later were compensated, were not mentioned in the said affidavit and an insurance policy issued by [REDACTED] had never been the subject of any decision in a compensation procedure. On the contrary, the URO finally stated that no further claims have been left which need to be decided (see letter dated 16th January 1963, paragraph 16 at the end). This supports the conclusion that a claim for an insurance policy issued by [REDACTED] was not upheld in the compensation procedures, which had been very

detailed and where, over a period of almost 8 years, decisions had been made on many claims, including an appeal and a settlement. If a [REDACTED] policy should have existed it would have been made the subject of a claim at that time.

28. Finally, as early as 1955 until today no documents reflecting that [REDACTED] was an issuing company of the dowry or education insurance could be located. The paucity of the Appellant's information, coupled with the absence of documentary evidence in [REDACTED]'s registers and of research matches with regard to a [REDACTED] policy, lead to the conclusion that the Appellant has not met the reduced burden of proof under the provisions of the Agreement.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 11th day of May 2005

[REDACTED]