

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

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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 [REDACTED] was born on [REDACTED] 1926 in Budapest, Hungary.
2. The Respondent is [REDACTED].
3. The Appellant submitted a Claim Form signed on 2nd May 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which she claims the proceeds of a dowry insurance policy, Number [REDACTED], issued by [REDACTED] in Budapest on 26th June 1929. The question in the Claim Form whether the policyholder and/or the insured and/or Beneficiary was a victim of the Holocaust was answered “Yes”.

4. The claim was submitted by the ICHEIC to [REDACTED] as the legal successor to [REDACTED], which denied it by letter to the Appellant dated 17th March 2003.
5. The Appellant submitted an Appeal to the Appeals Office dated 3rd April 2003.
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. The Appeals Office requested the Appellant by letter dated 7th May 2003 to sign an amended Appeal Form.
8. On 23rd June 2003 the Appeals Office received the amended Appeal Form in which the Appellant repeated her reasons for appealing the decision of [REDACTED] which she had set out previously in the imperfect Appeal Form.
9. The Appeals Office sent the new Appeal Form with the reasons for appeal to [REDACTED] on 2nd July 2003.
10. [REDACTED] responded in a letter dated 17th July 2003. It repeated the reasons it had set out before adding: *“On the other hand, we cannot but confirm our previous decision on this claim, as it is not related with the Holocaust and therefore does not fall within the scope of the German Foundation/ICHEIC system. In our opinion, this statement is strongly supported by the following remarks:*
 - *The claim form does not contain any indication at all about possible loss or damage which would have been suffered either by the policyholder or by the insured person / beneficiary / claimant as a consequence of the Holocaust. The claim form itself ... confirms that the policyholder lived in Budapest from 1918 up to his death in 1964, without suffering any deportation / displacement. The very same applies to the insured person / beneficiary / claimant, who apparently lived in Budapest during all her life.*
 - *The premium payment was duly continued by the policyholder up to the issue of the Hungarian law n. 6400/1946 (June 6th, 1946) which started the nationalisation process with regard to insurance companies. As declared in the claim form ..., the end of the premiums payment was only due to the fact that “the company did not accept any more premiums” (as a consequence of the law n. 6400/1946).”*
11. On 24th July 2003 the Appeals Office informed both parties that the appeal will be on a “document only” basis unless it received notification from either party requesting an oral hearing within 14 days of the date after receipt of this letter.
12. No request for an oral hearing has been received from either party. The Appeal proceeds on a “document only” basis.

13. In a letter dated 18th August 2003 the Appeals Office provided a copy of the letter from [REDACTED] dated 17th July 2003 to the Appellant. It asked her at the same time to answer specific questions on relating to whether she was a Holocaust victim as is defined in Section 14 of the Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002.
14. The Appellant responded in a letter dated 28th August 2003, which arrived at the Appeals Office on 25th September 2003. In answering the questions about the Holocaust victim issue she wrote in Hungarian (the following is a translation into English which the Appeals Office ordered):

“1. Both the late insured person (my father) and the living claimant/beneficiary (myself) had avoided the horrors of being carried off by the German National Socialist regime. In the light of this neither of us can be considered a physical victim of the Holocaust, nevertheless the insurance injury still exists.

2. The legal basis of the claim consists of the claim forms sent by you as well as the letterhead of your reply letter of 21/09/2000, which said that the submission was for ‘A Holocaust-era insurance claim’ and did not specify any limitation to specific physical ordeal or just death or any differentiation in this matter. This wording made many of us hopeful that a pecuniary injury of several decades will – to any extent – be remedied.

3. On the strength of the above, my claim regarding my life insurance as a “(Holocaust)-era insurance claim” still exists without changes and I request a favourable decision on the issue.”
15. 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.
16. The seat of the Appeal Panel is Geneva, Switzerland and the Panel Decision is made in that place.

THE CLAIM

17. The Appellant submitted the following documents and information about her Claim:
 - a) a copy of an insurance policy, Number [REDACTED], issued by [REDACTED] in Budapest on 26th June 1929 with copies of three clauses from the second, third and fourth page of the policy;
 - b) 70 premium receipts that had been issued between September 1929 and March 1947;
 - c) a copy of a letter to the Central Compensation Office in Budapest dated 20th January 1992;
 - d) a copy of a letter to the Hungarian Ministry of Justice dated 20th January 1992;
 - e) a copy of a letter from the Hungarian Ministry of Justice dated 24th January 1992;
 - f) a copy of a decision of the Central Compensation Office in Budapest dated October 1993;
 - g) a copy of a letter to the President of the Government Insurance Control in Budapest dated 7th December 1993;
 - h) a copy of a letter from the Government Insurance Control in Budapest dated 18th December 1998;

- i) a copy of a letter to the General Deputy of the Parliamentary Commissioner for Citizens Rights in Budapest dated 25th January 1998;
 - j) a copy of a letter from the General Deputy of the Parliamentary Commissioner for Citizens Rights in Budapest dated 25th January 1999.
18. The Appellant sets out the reasons for her Appeal as follows: Her father took out a “*dowry insuring capital with premium regain*” policy in 1929 for 22 years with the Budapest [REDACTED]. The insurance premiums were paid regularly until the end of March 1947. After that the company refused to take premiums and on maturity the sum was not paid by the company. On 3rd March 1981 she presented the policy to the [REDACTED] and although it added a clause to the policy it did not commit itself to payment.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

19. A copy of the Claim Form was submitted by the ICHEIC to [REDACTED]. In its decision letter dated 17th March 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 her that “*based on the information you provided and our search, no evidence was given as to the status of ‘Holocaust victim’ according with ICHEIC definition and we are therefore declining your claim*”.

THE ISSUES OF DETERMINATION

20. The Agreement cited at no. 15 of this decision covers, according to its introductory phrase, “*the settlement of individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice*”. A claim concerning non-life insurance is, according to Section 2 (2) lit. c) eligible for compensation, “*if the benefits of the policy were not paid out, because the policy holder became a Holocaust victim before an original insurance claim could be lodged, or if lodged before it could be settled or the benefits were confiscated by the German National Socialist Regime or by the government authorities as specified in the definition of Holocaust victim in Section 14*”. Losses and deprivations not connected with National Socialist injustice and specifically the Holocaust are not covered by the Agreement. Therefore, the sole issue for determination in this Appeal is whether the policyholder and or Appellant is a Holocaust victim in the sense of Section 14 of the Agreement.
21. According to this definition Holocaust victim means for the purpose of the Agreement “*anyone who, as a result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime, was deprived of his/her life or freedom; suffered damage to his/her mental or physical health; was deprived of his/her economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss or damage to his/her property. For the purpose of this definition, persecution by governmental authorities of the following countries for the period in brackets until the end of the Second World War in the following countries is considered equal to persecution by the organs of the German National Socialist Regime: ... Hungary (1939) ...*”.

22. The loss or deprivation of financial assets, which the Appellant suffered, was not the result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime or Hungarian authorities during the war. It was the result of the political and economical development in post-war Hungary. As declared in the claim form the end of the premium payment was due to the fact that “*the company did not accept any more premiums*”. This happened in 1947, almost two years after the end of the Holocaust. The reason for the non-acceptance of any more premium payments was the (Hungarian) Ministry Order 6400/1946, Para 2, M.E.. According to this Order the original obligations to pay were terminated for both the contractor and the insurance company in cases of life and annuity policies issued before 1st January 1945. The loss suffered by the Appellant was unrelated to the Holocaust and, therefore, it is not the proper subject for compensation under the Agreement.
23. Accordingly, the policyholder and/or beneficiary, contrary to what the Appellant declared in the Claim Form and her explanation in her letter dated 28th August 2003, was not a Holocaust victim in the sense of Section 14 of the Agreement. Therefore, the Appellant is not entitled to compensation under the Agreement.

THE APPEALS 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