

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]

Represented by
[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] (previously [REDACTED]), born on [REDACTED] 1923 in Berlin. He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1875 in Golub, near Thorn (Germany) and died on 22nd January 1949 in New York. [REDACTED] née [REDACTED] was born [REDACTED] 1894 in La Chaux de Fonds (Switzerland) and died on 1st December 1973 in New York.

The [REDACTED] family was persecuted by the German National Socialist regime. The Appellant was sent on a “Kindertransport” to Holland.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 12th June 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] issued a policy of life insurance. This claim was processed under claim number [REDACTED] and is the subject of this appeal.

He also submitted a claim form dated 16th July 2003 in which he stated that a company he could not name issued a life insurance policy to the policyholder and insured person [REDACTED] (his grandfather), who was born on [REDACTED] or [REDACTED] 1868 in Germany and died on 17th September 1943 in New York City. This claim is processed under claim number [REDACTED] and not the subject of the appeal.

4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 2nd December 2004: *“We have checked our central register on the basis of the data of your inquiry: Mr [REDACTED], born on [REDACTED], 1923 in Berlin. Mr [REDACTED] ([REDACTED]) [REDACTED], born on [REDACTED], 1975 [sic] in Golub near Thorn. Mr [sic] [REDACTED], nee [REDACTED], born on [REDACTED], 1894 in La Chaux de Fonds. ... 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 taken out. Unfortunately, the information that you provided to us does not confirm this fact, and we are unable to offer you any form of payment”*.
5. The Appellant submitted an appeal to the Appeals Office dated 20th December 2004, which was accompanied by an attachment setting out the reasons for the appeal. In addition, he had sent another copy directly to [REDACTED]. [REDACTED] forwarded this copy to the Appeals Office on 10th January 2005
6. The Appeals Office received the appeal form on 4th January 2005 and mailed a copy to the Respondent.
7. [REDACTED] responded in a letter dated 24th January 2005 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”* (for more details see paragraph 18).
8. On 17th February 2005 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. On 4th April 2005 the Appeals Office received a letter from [REDACTED] in Berlin, in which she informs the Appeals Office that she is representing the Appellant and that she will provide a power of attorney. As to the appeal she set out the following: “*In the context of the appeal proceedings, I request to consider that [REDACTED] informed my client by correspondence of 02.12.2004 that they have looked through their archive for records of Mr [REDACTED] ([REDACTED]) [REDACTED], born [REDACTED] 1975 in Golub, near Thorn. Beyond all doubt, an insurance contract could not be found according to these details as Mr [REDACTED] was born on [REDACTED] 1875 in Golub, near Thorn. Therefore I request that [REDACTED] arranges to search the archive again according to this birth date*”. On 21st April 2005 the Appeals Office received a letter dated 13th April 2005 to which a power of attorney for the Appellant’s representative was attached. The Appeals Office forwarded copies of both letters to [REDACTED] on 22nd April 2005.
11. In a letter dated 28th April 2005 [REDACTED] responded to the Appellant’s representative’s letter dated 31st March 2005 and wrote: “... *We would like to inform you that concerning the date of birth of Mr [REDACTED] we made a mistake in writing as we mentioned [REDACTED], 1975 in our letter of December 2, 2004. Of course, we searched in our registers with the date [REDACTED], 1875 which was mentioned in the claim form. Once again, we would like to point that this was only a mistake in writing*”.
12. 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

13. 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) In section three, he identifies the company that issued the policy as “[REDACTED]”. Regarding the place where it was purchased, he writes: “*Germany ?*”.
 - b) In sections four and five, he is unable to provide any information. He is not aware of any payments resulting from the insurance policy.
 - c) In sections six and seven, he identifies his father, [REDACTED] (named changed to [REDACTED]), as the policyholder and insured person. He is not aware of any other living heirs.
 - d) In section eight, he identifies his mother, [REDACTED], as the named beneficiary. Again, he is not aware of any other living heirs.

- e) In section nine, he states that no one has participated in any compensation/restitution procedure for this claim. Asked why not, he states: “*Was not informed about possible restitution*”.
 - f) In section eleven, he states that policyholder’s name is a potential match found in the lists on the Commission’s website.
14. With his appeal form the Appellant sent copies of identification documents which corroborate the biographical details he provided about himself and his family.
15. The Appellant sets out the reasons for her appeal as follows: “*My father’s name, [REDACTED], born [REDACTED], 1875 appeared on a list given to and published by the New York Times and also could be found on the internet as policyholders by [REDACTED]. I am at loss to understand why [REDACTED] now claims not to have any documentation*”.
16. An attached letter dated 27th December 2004 states: “*With reference to your letter dated 12/02/04 I am astonished at your negative response to my claim. After stalling for many years, [REDACTED] finally submitted to the NY Times a list of policyholders which was published and also appeared on the internet. My father’s name was printed on the list as [REDACTED], born [REDACTED], 1875. Since I was a child, sent on a child Transport to Holland I was not aware of father’s life insurance and would not have pursued this matter if my father’s name had it not appeared in the NY Times. Furthermore I would like to bring your attention to the fact that several of my acquaintances have already received a lump sum of \$ 1,000- which I have not received. I would appreciate your reconsidering my case and remain with thanks for a positive reply*”.
17. Upon request of the Appeals Office the Appellant sent a copy of the list he mentioned in his appeal form and its attachment (“*a list given to and published by the New York Times and also could be found on the internet as policyholders by [REDACTED]*” and “[*REDACTED*] finally submitted to the NY Times a list of policyholders which was published and also appeared on the internet”, see paragraphs 15 and 16). The copy of the list he sent was, in fact, the list on the ICHEIC’s websites.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. [REDACTED] declined the claim for the reasons given in its decision letter dated 2nd December 2004 (see paragraph 4).
19. In a letter to the Appeals Office dated 24th January 2005 and written in response to the appeal, [REDACTED] stated: “*We checked our central register on the basis of the data which the claimant provided us with. Unfortunately we did not find an entry for these persons. ... If there is no entry in the central register, we know for certain that the person concerned did not have a life insurance contract with us. ...*”.

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 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.
21. 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.
22. There is no doubt that the Appellant and his family living in the Holocaust era were Holocaust victims and that he could be entitled to proceeds of a life insurance policy issued to his father.
23. It is concluded, however, that he did not establish that a life insurance policy issued by [REDACTED] to his father existed. His 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 assertion. The only statement he can make is that the issuing company was [REDACTED], that the policy was probably issued in Germany, and that his father was policyholder and insured person and his mother was beneficiary. The paucity of information coupled with the absence of research matches lead to the conclusion that the Appellant has not met even the reduced burden of proof under the provisions of the Agreement.
24. It is true that [REDACTED] initially made an error as the Appellant’s representative’s letter of 4th April 2005 noted (see paragraph 10). However, [REDACTED], after having been made aware of this, repeated its search using the correct data without finding an entry in its central register (see paragraph 11). The absence of a match in this register containing all applications made for an insurance policy between 1923 and 1976 is a strong indication that no policy was ever issued to a person who is not listed in this register. As [REDACTED] explained in its letter dated 24th January 2005 the central register “*includes every application ever received for an insurance policy with [REDACTED], or one of the companies that it had subsequently purchased. ... The central register contains approximately 11million entries. Unlike many other records from that time, the central register remained intact and was not destroyed during World War II*”.
25. Finally, the Appellant’s belief that the lists he refers to in his claim form and in his reasons for appeal (see paragraphs 13 f) and 15 to 17) are a proof that [REDACTED] issued an insurance policy to his father apparently is based on a misunderstanding. The ICHEIC’s websites contain lists with possible matches; these lists are not lists showing “real matches”.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 31st day of May 2005

[REDACTED]