

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], née [REDACTED], born on [REDACTED] 1942 in Budapest (Hungary). She is the daughter of Dr. [REDACTED] and [REDACTED], née [REDACTED]. Dr. [REDACTED] was born on [REDACTED] 1899 in Segesvár (Austria-Hungary) and died on 4th October 1982 in Budapest. [REDACTED] was born on [REDACTED] 1915 and died on 4th January 1956 in Budapest.
2. The Respondent is [REDACTED] ([REDACTED]) as the legal successor of “[REDACTED]”.
3. The Appellant submitted a claim form dated 1st October 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that “[REDACTED]” issued a policy of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 18th September 2004 “*unfortunately we have to inform you that, based on the information you provided and our search, the supporting evidence of a contractual relationship with one of our subsidiaries in Eastern Europe shows that the minimum premium needed in order to validate the policy wasn’t paid, we are therefore declining your claim*”.
5. The Appellant submitted an appeal to the Appeals Office dated 24th November 2004 in which the reasons for the appeal were set out. Attached were copies from a ledger book and copies from an instruction about “*Praxis and Procedures of the Fund Regarding [REDACTED] Holocaust Era Insurance Policies*”.
6. The appeal form received from the Appellant was an incomplete appeal form in that it did not contain a declaration of consent to the adjudication of the appeal by way of arbitration in Geneva, Switzerland under Swiss federal law, a declaration of being bound to 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 to the Appeal Guidelines, a declaration waiving any right to appeal such decision as provided in the Appeal Guidelines and in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law and a declaration waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
7. The Appeals Office requested the Appellant by letter dated 1st December 2004 to sign an amended appeal form.
8. The Appeals Office received the appeal form on 4th January 2005 and mailed a copy to the Respondent.
9. [REDACTED] responded in a letter dated 26th January 2005 and requested the Appeals Panel for reasons it had set out before to “*dismiss the appeal*”.
10. On 4th 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.
11. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.

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 the claim form relative to the claim for the proceeds of a life insurance policy.

- a) In section one she answers the question “*Was the policyholder and/or insured and/or beneficiary a victim of the Holocaust ?*” by ticking the box “yes”.
- b) In section three she names “[REDACTED]” ([REDACTED]) as the company that issued the policy.
- c) In section four she states that she is submitting a copy of an insurance policy with the claim.
- d) In section five she gives detailed information on the insurance policy. The policy number is [REDACTED] and the currency Gold Pengö. The insured sum is 10,000 and the policy was issued on 20th November 1943 and matured on 20th August 1963. The Appellant states that the amount of premium was 10,000 Gold Pengö. Asked whether all premiums were paid she replies “No” and adds “*Did not pay*”. She states that she does not know the reasons for this.
- e) The policyholder and the insured are indicated as the Appellant’s father [REDACTED].
- f) The beneficiary is indicated as the Appellant herself.
- g) In section eleven of the translated claim form there is a note of the translator: “*The undersigned says, that she might have misunderstood the meaning of “beneficiary”. Her mother ([REDACTED]) died on 4th January 1956 and her father the policyholder, died in 1982. She is therefore the sole heir. Signed: [REDACTED] (née [REDACTED])*”.

14. With her claim form the Appellant submitted her baptism certificate and the death certificate of her parents.

15. The Appellant sets out the reasons for her appeal as follows: “*Your reasoning for declining my claims seems to be contradictory. On one hand, you explained that your documentation is limited for you do not have access to the company’s – probably well maintained – archives relating to policies issued in Easter Europe. On the other hand, you required evidences from me whose closest relative suffered persecution and complete loss of personal possessions including the proof of premium payments. Nevertheless please find attached a copy of my late father’s handwritten note on the premium payment. It says “June*

4. 1945 life insurance 256.60 pengő”. He kept continuing payment for sure despite that the house in which he lived was bombed to the ground”.

16. The Appellant submitted copies of two pages from a ledger book of her late father. The pages are headlined with “1945. June” and the second page shows a payment of 256.60 for a life insurance policy (“*életbiztosítás 256,60*”).

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. [REDACTED] declined the claim for the reasons given in its decision letter dated 18th September 2004.
18. In a letter dated 26th January 2005 written in response to the appeal [REDACTED] states: “*Unfortunately, with respect to the claim at issue, no record further to the ones already produced by the claimant was found either by [REDACTED] or by the ICHEIC. This is the reason why we cannot produce to the Panel any document related to this claim, as no such document is available. We cannot but confirm our decision of September 18, 2004 on this case, as – in compliance with the ICHEIC-German Foundation Valuation Guidelines – the [REDACTED] policy n. [REDACTED] has to be regarded as a ‘survivor’s policy’, whose valuation must be grounded on its ‘paid-up’ value. Even admitting that the premium payment could have been carried forward after the end of World War II and up to the Hungarian Law n. 6400/1946 (which on June 6, 1946 provided for the nationalization of the insurance industry), it is sure that the premiums were not paid for the minimum period (three years) required by the contractual terms. As a consequence of that, the policy at issue is devoid of any residual value, and that for reasons which nothing have to do with the Holocaust Era persecutions*”.

THE ISSUES FOR DETERMINATION

19. The Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002 covers, according to its introductory language, “*the settlement of individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice*”. Losses and deprivations not connected with National Socialist injustice and, specifically, the Holocaust are not covered by the Agreement. Therefore, the sole issue for determination in this Appeal is whether the policyholder or Appellant were Holocaust victims in the sense of Section 14 of the Agreement.
20. For purposes of the Agreement, “*Holocaust victim*” means “*anyone who, as a result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime, was deprived of his/her life or freedom; suffered damage to his/her mental or physical health; was deprived of his/her economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss or damage to his/her property. For the purpose of this definition, persecution by governmental authorities of the following countries for the period in brackets until the end of the Second World War in the following countries is considered equal to persecution by the organs of the German National Socialist Regime: ... Hungary (1939) ...*”.
21. The loss or deprivation of financial assets, which the Appellant suffered, were not the result of “racial”, religious, political or ideological persecution by organs of the German National Socialist Regime or Hungarian authorities during the war. Rather, they were the result of

the political and economic developments in the last years of the war and in post-war Hungary. The Appellant states that premiums had been paid until at least June 1945. This indicates that during the Holocaust Era no losses or deprivations of financial or other assets relating to the life insurance policy were suffered as the life insurance premium was paid even after the end of the war in Europe.

The Appellant's answer to the question in section 1 of the claim form [see paragraph 13 a)] apparently is based on a misunderstanding of this question. That the victim was deprived of his life; suffered damage to his mental or physical health; was deprived of his economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss of or damage to his property is not sufficient to bring the claim within the scope of the ICHEIC compensation scheme. In addition, the loss or deprivation must result from "racial", religious, political or ideological persecution by organs of the "*Third Reich*" or by other governmental authorities in the territories occupied by the "*Third Reich*" or its allies during the period from 1933 to 1945 (in Hungary during the period of 1939 to 1945). Although requested by [REDACTED], the Appellant did not provide any additional information as to this aspect of the claim. The only statement she gives in her appeal form is that her late father "*kept continuing payment for sure despite that the house in which he lived was bombed to the ground*" without stating that the bombing of the house represented general war damage and was not the result of "racial", religious, political or ideological persecution by the National Socialist Regime or its allies. Finally, the Appellant would be eligible for a compensation payment on the basis of the Agreement (see paragraph 12) only, if the insurance policy of her late father had been confiscated, paid into a blocked account or had suffered any damage caused by National Socialist injustice. This apparently did not occur as reflected in the fact that premium payments were made in June 1945, when the Holocaust Era was over.

22. Accordingly, the policyholder and beneficiary, contrary to Appellant's declaration in the claim form, were not Holocaust victims in the sense of Section 14 of the Agreement. Therefore, the Appellant is not entitled to compensation under the Agreement.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 9th day of May 2005

[REDACTED]