

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]

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]) and was born on [REDACTED] 1928 in Berlin (Germany). He presently resides in the United Kingdom. His parents were [REDACTED], born on [REDACTED] 1897 in Vrkosek, Moravia (Czech Republic) and died on 30th September 1944 at Auschwitz, and [REDACTED] (nee [REDACTED]), born on [REDACTED] 1892 in Berlin and died on 13th October 1944 at Auschwitz. The Appellant's parents married on 8th September 1927 and [REDACTED] is noted as a “bank employee” on the marriage certificate. The family resided in Berlin until

1938 and then moved to Bohemia and Moravia. The Appellant's father worked in the banking industry and attained the position of company secretary prior to the Holocaust. After the Nazi occupation of Bohemia and Moravia he became the senior clerk in the property declarations department with the Prague Jewish community. The Appellant was 14 years of age when his Jewish family were initially deported to the Theresienstadt ghetto in Czechoslovakia. The family were separated and the Appellant is the sole survivor of his immediate family after being incarcerated at Auschwitz.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a Claim form dated 13th June 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] issued a life insurance policy to his father [REDACTED]. The ICHEIC processed this claim under number [REDACTED].
4. The Appellant has related claim files in addition to [REDACTED] that are not the subject of this appeal. In related files [REDACTED] and [REDACTED] the Appellant claimed his mother worked for a Berlin branch of [REDACTED]. The [REDACTED] paid the Appellant US\$4,000 in 2004 for an [REDACTED] register entry (policy application number [REDACTED]) in his father's name. Three policy application references were found in the [REDACTED] archives for the Appellant's uncle. This claim was forwarded to the [REDACTED] for settlement in 2004.
5. ICHEIC submitted the claim to [REDACTED] and in its final decision letter dated 15th December 2004 [REDACTED] states that it had searched the Appellant's family names and dates of birth provided, but had found no entry in its records. [REDACTED] wrote to various compensation authorities and discovered that the Appellant's uncle, [REDACTED], had BEG compensation proceedings. In the uncle's case, a BEG decision was issued on 27th August 1970 and the sum of 2,700 DM was awarded for this [REDACTED] policy.
6. The Appellant submitted an appeal to the Appeals Office dated 8th February 2005. The Appeals Office sent a copy to [REDACTED] on 11th February 2005.
7. On 22nd March 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.
8. No request for an oral hearing has been received from either party. The appeal proceeds 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. In the ICHEIC Claim form completed by the Appellant on 13th June 2000 he claims his father's life insurance policy with [REDACTED] and notes his mother as the beneficiary of this policy. He states in answer to Question 4.1: "*The discovery in April 2000 that my uncle Mr [REDACTED] of Berlin ... had taken out a life policy with the [REDACTED] on 17.06.1930 for RM 25,000 ... My father, Mr [REDACTED] of Berlin & Prague born [REDACTED] 1897 was the brother-in-law of Mr [REDACTED], was also a close friend and business associate and they always did things together. From 1927 to 1935 both families lived in the same villa ...and both took out life policies with [REDACTED].*"
11. The Appellant has provided biographical information such as copies of birth certificates, photographs and a statement he swore on 19th February 1953. All documentation submitted during the claims and appeals processes have been duly considered in this appeal.
12. The Appellant submitted an appeal form dated 8th February 2005 and states in his reasons for his appeal that his mother had a twin brother, [REDACTED]. The Appellant's uncle and his father were very close friends; had similar business interests and shared holidays together. [REDACTED] purchased policy number [REDACTED] from [REDACTED] on 17th June 1930 and his heir [REDACTED] instituted BEG proceedings during the 1950's and was eventually paid the sum of 2,700 DM in 1970. The Appellant also states that: "*my mother had worked for [REDACTED] in Berlin*". The Appellant considers it reasonable to conclude that since his uncle purchased insurance from [REDACTED], his father would have also purchased life insurance from this company.
13. In the Appellant's letter in response to [REDACTED]'s letter of 8th February 2005 he states: "*Owing to my deportation to ghetto, concentration and slave labour camp, and owing to the death of my parents in Auschwitz and the loss of every one of my possessions which were looted by the then German Reich, it is impossible to provide any document of any description. To insist on me providing such evidence is totally unrealistic, unfair and contrary to natural justice. The [REDACTED] demands a degree of proof which is "beyond all reasonable doubt" rather than "on the balance of probabilities" as in English civil law and this is a civil case. Cases resulting from the Holocaust cannot be, or should not be, approached in a matter denying the facts of the Holocaust.*"

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. In [REDACTED]'s final decision letter dated 15th December 2004 it states:

"Unfortunately, no match occurred in our internal records, which is due to the lack of precise details in your claims-form, e.g. regarding the policy number. The only search criterions available to us were the names of family member mentioned by you and that of your father. Also our research ins till available lists containing the names of former policy holders and other persons involved in contracts did not produce any findings even under consideration of all names and dates of birth mentioned in the claims-form and possible spelling or transmission errors or deviating pronunciations. We have however been able to establish a policy for your uncle Mr [REDACTED]."

[REDACTED] was unable to find any records in the German compensation and restitution archives or in the Central Filing Agency in Düsseldorf and concludes that, "*According to the Foundation Law and the "Agreement" a claim has to be denied, if there is no sufficient and adequate evidence of a contractual relationship with the insurance company named in the inquiry. We are confident that you will understand our decision not to submit an offer under the given circumstances*". Concerning the compensation claim for the proceeds of a

life insurance issued to the Appellant's uncle, [REDACTED], [REDACTED] states that a sum of 2,700 was paid out and therefore he is not eligible for compensation for that policy. The BEG decision document dated 27th August 1970 is enclosed with this letter.

15. In [REDACTED]'s letter dated 18th February 2005 in response to the appeal it confirms its previous denial of the claim: "*The only information related to former activities in German and abroad in [REDACTED]'s possession consist of a reduced number of statistical and some technical registers sorted by policy numbers still available out of [REDACTED]'s former main archive in Berlin, which was destroyed in February 1945. These registers which contain no names of policyholders whatsoever were thoroughly analysed and recorded together with all the information obtained as a result of internal and external searches into one electronical database to perform all possible research.*" The letter continues to reiterate that no match has been found for the Appellant's claim and was therefore denied.

THE ISSUES FOR DETERMINATION

16. This appeal specifically relates to the Appellant's father, [REDACTED]. However, it is noted that [REDACTED] conducted searches on all the names of family members provided by the Appellant during the claims process.
17. The Appeal Guidelines (Annex E of the Agreement), Section 17, 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.
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". The standard of proof of plausibility has been agreed by the ICHEIC contracting parties in order to facilitate the progression of Holocaust era insurance claims. The Appellant mentioned that the standard of proof in this appeal was the English criminal or civil standard (paragraph 13). This is incorrect. The relaxed standard of plausibility takes into consideration all the special circumstances including, but not limited to, the destruction caused by World War II, the Holocaust and the lengthy period of time that has passed since the alleged insurance policy in question was obtained.
19. Where the Appellant is not able to submit any documentary evidence in support of the claim, the Appellant's assertions 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. It is accepted that the Appellant's father [REDACTED] and uncle

[REDACTED] were businessman who were cogent in insurance issues. This is reflected by the fact that both were insured with [REDACTED], and the Appellant's uncle was also insured by [REDACTED]. However, there is no proof, anecdotal or otherwise, that [REDACTED] issued a life insurance policy to the Appellant's father. The association or implication that since the Appellant's uncle was a close friend and relation and had a policy with [REDACTED], is not enough to prove on the standard of plausibility that a policy was also purchased by the Appellant's father.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 22nd day of August 2005

[REDACTED]