

## THE APPEALS PANEL

Established under an Agreement dated 16<sup>th</sup> October, 2002 made by and among the Foundation “Remembrance, Responsibility, and Future”, the International Commission on Holocaust Era Insurance Claims, and the [REDACTED]

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Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

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### 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 [REDACTED], née [REDACTED], was born on [REDACTED] 1923 in Stanislawow, Poland. The Appellant is the daughter of [REDACTED], born on [REDACTED] 1896-1900 in Oslawy Biale (Poland) and died in the Belzec concentration camp in September 1942, and [REDACTED] (née [REDACTED]) born [REDACTED] 1900 (approximately) and perished in December 1942 in the Lwow ghetto. The Appellant claims the proceeds of a life insurance policy taken out by her father [REDACTED], and claims that he was an insurance agent for [REDACTED]. She also claims that her mother and uncle [REDACTED] purchased life insurance policies from [REDACTED].
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted three claim forms dated 10<sup>th</sup> August 2002 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims the life

insurance policies purchased from [REDACTED]. Claim file number [REDACTED] was instituted.

4. The ICHEIC submitted the claim to [REDACTED]. [REDACTED] states in its final decision letter dated 9<sup>th</sup> February 2005: *“We have carefully examined the information you provided. We have also carried out a search of all the information available to us that could support your claim. However our documentation is limited because the archives relating to policies issued in Eastern Europe were held locally and are no longer in our possession. Unfortunately we have to inform you that, based on the information you provided and our search, no supporting evidence of a contractual relationship with our company or any of our subsidiaries in Eastern Europe could be found, and we are therefore declining your claim.”*
5. The Appellant submitted an appeal form dated 6<sup>th</sup> April 2005 which was received by the Appeals Office on 10<sup>th</sup> June 2005 to the Appeals Office.
6. [REDACTED] responded in its letter dated 21<sup>st</sup> July 2005 and repeated its reasons for denial.
7. On 27<sup>th</sup> July 2005 the Appeals Office informed the Appellant and [REDACTED] 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 16<sup>th</sup> 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 6<sup>th</sup> 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 submitted three Claim forms signed 10<sup>th</sup> August 2002 and date-stamped by ICHEIC on 29<sup>th</sup> August 2002, which contain almost identical information:
  - a) In section 3 the Appellant states that the insurance policy was issued in Stanislawow by [REDACTED]. At 3.3, she states *“My father – [REDACTED] was an agent of the company.”*
  - b) In section 4 she states that she is unable to provide documents: *“All my family perished during the Holocaust and also all our possession and documents lost”*.
  - c) In section 5 she claims that the type of insurance was life insurance. She states that she is not aware of payments resulting out of the insurance policy. In response to question 5.11 she indicates that nobody has approached the insurance company regarding this policy.
  - d) In sections 6 and 7 she identifies the policyholder and the insured person as her father [REDACTED]. She states that she is the only living heir.
  - e) In section 8 the Appellant identifies her mother [REDACTED] as the beneficiary.

- f) In Section 9 the Appellant confirms that she is not aware of participation in any restitution/compensation procedure for this claim. She states: “*I did not know where or how to apply*”.

The Appellant adds the following information in her second and identically dated Claim Form:

- a) In section 7 she identifies her uncle, [REDACTED] as the insured person. He was born in Stanislawow, in approx. 1896 and died in the Stanislawow ghetto in the summer of 1942.
- b) In section 8 she identifies her aunt, [REDACTED], (née [REDACTED]), as the beneficiary, born in Stanislawow, in approx. 1900, and died in the Stanislawow ghetto in the summer of 1942.

The Appellant adds the following information in her third identically dated Claim Form:

- a) In section 7 she identifies her mother, [REDACTED], as the insured.
- b) In section 8 she identifies her father, [REDACTED], as the beneficiary.

11. The Appellant set out the reasons for her appeal as follows: “*Your verdict declining my claim is unjust. I cannot provide any documents to support my claim; I do not have any new proof. On March 31, 1942 the German Schutz Polizei set fire to the Ghetto, destroying the house in which I used to live – and all our belongings and documents. Most of my family were killed by the Nazis in 1942; I went through hell!! Had the case been opened after a reasonable amount of time after the war ended – when survivors of my parents’ generation could still be found alive – I could have provided witnesses to support my case. But after half a century has passed – they are all gone! You take a very easy position by stating – that the documentation concerning Eastern European archives is not in your possession. Why is this the case, and how is there justice in this situation?*”

## **THE INVESTIGATION AND DECISION BY THE RESPONDENT**

12. [REDACTED] denied the claim for the reasons given in its decision letter dated 9<sup>th</sup> February 2005 (paragraph 4).
13. In response to the appeal [REDACTED] reiterated its position in a letter dated 21<sup>st</sup> July 2005 stating that it had researched its archives without finding any results. Furthermore, [REDACTED] states, “*the claim at issue relates to an Eastern European country, where [REDACTED]’s former independent branch office was completely nationalised and expropriated immediately after the end of World War II. As a consequence of that, the only complete archives of the insurance activities – which were kept locally in compliance with local laws, as well as the financial reserves covering the value of the policies – were subtracted to [REDACTED]’s control.*” [REDACTED] states that “*the only records related to Eastern European activities which remained in [REDACTED]’s possession consist of very limited and fragmentary information*” which has now been thoroughly analysed and recorded into an electronic database. [REDACTED] adds: “*the correctness and completeness of this process has been duly verified by the ICHEIC Peer Review Audit.*”

Concerning the Appellant’s claim, [REDACTED] writes “*no evidence has been either produced or found by ourselves, or by the ICHEIC Archive Research Program, in respect to any alleged role of Mr. [REDACTED] as an insurance agent, for [REDACTED] as well as for other companies.*

*In light of the above, we cannot but confirm our decision of February 9, 2005, and respectfully request the Appeals Panel to dismiss this appeal.*”

## **THE ISSUES FOR DETERMINATION**

14. 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 1<sup>st</sup> January 1920 and 8<sup>th</sup> 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.
15. Where the relevant 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.
16. In this matter the Appellant asserts that her father was an agent for [REDACTED]. There is no supporting anecdotal or documentary evidence to corroborate this assertion. It is accepted that many members of the Appellant’s family and friends were killed during the Holocaust, or died during the intervening years after World War II until this claim was initially made in 2002. It is also accepted that [REDACTED] has only limited and fragmentary information on Eastern European branches, and this also relates to employment records. Due consideration has been given to Section 17.1 of the Agreement that states the Arbiter must bear “*in mind the circumstances of each case, the difficulties of tracing documents and information and proving or disproving the validity of a claim after the destruction caused by the Second World War and the Holocaust and the long time that has elapsed since the insurance policies were issued. In all claims and appeals processing, it is contemplated that German companies, the Panel, Panel Member or Arbiter shall apply the same Relaxed Standards of Proof.*” Notwithstanding this, an assertion about the employment of a policyholder and/or the purchase of policies must have some particularity in the form of personal letters, diary entries, company archives or personal recollections that provide sufficient support. Regrettably, this claim has none.
17. There is no doubt that the Appellant and her family were Holocaust victims and that the Appellant would be entitled to the proceeds of any insurance policies as either named beneficiary or as heir.

However, the Appellant has not met the burden of proof that any policy was issued by [REDACTED]. There are no known details about the insurance. This is insufficient to convince the deciding Arbiter of the existence of a life insurance contract between the Appellant’s family members and [REDACTED], especially since no additional details have been provided and neither [REDACTED] nor the ICHEIC found a research match in their databases.

**IT IS THEREFORE HELD AND DECIDED:**

The appeal in Claim number [REDACTED] is dismissed.

Dated: 19<sup>th</sup> December 2005

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[REDACTED]