

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 was born on [REDACTED] 1930 in Miskolc, Hungary.
2. The Respondent is [REDACTED].
3. The Appellant submitted a Claim Form signed on 18th March 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which he claims the proceeds of a life insurance, Number [REDACTED], issued by [REDACTED] on 1st January 1944. The question in the Claim Form whether the policyholder and/or the insured and/or beneficiary was a victim of the Holocaust was answered with “No”.

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. The reasons given were: *“Unfortunately we have to inform you that, based on the information you provided and our search, the supporting evidence of a contractual relationship with one of our subsidiaries in Eastern Europe shows that the minimum premium needed in order to validate the policy wasn’t paid due to the incoming of the 1946 legislation in your Country, and furthermore no evidence was given as to the status of “Holocaust victim” according with the ICHEIC definition we therefore declining your claim.”*
5. The Appellant submitted an appeal to the Appeals Office dated 14th May 2003.
6. The appeal was accompanied by another letter dated 14th May 2003, which is written by the government adviser of the Hungarian Prime Minister’s Office, Secretariat for Minority Affairs, Dr. [REDACTED]. In this letter the following information is given: *“Mr. [REDACTED] approached our Secretariat on the basis of close personal relationship to Mr. [REDACTED], state-secretary at the Prime Minister’s Office of Hungary. Mr [REDACTED], an aged survivor of the Holocaust, requested our assistance in filling out his appeal form after the German company [REDACTED] (member of the [REDACTED]) declined his claim for compensation. ...”*.
7. 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 and employees, except as provided under Swiss law. The Appeal Form had enclosures, including, among others a copy of the insurance policy.
8. The Appeals Office requested the Appellant by letter dated 18th June 2003 to sign an amended Appeal Form.
9. On 18th July 2003 the Appeals Office received a fax of the amended Appeal Form in which the Appellant repeated his reasons for appealing the decision of [REDACTED], which he had set out previously in the imperfect Appeal Form.
10. The Appeals Office sent the new Appeal Form with the reasons for appeal to [REDACTED] on 21st July 2003.
11. [REDACTED] responded in a letter dated 13th August 2003. It repeated the reasons it had set out before and added: *“However, we wish to confirm that this claim is not eligible for compensation within the ICHEIC / German Foundation framework, as declared by the claimant himself (1.1 of the claim form), who indicated that no one among the involved individuals can be regarded as a Holocaust Victim according to the ICHEIC definition. Our March 17, 2003 additional remark about the lack of any residual value of the policy (which was entered into only in 1944) has to be simply considered a further, secondary reason for declining this claim”*.

12. On 26th August 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 receipt of this letter.
13. No request for an oral hearing has been received from either party. The appeal proceeds on a “documents only” basis.
14. 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 in that place.

THE CLAIM

15. The Appellant submitted the following documents and information about his 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) a copy of general conditions applying to the Life Insurance Policy;
 - c) a copy of a death certificate, Number [REDACTED], showing that [REDACTED] died on 3rd July 1981.
16. The Appellant sets out the reasons for his appeal as follows: *“My mother ([REDACTED], born: [REDACTED]) contracted with [REDACTED] in 1944 (Bond number: [REDACTED]). The company was appropriated by the Hungarian state after World War II. Thus, the company could not comply with its obligations and my mother remained unpaid. I have claimed compensation for the unpaid arrears from the International Commission on Holocaust Era Insurance Claims, which forwarded it to [REDACTED] of the [REDACTED]. [REDACTED] in a letter of March 17, 2003 declined my claims, maintaining that “the minimum premium needed in order to validate the policy wasn’t paid due to the incoming of the 1946 legislation in [Hungary]”. Now, I would like to appeal this decision on the basis that my (mother’s) personal neglect cannot be established. Instead, my mother regularly paid the fees set out in the policy scheme. ...”*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. 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 *“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 further informed him "no evidence was given as to the status of 'Holocaust victim' according with ICHEIC definition". For details [REDACTED] referred to this letter and its letter dated 13th August 2003.

THE ISSUES OF DETERMINATION

18. The Agreement cited in Paragraph 14 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.
19. A Holocaust victim is defined for the purpose of the Agreement as "*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) ...*".
20. The Appellant himself states that neither his mother nor he is a Holocaust victim as defined above. Thus the loss or deprivation of financial assets, which he 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.
21. 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 December 2003

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member