

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 [REDACTED] 1915 in Budapest (Hungary) and presently resides in Ontario, Canada. The Appellant’s father was [REDACTED], who was born on [REDACTED] 1890 in Dunaszerdahely (Hungary) and died in June 1944 in the Mauthausen concentration camp (Austria). Her mother was [REDACTED], nee [REDACTED], born [REDACTED] 1888 in Dunaszerdahely and died in Auschwitz shortly after her arrival in May 1944. The Appellant has one surviving brother, [REDACTED], born [REDACTED] 1920 in Nagyvarad (Hungary) and presently resides in California, United States.

2. The Respondent is [REDACTED].
3. The Appellant submitted an International Commission on Holocaust Era Insurance Claims (ICHEIC) Claim form dated 7th August 2000. The Appellant's brother also submitted an identical ICHEIC Claim form, save for his personal details, on 4th October 2000. In both Claim forms the Appellant and her brother claim the proceeds of their father's life insurance policy in the sum of 300,000 Lei issued by [REDACTED]. With the Claim forms there was a typed list of policies their father had purchased. The [REDACTED] policy was on this list. In February 2005 the insurance company [REDACTED], now responsible for [REDACTED], has paid US\$ 21,000 to the Appellant and her brother (see below para.21).
4. The ICHEIC submitted the claim to [REDACTED]. The claims file has no information why the claim was sent to [REDACTED]. In its decision letter dated 20th October 2004, [REDACTED] writes, "*There are no entries corresponding to the data of your inquiry in our register. Since this register is complete, this means that there exists no contractual relationship with [REDACTED] or any company subsequently purchased by [REDACTED].*"
5. The Appellant submitted an appeal to the Appeals Office dated 2nd November 2004, and states that offers have been received from [REDACTED] and [REDACTED] insurance companies in light of her father's list of policies, but that [REDACTED] had not indicated which company it had acquired from the list.
6. The Appeals Office received the appeal form on 9th November 2004 and sent a copy to [REDACTED] on 10th November 2004. [REDACTED] responded in a letter dated 7th December 2004 and reiterated its previous denial of the claim.
7. On 14th December 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.
8. No request for an oral hearing was made. The appeal proceeded on a "*documents only basis*".
9. 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

10. The Appellant and the Appellant's brother submitted Claim forms (set out in paragraph 3). For the purposes of this Decision the Appellant's ICHEIC Claim form will be discussed because the Claim from for the Appellant's brother is identical in substance.
11. The Appellant provided in the Claim form the following information for her father's life insurance policy:

- a) In section three the Appellant identifies the name of the company that issued the policy as “[REDACTED]”. In response to question 3.2 (“*place where insurance policy was purchased*”) she writes, “*Nagyvarad*” in Erde’ly, Hungary.
 - b) In section four, the Appellant states that she is able to provide a copy of the original typed list of policies from the policyholder to substantiate her claim, as well as sections of a book describing the circumstances of death of the insured.
 - c) In section five, she indicates that the policy in question was life insurance policy number [REDACTED] with an insured amount of 300,000 Lei, maturing on 1st February 1951.
 - d) In section six and seven, the policyholder is identified as the Appellant’s father, [REDACTED].
 - e) In section eight the Appellant states that her mother, [REDACTED], nee [REDACTED] was the beneficiary of the life insurance policy.
12. The Appellant and her brother submitted a typed list of ten insurance policies drawn up by their father on an unknown date prior to his death. This list provides details of nine insurance companies - [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The Appellant is claiming that [REDACTED] is responsible for one or more insurance companies on this list.
13. The Appellant sets out her reason for the appeal in her Appeal form and states: “*Attached are the original list of policies that my father [REDACTED], provided me. It includes details about policy numbers and maturing dates. The letter which I have received from [REDACTED] [...] [REDACTED] – does not indicate the reference insurance company that they are covering through acquisition [...]. [REDACTED] is not indicating which insurance company and valid policy they have acquitted from my father’s list*”.
14. In a letter dated 19th May 2005 the Appellant confirms her wish to continue her appeal stating, “*other policies related to my Father have in fact been validated and relevant offers of payment have been made. I reject [REDACTED]’s position in the context of the validity of the other plan numbers that I have provided.*”
15. A request for further information was sent to the Appellant on 13th June 2005 during the Appeals process at the request of the Panel. The letter stated: “*The submitted list of your father’s ten policies was with nine different insurance companies that existed in the 1930s. There is no reference to [REDACTED] in this list. The Appeals Panel does not have any information that [REDACTED] took over any of these companies. Please submit any information that you might have that shows [REDACTED] was the legal successor for any of these companies, or why you think that [REDACTED] issued an insurance policy to your father. If you are unable to provide such information you might consider the withdrawal of your appeal against [REDACTED]’ decision; please communicate your decision within 21 days mentioned above.*” No reply was received from the Appellant.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In its decision letter dated 20th October 2004, [REDACTED] wrote “*we have checked our central register on the basis of these data – Mr [REDACTED], born [REDACTED], 1890 in Dunaszerdahely Dunajska – Mrs [REDACTED], nee [REDACTED], born in [REDACTED] 1888 in Dunaszerdahely Dunajska [...]. There are no entries corresponding*

to the data of your inquiry in our register. Since this register is complete, this means that there exists no contractual relationship with [REDACTED] or any company subsequently purchased by [REDACTED].

In accordance with the rules of the International Commission, [REDACTED] can only make a payment when there exists some evidence that a contract may have existed. Unfortunately, the information that you provided to us does not confirm this fact, and we are unable to offer you any form of payment. ”

17. In a letter in response to the Appeals process dated 7th December 2004, [REDACTED] wrote, “*We confirm our decision as of October 20, 2004 and respectfully ask the Panel to reject the appeal submitted with respect to this claim.*”

THE ISSUE FOR DETERMINATION

18. The main issue for determination in this appeal is whether the Appellant has met her 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 Section 14 of the 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 to establish 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 as co-heir with her brother would be entitled to half the proceeds of any life insurance policy issued to her father and that all family members were Holocaust victims. The remaining and decisive question is whether the Appellant’s father had a life insurance policy with [REDACTED].

21. It is concluded that the Appellant has not established the existence of any life insurance policy issued by [REDACTED] to her father, [REDACTED]. 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 allegation that [REDACTED] issued a life insurance policy to her father or could be responsible for an insurance contracted with a predecessor company of [REDACTED]. The Appellant asserts that [REDACTED] has not indicated which policy or policies on her father’s typed list it denies. The list has nine different insurance companies. However, none of these companies

are attributed to [REDACTED], or a company for which [REDACTED] has subsequently assumed responsibility. The Appeals Office sent a request for further information to the Appellant on 13th June 2005 (see paragraph 15) to which no reply was received. The Appellant has not provided any information to link [REDACTED] with the companies stated in her father's list of policies. ICHEIC have also not attributed [REDACTED] to any of the companies on the list. Furthermore, the Appellant names [REDACTED] in her Claim form as the company that issued the life insurance policy to her father. [REDACTED] ([REDACTED]) paid the Appellant and her brother in excess of US\$21,000 for the 300,000 Lei [REDACTED] policy in February 2005 because [REDACTED] was a former subsidiary to [REDACTED]. In conclusion, the Appellant's claim must fail.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 25th day of July 2005

[REDACTED]