

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], was born on [REDACTED] 1921 in Brno, Czechoslovakia. Her mother [REDACTED], née [REDACTED], was born on [REDACTED] 1886 in Vilance, Austria, and died in 1980. As a result of the German invasion of Czechoslovakia, all of her parents’ possessions in Brno were confiscated and never recovered.
2. The Respondent is [REDACTED] (“[REDACTED]”)

3. The Appellant submitted a claim form dated 5th June 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which she mentioned that her mother had taken out life insurance for herself, the Appellant and for her brother [REDACTED].
4. By letter dated 24th May 2005 [REDACTED] declined payment for insurance taken out with its company. It informed that [REDACTED] was founded in 1987. It stated that it had searched all relevant internal and external archives but that it was not able to find an insurance contract in the name of the Appellant's family.
5. With her Appeal dated 27th June 2005 against [REDACTED]'s decision, the Appellant refers to insurance her father had taken out and of which she was the legal heir. She enclosed a copy of a life insurance policy dated 16th April 1921 of "[REDACTED]" in Vienna taken out by her father [REDACTED]. The document lists the Appellant as the beneficiary of the insurance contract. The insured sum was for 100,000 Kronen.

The Appellant also submitted copies of two "parent insurance" policies taken out with the insurance company "[REDACTED]" which are not relevant to this case.

6. In response to the appeal, by letter of 2nd August 2005, [REDACTED] pointed out that it had declined the claim due to the lack of any evidence indicating an insurance contract with the Appellant's family. The company "[REDACTED]" in Germany had lost almost all files from the Nazi period because the company building in Berlin had been bombed and burned out.

[REDACTED] stated that it had not previously received a copy of the insurance policy provided by the Appellant with her appeal. It conceded, that in light of this new evidence, the basis for its previous decision was incorrect.

Nonetheless, [REDACTED] reconfirmed its earlier decision declining the Appellant's claim, because it asserts that it was not responsible for insurance policies taken out with [REDACTED] in Vienna (Austria). Instead, it was only responsible for claims against the German branch of [REDACTED]. It explains that during the Nazis era, the headquarters of the "[REDACTED]" group had been in Vienna as it is today and was directed and run from there.

The German branch in Berlin, on the other hand, was a subsidiary with no connection to the Austrian, Czechoslovakian or Hungarian business. Those businesses were directed from Vienna and run by the local subsidiaries in Prague, Bratislava and Budapest.

The Respondent suggests, therefore, that the Appellant's claim was related to the headquarters of "[REDACTED]" in Vienna and should to be audited in Austria under the rules of the Austrian General Settlement Fund and does not fall under the Agreement among the ICHEIC, the German Foundation and the [REDACTED].

[REDACTED] enclosed a document that lists insurance companies that fall under the jurisdiction of the Austrian General Settlement Fund according to paragraph 18 of the Austrian law regarding the restitution fund ("Entschädigungsfondsgesetz"). Among them is "[REDACTED]" insurance in Vienna.

7. In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel's general decision in July 2004, this appeal was assigned to [REDACTED].

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. The seat of the Appeals Panel is Geneva, Switzerland, and the Decision is made there.

CONCLUSIONS OF LAW

8. The Appellant has not met her burden of proof to establish a valid claim in accordance with Section 17 of the Appeal Guidelines.

According to Section 17.2.1 of the Appeal Guidelines, to succeed in an appeal, the claimant must establish, based on the Relaxed Standards of Proof, that it is plausible that the claim relates to a life insurance policy issued by or belonging to a German company.

The Appellant provided evidence of an insurance policy taken out by her father in 1921 with “[REDACTED]” in Vienna.

This company is neither identical with [REDACTED], which is incorporated in Germany nor is [REDACTED] its predecessor in law. [REDACTED]’s predecessor was the German subsidiary of “[REDACTED]” which was a *separate* entity from the insurance company “[REDACTED]” in Vienna. It is accepted by ICEIC that [REDACTED] is responsible *only* for policies taken out with the German company “[REDACTED]”.

9. [REDACTED]’s denial of the claim was, therefore, in accordance with the rules of the Agreement and the Appeal Guidelines.
10. However, 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 a named beneficiary or heir. The Appellant and her family suffered greatly at the hands of the National Socialist Regime.
11. 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, it is recommended that the Appellant 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 this 13th day of January 2006

[REDACTED]