

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] 1921 in Mannheim (Germany) and presently resides in the United States of America. The Appellant is claiming life insurance issued by [REDACTED] to her late husband, [REDACTED] (formerly [REDACTED]) who was born on [REDACTED] 1908 in Berlin (Germany) and died on 14th October 1987 in the United States. In 1934 he emigrated to Palestine, went 1936 to England, moved then to Brussels from where in 1940/1941 he was brought to the French internment camp St. Cyprien. Later he fought in WW II.

2. The Respondent is [REDACTED] as successor of [REDACTED], [REDACTED] and [REDACTED].
3. The Appellant submitted two International Commission on Holocaust Era Insurance Claims (ICHEIC) claim forms dated 6th April 2000 and 29th May 2003. In both claim forms the Appellant claims the proceeds of her husband's life insurance policy issued by [REDACTED]. With the Claim forms there was correspondence dated 1958 and 1972, which will be discussed below.
4. The ICHEIC submitted the claim to [REDACTED] because the German branch of [REDACTED] now, after several take-overs, belongs to [REDACTED]. In its decision letter dated 29th September 2004, [REDACTED] explained that it had registers for all [REDACTED] life insurance contracts, but after more than 60 years the records were no longer complete. In the remaining records, no contractual relationship with the Appellant's late husband could be found with [REDACTED].
5. The Appellant submitted an appeal to the Appeals Office dated 26th November 2004, and states that her late husband purchased a 500 English pound policy from [REDACTED] in Palestine during 1934.
6. The Appeals Office sent the appeal to [REDACTED] on 1st December 2004. [REDACTED] responded in a letter dated 15th December 2004 and reiterated its previous denial of the claim.
7. On 6th January 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. No request for an oral hearing was made. The appeal proceeded on a "*documents only basis*".
8. The Appellant and her sister, [REDACTED] nee [REDACTED], have a number of related ICHEIC claims for policies of her father's and own policies ([REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]). However, these related claims, partly rejected through the ICHEIC Appeals Tribunal, are not relevant to the claim concerning the Appellant's late husband's policy with [REDACTED].
9. The Appellant and her sister each received a US\$1,000 humanitarian payment under the relevant ICHEIC procedures.
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 submitted Claim forms (referred to in paragraph 3). The insurance company was [REDACTED] and the policy was purchased in 1934. There is contradictory

information regarding where the policy was purchased. In the Claim form dated 6th April 2000 the policy was purchased in Germany. However, in the Claim form dated 29th May 2003 it was purchased in Palestine; this corresponds to the information given in the appeal form (see above paragraph 5).

12. The Appellant provided copies of three relevant letters:

- (i) [REDACTED] Life Insurance Company wrote to the solicitor Dr Herbert Pardo on 3rd February 1958 that no [REDACTED] life policy for Mr [REDACTED] ([REDACTED]) had been found in their portfolio or the former portfolio of [REDACTED]. The same information, according to [REDACTED]'s letter, had already been given in a letter dated 29th September 1955 (which is not on file).
- (ii) The Berlin Compensation Authority wrote to Dr Herbert Pardo on 17th January 1972 that the claim for [REDACTED] life insurance policy the in the sum of 500 Sterling Pounds should be withdrawn as it did not meet the requirements of Article 127 of the BEG which states *"the persecuted individual has the right to compensation if, due to this persecution, he as the insurance policy holder or as the beneficiary has lost all or some of the rightful protection of a life assurance policy (endowment or pension policy) provided by a private or public insurance company outside of the state system and that a statutory or conditional existing claim to insurance funds is therefore affected."*; and
- (iii) The Palestinian branch of [REDACTED], in response to a letter dated 24th July 1939, wrote to Mr [REDACTED] on 17th August 1939 (1) *"that all payments have to be made through Barclays Bank Palestine"* and it was going to send a cheque *"for LP. 60.148"*; it added (2) that it were impossible *"to send a cheque on London"* and that the amount paid of such cheque, after deduction of charges, would be only £59.16.0. It further states (3): *"Regarding the amount of the Final Dividend of 8.82% we beg to inform you that in due course you will receive a final balance sheet which will give you all the items of Receipts & Payments."*

13. The Appellant sets out her reason for the appeal in her Appeal form and states: *"I do not accept your statement being you [are] unable to find my late husband's life insurance policy with "[REDACTED]". (...) [REDACTED] ([REDACTED]) emigrated to Palestine in August 1934. There he bough LST 500 (English Pounds) life insurance written by [REDACTED] in Jerusalem..."*.

14. In a letter dated 18th January 2005 the Appellant again submitted the letter from [REDACTED] dated 17th August 1939 and states: *"As an enemy alien, [REDACTED] was deported to an internment camp in southern France, St Cyprien."*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. In [REDACTED]' decision letter dated 29th September 2004, it wrote *"We regret, no entries exist in the register for Mr [REDACTED] ([REDACTED]). Regrettably, the register is no longer complete after more than 60 years. Moreover, we also searched the archive documents of [REDACTED] which are still in existence. Unfortunately, these documents contain no information concerning a contractual relationship with your husband, too. Therefore, we have no evidence for a life insurance contract concluded between your husband and [REDACTED]. We hope you will understand that we cannot offer payment, since there is no evidence of an existing contract."*

16. In a letter in response to the Appeals process dated 24th February 2005, [REDACTED] wrote, “*Our company took over only the German part ([REDACTED]) of the [REDACTED] life insurance company in 1936. All other parts of [REDACTED] were not adopted by our company. According to the information the claimant gives in the appeal form her husband had concluded a life insurance contract with [REDACTED] in 1934 in Israel. This is also backed by the letter that was written by the Palestine branch of [REDACTED]. Therefore, this contract was not part of the German portfolio. Furthermore, we understand from the document that payment was made to Mr [REDACTED] by cheque in 1939 and that the contract was settled.*”

THE ISSUE FOR DETERMINATION

17. 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.
18. 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”.
19. There is no doubt that the Appellant as heir would be entitled to the proceeds of any life insurance policy issued to her late husband and that he was a Holocaust victim. The remaining and decisive question is whether the Appellant’s husband had a life insurance policy with that part of the Vienna based [REDACTED] that was later affiliated with [REDACTED] and for which [REDACTED] now is responsible.
20. It is concluded that the Appellant has established the existence of a life insurance policy issued by [REDACTED] Palestine to her husband, [REDACTED] (formerly [REDACTED]). There is clear evidence to that in the letter from [REDACTED] dated 17th August 1939 to Mr [REDACTED]. However, since the policy was issued from the Palestinian branch of [REDACTED] in Jerusalem and [REDACTED]’ predecessor companies had taken over only the German portfolio of [REDACTED], [REDACTED] submitted the valid defence that it is only responsible for [REDACTED] policies that were issued in Germany and not for any policy issued in [REDACTED]. In addition to this, the letter dated 17th August 1939 clearly states that a payment at that time was made for the policy to the policyholder Mr [REDACTED] by [REDACTED] Palestine. This same payment apparently was the reason why the German restitution authority in 1972 advised to

withdraw the restitution claim; the restitution authority, as may be concluded from the letter quoted in paragraph 12, thought that with regard to that policy there was no loss for which restitution could be claimed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 17th day of August 2005

[REDACTED]