

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 Prof. Dr. [REDACTED] (previously [REDACTED]). He was born on [REDACTED] 1922 in Velka Bytca, Czechoslovakia. He is the son of [REDACTED], who was born on [REDACTED] 1879 in Lada, Austro-Hungarian Empire, and died in September 1944 at the Auschwitz concentration camp.

The Appellant's uncle is [REDACTED]. He died in Bytca, Austro-Hungarian Empire in 1940.

The Appellant had a brother, [REDACTED], who was born on [REDACTED] 1919 in Velka Bytca, Czechoslovakia and passed away recently. [REDACTED] and [REDACTED] were co- Claimants.

2. The Respondent is [REDACTED] as the legal successor of "[REDACTED]".
3. The Appellant submitted four almost identical Claim Forms (two dated 30th April 2000 and two dated 21st July 2000) to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that "[REDACTED]" issued the insurance policy in Velka Bytca, Czechoslovakia.
4. Initially, the ICHEIC assigned claim numbers [REDACTED] and [REDACTED] to the claims because the Appellant mentioned two policyholders. Subsequently, claim number [REDACTED] was merged with claim number [REDACTED].
5. The ICHEIC submitted the claim to the Respondent. In its final decision letter dated 21st March 2005, [REDACTED] wrote: *"Based on the information that you have provided in the claims forms we have intensively searched all relevant archives and records in accordance with the Agreement for information on the specific life insurance policies. Unfortunately no match occurred in our records. In this connection we have to inform you that [REDACTED] Life Insurance was founded in 1987. Therefore no life insurance policies of [REDACTED] were sold before 1987. However, we have proofed your claim also for [REDACTED] which was legally the predecessor of [REDACTED] Life Insurance. Unfortunately we could not find any reference regarding life insurance policies of your father and your uncle in the archives of [REDACTED]. In addition external (i.e. state-run) archives of German compensation and restitution authorities were researched in order to ascertain, if the policies on which you are claiming were part of a decision of previous restitution and compensation proceedings. ... None of the relevant external archives contain any reference regarding a life insurance policy. Based on the information provided by you in the claim forms and after our intensive research in all relevant internal and external archives the existence of life insurance policies taken out by Mr. [REDACTED] and Mr. [REDACTED] with [REDACTED] or [REDACTED] could not have been established, even under the "Relaxed Standards of Proof" of the Agreement. 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."*
6. The Appellant submitted an appeal to the Appeals Office dated 7th April 2005 in which the reasons for the appeal were set out.
7. The Appeals Office received the appeal form on 12th April 2005 and mailed a copy to the Respondent.

8. [REDACTED] responded in a letter dated 6th May 2005 and requested the Appeals Panel for reasons it had set out before to reject the appeal.
9. On 16th May 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.
10. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
11. 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 of 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 and his brother [REDACTED] have submitted the following information in relation to the claim for the proceeds of a life insurance policy in the claim forms:

Claim Forms dated 30th April 2000 (submitted by [REDACTED] and [REDACTED] as co-Claimants)

- a) In section three, regarding the Company that issued the policy, the Appellant and his brother write: “[REDACTED]”. They state that the policy was purchased in Velka Bytca and add: “*Account in bank in Bratislava Czechoslovakia, No. [REDACTED]*”.
- b) In section four, asking for documents substantiating the claim, the Appellant and his brother mention the following documents: two certificates of Canadian Citizenship and a “*Certification of the city’s national committee, at Velka Bytca*”.
- c) In section five, asking for known details about the policy, they confirm the type of insurance to be a life insurance policy issued in “*Czechoslovak crowns*”. They state that they have no information regarding the policy number, the sum insured, the date of issue and the date of maturity. The Appellants add that they are not aware of any payments resulting out of the insurance policy. They indicate that the premium was paid annually; they do not know the amount of the premium and if all the premiums were paid. In response to question 5.10 they add: “*till their [i.e. [REDACTED]’s and [REDACTED]’s] deaths (1944)*”. The Appellant and his brother confirm that they do not know if anybody who has approached the insurance company about this policy.
- d) In sections six and seven, they identify the policyholder and insured person as their father [REDACTED] and their uncle [REDACTED]. They do not know of any other living heirs.
- e) In section eight, the Appellant and his brother identify themselves as the beneficiaries.

- f) In section nine, asking about previous compensation or restitution procedures, the Appellant and his brother confirm that they do not know of participation in any compensation or restitution procedure for this claim. They add that it was “*in Czechoslovakia during Communist Regime not possible to make any application*”.
- g) In section eleven, asking for further information, the Appellant and his brother refer to an enclosure (certificate from the city’s committee) and state: “*Agent: M. Mandl, Hvezdoslavova 407, Velka Bytca, Czechoslovakia*”.

Claim Forms dated 21st July 2000, ([REDACTED] is the only claimant)

- a) One of the claim forms identifies the Appellant’s father [REDACTED] as the policyholder and insured person. In section five, [REDACTED] identifies the type of insurance to be a life insurance, but adds that there might also have been accident insurance. In section eight, he identifies himself as the beneficiary. He states that his brother [REDACTED] is another living heir. In response to question 8.10 he mentions his “*late brother [REDACTED]*”. In section eleven, the Appellant states that [REDACTED] (father), [REDACTED] (mother), [REDACTED] (late brother), he himself ([REDACTED]) and [REDACTED] (brother) are the insured persons.
 - b) The other claim form identifies [REDACTED]’s uncle [REDACTED] as the policyholder and insured person. In section eleven, he adds that [REDACTED] (uncle), [REDACTED] (brother), he himself and [REDACTED] (late brother) are the insured persons.
13. With the claim forms the Appellant and his brother submitted copies of their certificates of Canadian Citizenship.
14. In addition, the claim file contains copies of:
- a) A Power of Attorney dated 6th March 1992 signed by [REDACTED]. This document names [REDACTED] as the Representative in “*all matters relating to property and finance*”.
 - b) A Power of Attorney dated 9th March 1992 signed by [REDACTED]. This document also names [REDACTED] as the Representative in “*all matters relating to property and finance*”.
 - c) A copy of a certification of the “*Council of the City’s National Committee at Bytca*” (dated 26th September 1964) confirming that the Appellant’s father [REDACTED], his mother [REDACTED], nee [REDACTED], and his brother [REDACTED] were murdered at the Auschwitz concentration camp.
 - d) A letter dated 11th June 2000 from the Appellants to ICHEIC explaining that they contacted the insurance company [REDACTED] in 1992 and 1998 without “*too much success*”.
 - e) A letter dated 31st August 1992 from [REDACTED] to [REDACTED] stating that all insurance companies were nationalised after the Second World War in Czechoslovakia. In the process of this nationalisation all assets and liabilities were transferred to the new state insurance company. [REDACTED] explains that the Appellant must direct his inquiries to this company.
 - f) Copies of a Declaration list of Jewish Property dated 9th September 1940. It details the assets of [REDACTED] (born [REDACTED] 1879). Section IV, e states: “*Not yet paid*”.

claims for life, capital and annuities insurance. These (handwritten Life Insur.) claims are to be calculated of paid up premiums". Moreover, the sum "Ks 21 000.--" is mentioned.

15. The Appellant ("*also in name of his late brother [REDACTED]*") sets out the reasons for his appeal as follows: "*My late brother left behind his wife [REDACTED] and four children. His widow has financial problems. I am positive that our late father told us about those insurances before he died in Auschwitz. He told us not only life insurances but also about accident insurances. He was a wealthy man and invested a lot of money into insurances. His money went from Italy and Czechoslovakia to Germany. As the Czech Insurance Company wrote us, the money was confiscated by Germany (Vermögensamt, Deutschland – probably to Insurance Company [REDACTED]). We would be very grateful if you could help us to trace our claims. I admit that after so many years, it is very difficult to find the truth. We just feel that all the insurance companies involved are simply shifting their responsibilities from one to the other. We hope that this problem will be solved after so many years of correspondences*".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. [REDACTED] declined the claim for the reasons given in its decision letter dated 21st March 2005 (paragraph 5) and in its letter dated 6th May 2005 written in response to the appeal (paragraph 8) .

THE ISSUES FOR DETERMINATION

17. 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.
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 limited to establishing 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.

19. There is no doubt that the Appellant and his family living in the Holocaust era were Holocaust victims and that he and his brother's heirs could be entitled to proceeds of a life insurance policy issued to his father and/or his uncle.
20. It is concluded, however, that he did not establish that a life insurance policy issued by "[REDACTED]" to his father and/or uncle existed. His evidence lacks the requisite authenticity and particularity and there is no corroborative evidence (such as letters or statements from third parties) to support the Appellant's assertion. The only statement he was able to make is that the issuing company was "[REDACTED]", that the policy was issued in Velka Bytca, Czechoslovakia, that the currency of the insured sum was Czechoslovakian Crowns and that his father and/or uncle were the policyholders and insured persons. The paucity of information coupled with the absence of research matches lead to the conclusion that the Appellant has not met even the reduced burden of proof under the provisions of the Agreement that it was "[REDACTED]" which issued policies of life insurance to his father and uncle.
21. Nevertheless, the Appellant's repeated statements in his claim form and in his appeal form that there were insurance policies and, most important, the written evidence in the Declaration list of Jewish Property dated 9th September 1940 [see above paragraph 14 f)] indicating that there were "*Not yet paid claims for life, capital and annuities insurance. These (handwritten Life Insur.) claims are to be calculated of paid up premiums*" fully support his contentions as to the existence of such policies. Unfortunately this evidence does not give any hint as to the identity of the issuing insurance company or insurance companies. It is certainly plausible, therefore, that there were one or more insurance policies, although the identity of the issuer(s) remains unclear. Accordingly, the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures. The ICHEIC will be informed accordingly

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 26th day of July 2005

[REDACTED]