

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], née [REDACTED], born on [REDACTED] 1923 in Borgentreich (Germany). She changed her name from [REDACTED] to [REDACTED] after her marriage. She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1896 (or 1895) in Borgentreich; [REDACTED] was born on [REDACTED] 1899 in Borgentreich. In a letter dated 22nd January 2001 the Appellant stated her mother’s place of birth is Bühne/Westfalia (Germany). Both parents died in a concentration camp on an unknown date.
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim dated 27th March 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that an insurance company whose name was not known to her issued a life insurance policy. Before this she submitted another claim on a form of the Holocaust Claims Processing Office (HCPO), to which the ICHEIC assigned claim number [REDACTED] which was later amalgamated with claim number [REDACTED], because the subject of both claims was identical.
4. The ICHEIC submitted the claim dated 27th March 2000 to the German companies.
5. In a letter dated 30th October 2000 [REDACTED] informed the Appellant that it had checked its central register on the basis of the following data: “Mrs. [REDACTED], née [REDACTED], ... Mr. [REDACTED] ... and Mrs. [REDACTED] “ without finding an entry for the Appellant herself or her mother [REDACTED]. For [REDACTED], however, there was an entry. [REDACTED] also described the meaning of this match and further research it was going to perform. In a further letter dated 10th January 2001 [REDACTED] informed the Appellant that it had contacted the compensation authority in Darmstadt (Hessen) for further information.
6. In its decision letter dated 21st January 2003 [REDACTED] informed the Appellant that there is an entry in the central register for Mr. [REDACTED], born in 1895 in Borgentreich. Since both - name and place of birth - coincide, [REDACTED] assumed that the entry was made for the Appellant’s father [REDACTED], even though the Appellant had stated that her father’s year of birth was 1896. They further informed her that nevertheless no file exists and that there is no entry in the in-force register of 1941 and the reserve register. After research at the German State Compensation and Restitution Authorities, at the State Archives in Berlin and Brandenburg and at the Federal Archive in Berlin was not successful, [REDACTED] concluded that there was no proof of a contract with the Appellant’s father or – if there had been a contract – no claim remained unsettled. Accordingly, it denied the claim.
7. The Appellant submitted an appeal to the Appeals Office dated 30th January 2003 and attached in support of her appeal copies of the letters of [REDACTED] dated 30th October 2000 and 10th January 2001.
8. 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 waiving any right to appeal such decision as provided in the Appeal 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 waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
9. The Appeals Office requested the Appellant by letter dated 24th July 2003 to sign an amended Appeal Form.
10. On 11th September 2003 the Appeals Office received a perfected Appeal Form dated 12th August 2003 with an attachment setting out further reasons for the appeal, which was forwarded to the Respondent.

11. [REDACTED] responded in a letter dated 23rd September 2003, in which it confirmed its decision and provided copies of all documents relating to the claim. It further stated *“according to the dates of signing and receipt of the Appeal Form, the claimant did not appeal within the 120-day-period”*.
12. On 26th September 2003 the Appeals Office informed both parties that the appeal will be 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.
13. 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 Panel Decision is made there.

THE CLAIM

14. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
 - a) On the claim form she names her father [REDACTED], *“born [REDACTED] 1896 (?)”* as the policyholder and insured, but also names her mother [REDACTED], née [REDACTED], born *“[REDACTED] 1899”* in brackets.
 - b) She names herself as the beneficiary and states that there are no other living heirs.
 - c) The Appellant does not name the insurance company that issued the policy.
 - d) She states that the policy was purchased in Borgentreich in the state of Westfalia in Germany.
 - e) She does not provide any details about the policy in question 5.
 - f) In response to question 11 concerning further information, the Appellant writes *“I was 17 years old when I came to the USA. My parents did not inform me of any special insurance they had, just that we never discussed any financial business. Since they perished in concentration camp I have no document to verify this claim”*.
 - g) In a letter to ICHEIC dated 24th April 2001 she again writes *“I left Germany when I was 16 years old and did not have any knowledge about the finances of my parents. These items were never discussed when I was with them”*.
15. In her statement of Grounds of Appeal the Appellant writes: *“My parents were living in Borgentreich, Westf. at the time when my father applied for life insurance with the [REDACTED]. The company stated that they found records that the application was received. I am certain that a policy was issued. My parents later moved to Cologne (Koeln). I was only 17 years old when I came to the United States. My parents were hoping that they would receive a visa to follow me. Instead they were deported and killed in a concentration camp. My father is very much entitled to the refund of this policy since the policy was in force when he was killed. When I came to the United States I had very little knowledge of the assets of my parents. They were financially in good circumstances. The correspondence of the [REDACTED] of October 20, 2000 and January 10, 2001 have been submitted to you previously. It stated that the application was received. Since the [REDACTED] does not know if a policy was issued. We must assume that a policy was issued by the [REDACTED]. I would therefore appreciate that you take into consideration*

that my father has a insurance with the [REDACTED]. Please take into consideration the decision and refund the funds to me which I have coming from this policy”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. [REDACTED] found an entry for the Appellant’s father, [REDACTED], in its central register. In the final decision letter to the Appellant dated 21st January 2003 the company states *“according to the entry, Mr [REDACTED] was born in 1895. You provided us with the information that your father was born in 1896. Since both the name and the place of birth coincide, we assume that the entry was made for your father. As an entry was made each time an application for life insurance was filed we do not know whether a contract was actually concluded or not. The entry does not contain details on the applied insurance coverage, in particular the sum insured, the amount of premium or the projected insurance term. Its sole purpose is to find the corresponding file in our archive, which is arranged in numerical order. The entry therefore only contains – apart from the personal data of the applicant – the applicant number [REDACTED]. On the account that no file exists we have no information whatsoever on the possible terms of the contract. In addition, the inforce register of 1941 and the reserve register do not contain an entry. For this reason, we have already informed you that we have no evidence of a contract concluded with us.”* To obtain further information, [REDACTED] contacted the German State Compensation and Restitution authorities, the State Archive of Berlin, the Central State Archive of Brandenburg and the Federal Archive in Berlin. However, no relevant documentation was found.

17. In the final decision letter dated 21st January 2003 [REDACTED] states *“there is no proof of a contract concluded by Mr [REDACTED] with us. Apart from this, we know that if a policy had existed the insurance benefit was duly settled: our inforce register of 1941 – which we have already mentioned – reveals that such a contract no longer existed by the end of 1941 in any case, as the number entered in the central register is not included in this register. Moreover, this number is not included in our reserve register of which we have informed you earlier too. This means that no reserves were established for this policy. Therefore, if a contract had existed no claim remained unsettled”.* [REDACTED] concludes, *“our intent is – in accordance with the guidelines of the International Commission – to compensate life insurance claims which have remained unsettled so far and for which we have documentation. This, however, does not apply to your inquiry as, on the one hand, we could not establish the existence of a contractual relationship and, on the other hand, we definitely know that under the number entered in the central register no benefits were left unsettled”.*

THE INVESTIGATION BY OTHER COMPANIES

18. In a letter dated 6th November 2000 [REDACTED], which is one of the other German companies to whom the Claim Form was sent, informed the Appellant that *“regarding the name of your father [REDACTED] we have found documentation of a life insurance*

contract in our archives ... we are carrying out further investigations in order to receive information about the life insurance policies of your parents”.

19. In a further letter dated 14th January 2001 [REDACTED] informed the Appellant *“according to the present document the life insurance policy of your father [REDACTED] was concluded with [REDACTED], Munich. The policy was number [REDACTED]. The attachment date was 1st October 1933, the sum insured was 787 Reichsmarks”.*
20. Finally, in a letter dated 25th April 2001 [REDACTED] summarised the result of its further research as follows: *“Regarding the life insurance policy of your father Mr. [REDACTED] I am enclosing the present document. It is a valuation sheet (‘Entschädigungsbogen’, enclosure 1). Unfortunately we were not able to find the complete contract file. According to the valuation sheet the contract was concluded through the ‘[REDACTED]’ society with ‘[REDACTED]’. ‘[REDACTED]’ was a group insurance contract. In order to conclude the life insurance contract your father became a member of ‘[REDACTED]’ society. The life insurance policy was transferred to ‘[REDACTED]’ in 1936 ... The life insurance contract had the following content: Policyholder and person insured was your father Mr. [REDACTED]. The attachment date was 1 October 1933, the expiry date was 1 October 1980. The sum insured was 787 Reichsmark (RM), the monthly premium (incl. insurance tax) was RM 2. According to the document, Mr. [REDACTED] stopped the premium payment of his life insurance policy to 1 November 1934. At this time the premiums contributed by him were not sufficient to yield a surrender value (‘noch kein Rückkaufswert vorhanden’). The insurance policy expired. ... The valuation sheet indicates that a compensation procedure was undertaken”.*

THE ISSUES FOR DETERMINATION

21. The first issue for determination in this appeal is whether the Appellant filed her appeal in time, i.e. within 120 days of the receipt of the company’s decision (section 4 (3) of the Agreement dated 16th October 2002). The initial incorrect Appeal Form is dated 30th January 2003 and was sent – as reflected by the cancellation stamp of the United States Postal Services – on 30th January 2003 to the address given on the incorrect Appeal Forms at that time. The appeal is deemed to have been filed in a timely fashion because it was sent to the Post Office Box in the Netherlands where procedures for determining date of receipt were insufficient.
22. The next issue for determination in this appeal is whether the Appellant has met her 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:
 - a) 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;
 - b) 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

- c) 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.
23. 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 does not 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 German company.
24. The Panel has concluded that the Appellant has not met her burden of proving that a life insurance policy on the life of her father, which is the subject of the instant claim, existed in that her evidence lacks the requisite authenticity and particularity. The Appellant herself states in the HCPO Claim Form *“Since I was 17 years old I have no information of the company my father was insured with. I only remember that my father had a life insurance policy”*. She repeats this statement in the ICHEIC Claim Form saying, *“I was 17 years old when I came to U.S.A. My parents did not inform me of any special insurance they had, just that we never discussed any financial business”* and in her letter dated 24th April 2001 saying *“I left Germany when I was 16 years old and did not have any knowledge about the finances of my parents. These items were never discussed when I was with them”*. In light of these statements and the result of the investigation of [REDACTED] the Panel concludes that the Appellant has established that her father had taken out life insurance policies. The Panel does not regard it as plausible, however, that [REDACTED] - which is the only party in this appeal on the Respondent’s side - was the insurance company issuing the life insurance policy. Whether there might be a viable claim against [REDACTED], which had said *“the premiums contributed ... were not sufficient to yield a surrender value”*, is not the subject of the present appeal.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 22nd of January 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member