

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]

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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 [REDACTED], née [REDACTED] and born on [REDACTED] 1922 in Jelshowa (or Jelsava), Czechoslovakia, is a survivor of Auschwitz and Bergen Belsen, and presently resides in Canada. The Appellant’s father, cantor in the greatest synagogue in Hnusta, was [REDACTED] (or [REDACTED]) who was born in [REDACTED] 1884 in Ratka, Hungary and her mother was [REDACTED] (née [REDACTED]); both were killed in Auschwitz in 1944. The Appellant’s brothers, [REDACTED], [REDACTED] and [REDACTED] were deported and killed during the Holocaust. The Appellant is the sole survivor of her immediate family.

2. The Appellant submitted a claim form dated 21st April 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims an endowment insurance policy for herself and her father's life pension insurance that were issued by [REDACTED] in Czechoslovakia.
3. The Respondent is [REDACTED] ([REDACTED]). [REDACTED] was a predecessor company of [REDACTED]'s.
4. The ICHEIC submitted the claim to [REDACTED]. [REDACTED] states in its decision letter dated 17th March 2005 that it had searched the archives of [REDACTED], and also external German compensation and restitution records, but had found no evidence of a life insurance policy with the Appellant or her father.
5. The Appellant submitted an appeal form dated 12th April 2005 to the Appeals Office.
6. [REDACTED] responded in its letter dated 6th May 2005 and repeated its reasons for denial.
7. On 20th May 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. On 25th May 2005 the Appellant requested an oral hearing by way of telephone conference.
8. An oral hearing took place on 1st August 2005 before [REDACTED]. The Appellant was represented by her son, [REDACTED]. [REDACTED] was represented by [REDACTED]. Shortly before the oral hearing and during the oral hearing the Appellant and her representative presented for the first time certain factual details about the insurances (see below paragraph 15).
9. In response to [REDACTED] request for further information at the oral hearing, [REDACTED] confirmed in a letter dated 4th August 2005 that there was no evidence of a contractual relationship between [REDACTED] and the Appellant for a dowry policy or for a life insurance for the Appellant's father or a pension plan with the Jewish Community of Hnusta. [REDACTED] also pointed out that it had purchased the asset accounts of only the German [REDACTED] branch in 1987, "*had no connection or influence to the Austrian, Czechoslovakian or Hungarian business*" and thus had no responsibility for contracts concluded in Czechoslovakia.
10. This appeal was stayed pending discussion between ICHEIC and [REDACTED] as well as between the Contracting Parties of the Agreement mentioned in paragraph 11 into whether [REDACTED] was responsible for all [REDACTED] policies. The Panel in December 2005 was informed by ICHEIC, after consultations with [REDACTED], the [REDACTED] and the German Foundation, that [REDACTED] is responsible for the German portfolio of [REDACTED] only.
11. The appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002 made by and among the German Foundation "Remembrance, Responsibility and the Future", the ICHEIC and the [REDACTED] ([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

12. The Appellant has submitted the following information in relation to her claim for the proceeds of a her father's life insurance annuity pension policy and her dowry policy in the ICHEIC claim form:
 - a) The Appellant states that the name of the insurance company that issued the insurance was [REDACTED]. The policy was purchased in [REDACTED], Czechoslovakia.
 - b) In section five the Appellant indicates the type of policy as "*Life insurance*" and states that the currency of the policy was "*Krona*". She asserts that she is not aware of any payments resulting from the insurance and that the payments were stopped in November 1939 because the German SS troops forced her family to leave.
 - c) In section eleven she explains that her claim is for two policies: first her father's pension annuity policy and the second policy was her dowry: "*Unfortunately, I do not have any other supporting proof as all was taken away from us by the Germans. However, I can recall with complete certainty (without any hesitation) that the insurance company was called [REDACTED] and that the policies did exist.*"
13. The Appellant set out the reasons for her appeal on 12th April 2005 that her father had contracted with [REDACTED] for two investments. First, premiums for a pension policy were paid 50% by the Appellant's father and 50% by his employer, the Jewish Community in Hnusta, and this life pension would eventually become a life annuity. Secondly, the Appellant claimed a dowry policy that her father had arranged in the event of her marriage.
14. The Appellant submitted biographical documentation from the National Archives of the Canadian Jewish Congress and an affidavit prepared for the United Restitution Organisation that detailed her family's Holocaust experiences. The [REDACTED] policies were not mentioned in this undated affidavit.
15. On 25th July 2005 the Appellant made further submissions that the dowry policy was purchased in approximately 1931 for \$100,000 Koruna and the pension plan was purchased in 1923 and had been arranged by the Jewish Community Council administration office in Hnusta and would have paid out the Appellant's father \$1,000 Koruna per month.
16. At the oral hearing on 1st August 2005 the Appellant and her son [REDACTED] reiterated the submissions made in correspondence throughout the claims and appeal processes. It was also stated that an "*old affidavit*" had been found evidencing the existence of the policies. [REDACTED] requested that this be submitted. This affidavit, specifically referring to the policies, was not received.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. [REDACTED] denied the claim for the reasons given in its decision letter dated 17th March 2005 (paragraph 4).
18. In response to the appeal [REDACTED] confirmed its position in a letter dated 6th May 2005 stating that it had researched its archives without finding any results concerning the Appellant's father's life insurance policy. Furthermore, [REDACTED] states: "*Unfortunately almost all of the German [REDACTED] files were destroyed in Berlin by a large fire in the headquarters of the [REDACTED]. So we do not have any records, which could verify the claim of Mrs [REDACTED].*"
19. [REDACTED] was asked by [REDACTED] whether any searches had been completed for the Appellant's endowment policy and it replied on 19th July 2005 that: "*In the limited archives of [REDACTED] we could not find any reference regarding a life insurance policy and also an endowment insurance. In short words, we could not find any reference regarding a contractual relationship between the father of Mrs [REDACTED] and the [REDACTED].*"
20. At the oral hearing [REDACTED] explained for the first time in detail that it had taken over only [REDACTED]'s German portfolio and was responsible only for this portfolio and not for [REDACTED] policies issued in Czechoslovakia; the headquarters of [REDACTED] had been in Vienna, Austria. The German [REDACTED] had to report to Vienna as a subsidiary company for all local business. In April 1945 a fire occurred at the Berlin offices of German [REDACTED] due to bombing. The remaining limited records were searched and no mention of the Appellant or her father could be found. Additionally, [REDACTED] informed that no single policy had been issued in Czechoslovakian Koruna with the German [REDACTED]. [REDACTED] requested that this be confirmed in writing and [REDACTED] provided a letter dated 19th July 2005 (paragraph 9). [REDACTED] wrote: "*When [REDACTED] bought in 1987 the asset accounts of the German [REDACTED], which moved to Frankfurt after the war, [REDACTED] received the records and files of that time. In other words, we do not have a complete or large archive or files or records of the Nazi period. However, after an intensive investigation of all the cellars we found by accident a few old files. But only less than 100 could be identified as contracts of the Nazi time. None of these belong to Austria, Czechoslovakia or Hungary. All these contracts have German policies and are sold in Reichmark, Goldmark or Dollar, none is in Czechoslovakian Crowns.*"

THE ISSUES FOR DETERMINATION

21. 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.
22. 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 any policy was issued by the company.
23. In this matter the Appellant submitted clear anecdotal evidence concerning her father’s investments with [REDACTED]. The Appellant’s statements concerning the policies are not implausible, despite the fact that important details contributing to the plausibility, such as the amount of the policies, were submitted immediately before and during the oral hearing. Furthermore, the plausibility of the claim is not affected by the fact that an “*old affidavit*” allegedly referring to the existence of the policies was first mentioned during the oral hearing, but was not presented as evidence afterwards.
24. There is no doubt that the Appellant and her family are Holocaust victims and that the Appellant would be entitled to the proceeds of any insurance policies as either named beneficiary or as heir.
25. However, the issue for determination is whether [REDACTED] is responsible for the policies the Appellant claims were purchased in Czechoslovakia. The deciding Panel Member accepts, as is also the result of the discussions between the Contracting Parties (see above paragraph 10), that [REDACTED] is responsible only for the German portfolio of [REDACTED]. It acquired and dealt with the German portfolio only; there is no evidence to suggest that it ever issued policies in Czechoslovakia or in the currency of Czechoslovakian Koruna (Krona or Crowns). In the respective databases there is no evidence of a contractual relationship between the German [REDACTED], the Appellant and her father. [REDACTED] is not responsible for [REDACTED] policies issued in Czechoslovakia because German [REDACTED] was a subsidiary company to the Austrian [REDACTED]. Therefore, the Appellant has not met the burden of proof pursuant to Section 17.2.1 (paragraph 21) that a German company is responsible for the policies claimed.
26. Considering the details set out above, the Panel concludes that [REDACTED]’s denial of the claim was in accordance with the rules of the Agreement and the Appeal Guidelines.
27. In fairness to the Appellant, this case will be referred to the ICHEIC Claims team so that the matter may be processed in Austria, since [REDACTED] was an Austrian company. If this processing is not deemed possible, then it is recommended that the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures pursuant to Section 8A2 of the Memorandum of Understanding.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated: 12th January 2006

[REDACTED]