

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

PANEL DECISION

The Appeals Panel 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] who was born [REDACTED] 1933 in Balti (Moldavia). He is the son of [REDACTED] and [REDACTED]. [REDACTED] was born in 1912 Balti (Moldavia) and died there on 29th November 1972. The Appellant’s younger brother, [REDACTED], died in 1942 at the age of five in the camp Moghilov-Podolski of typhoid fever.
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim to the International Commission on Holocaust Insurance Claims (ICHEIC) in which he claims that “*the* [REDACTED]’ (or [REDACTED]) [REDACTED] *company and the* [REDACTED]’ *company*” issued a life insurance policy and a house insurance policy for a shop selling and buying food products.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 6th February 2003 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 to the Appeals Office dated 27th February 2003, which was accompanied by a letter setting out the reasons for the Appeal.
6. The Appeal Form received from the Appellant was an incorrect 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 of waiving any right to appeal such decision as provided in the Appeals 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 of waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents and employees, except as provided under Swiss law.
7. On 18th July 2003 the Appeals Office received the new Appeal Form which is dated 25th May 2003 and mailed a copy of it to [REDACTED].
8. [REDACTED] responded in a letter dated 13th August 2003 and requested the Appeals Panel for reasons it had sent out before to “*reject the appeal submitted with respect to this claim and to confirm [REDACTED]’s previous decision on it*”.
9. By letter dated 17th September 2003 the Appeals Office sent a copy of this letter to the Appellant. It informed both parties that the Appeal will be on a “*document only*” basis unless the Appeals Office receives a notification from either party requesting an oral hearing within 14 days of the date of receipt.
10. No request for an oral hearing has been received from either party and the Appeals Panel does not consider it necessary to order such a hearing and thus the Appeal proceeds on a “*document only*” basis.
11. The Appeal is governed by the Agreement Concerning Holocaust Era Insurance Claims dated 16th October 2002 made between the Foundation “Remembrance, Responsibility and Future”, ICHEIC and the [REDACTED] (The Agreement) and its Annexes including, but not limited to, Annex E, The Appeal Guidelines.
12. The Seat of the Appeals Panel is Geneva, Switzerland, and the Panel Decision is made in that place.

THE CLAIM

13. The Appellant sets out the reasons for his Appeal as follows: “ I, [REDACTED], born in Balti, Moldavia, on 11 July 1933, I was deported in 1941 to Moghilov-Podolski together with my mother, [REDACTED], and a younger brother, who found his death in Moghilov-Podolski. My father was deported from Balti to place not known to us during the war. After the war, my father returned to Balti, as well I and my mother. Upon our return we saw our property totally destroyed – our house was destroyed, our shop was destroyed and our storehouse was destroyed, everything leveled to the earth. The above property was located at the addresses as mentioned in the claim no. [REDACTED] submitted to ICHEIC and forwarded to [REDACTED]. In Eastern Europe, all the insurance documents were destroyed by the Communists. Also, we were denied any way to contact the Insurance Company, since was seen as a forbidden contact with the West and could lead to jail punishment. ...”.
14. In the Claim Form he identifies in answer to Question 3 “[REDACTED]” (or “[REDACTED]”) and the “[REDACTED]” as the companies which issued a life insurance policy and a house insurance policy for a shop selling and buying food products. He states the policy was issued in the currency Lei, that monthly payments of the premium were made and that the policy was purchased in Balti, Moldavia. In answer to Question 7 of the Claim Form he identifies the policyholder as his father, [REDACTED], born 1912 and his father was also the insured person. He, the Appellant, was beneficiary of the life insurance.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. A copy of the Claim Form was submitted by the ICHEIC to [REDACTED]. In its decision letter dated 6th February 2003 [REDACTED] informed the Appellant that “*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*”. They informed him 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*”.
16. In a letter dated 13th August 2003 [REDACTED] repeated the above said and confirmed its decision.

THE ISSUES FOR DETERMINATION

17. The sole issue for determination in this Appeal is whether the Appellant has met his 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. In reaching decisions on appeals of decisions on non-life insurance policies, the Panel, the Panel Member and Arbitrator shall apply the rules set out in Section 2 (2) of the Agreement and in other respects shall follow the Guidelines to the extent possible, making adjustments as required (*mutatis mutandis*).
19. The Appellant has not succeeded in establishing that a life insurance or a house insurance policy issued by [REDACTED] existed.
20. Where no written record of a policy can be traced by the relevant Member Company, 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 assertions 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 which declined the claim.
21. The Appellant’s assertions relating to the name of the insurance company is not expressly challenged by [REDACTED]. [REDACTED] just states that it has not found a match with its records and adds that those archives relating to policies issued in Eastern Europe were held locally and are no longer in its possession.
22. The Panel has concluded that the Appellant has not met his burden of proof in that his evidence lacks the requisite authenticity and particularity. There is no corroborative evidence (such as letters or statements from third parties) to support the Appellant’s recollection of the existence of an “[REDACTED]” or a “[REDACTED]’ (or [REDACTED])” policy. He is not able to establish with sufficient certainty which, if either, of the policies was issued by [REDACTED] or [REDACTED].
- If, in fact, a policy had been issued by “[REDACTED]” [REDACTED] would not be liable for such policy. According to the ICHEIC’s information “[REDACTED]” was on a [REDACTED] list dated 24th December 1999, but [REDACTED] sent a letter declining to accept responsibility saying that it in “[REDACTED]” only had a minority shareholding. There is no suggestion that [REDACTED] could be liable for insurance policies issued by “[REDACTED]”.
- As far as it could have been a policy issued by “[REDACTED]” a company with that name existed, but it only operated in Italy. “[REDACTED]” could also stand (as a “shortened” name) for “[REDACTED]”, which was operating in Romania at that time and for which now [REDACTED] is responsible. However, there has not been a match, neither by the company nor in the ICHEIC research database.

THE APPEAL PANEL THEREFORE HOLDS AND DECIDES

The appeal is dismissed.

Dated this 17th day of October 2003

(signed) Timothy J. Sullivan
Timothy J. Sullivan
Chairman

(signed) Rainer Faupel
Rainer Faupel
Panel Member

(signed) Abraham J. Gafni
Abraham J. Gafni
Panel Member

This is to certify that the original has been signed by the Panel Members.

London, 3rd day of November 2003

Martin Gutfrucht
Principal Legal Adviser