

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

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] 1918 in Podol (Austria-Hungary). He is the son of [REDACTED], who was born on [REDACTED] 1884 in Prague and died in 1942, possibly shot at Riga.
2. The Respondent is [REDACTED].

3. The Appellant submitted on 2nd June 2000 a claim to the International Commission on Holocaust Insurance Claims (ICHEIC) by which under 11.1 of the claim form he claims “*possibility of further policies with [REDACTED] (?)*”.
4. The ICHEIC submitted the claim *inter alia* to the Respondent. [REDACTED] stated in its decision letter dated 27th March 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 14th April 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 19th June 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 2nd 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: “*Documentation is limited because of [REDACTED] not having kept copies (records) of Life Insurances contracted at their Head Office.*” He further refers to a letter dated 14th April 2003 he sent to [REDACTED]. This letter reads as follows: “ *... I regret that your Company failed to keep records or copies of Life Insurances contracted, at your head office in Italy. This is in contrast to my experience I have had with another Italian Life Insurance, who produced copies of all my father’s Life Insurances, which he had taken out with that company, contracted in Czechoslovakia in the period of 1920 – 1939. I was equally unable to produce any documents except our residence etc. Subsequently approx 3 years a sum as compensation was being paid out to me as my father’s heir, to my complete satisfaction. It appears therefore that due to the fact that no records were being kept at your head office, my claim is immediately at a disadvantage, resulting in you declining my claim. No doubt there must be thousands of similar claimants who are unable to produce the necessary documentation. After all premiums paid to your Company during the above mentioned period without having been finalised due the reigning circumstances, must have resulted in a handsome profit at time. ...*”.
14. In the Claim Form the Appellant’s answer to Question 3 is: “*Possibly [REDACTED]– do not approach [REDACTED] as I have received satisfactory settlement if life insurances issued by them*”. He states that the currency in which the insurance was issued was probably Czech Crowns. He identifies his father [REDACTED] as the policyholder and insured person and himself as beneficiary. He further states that his father was insured by his employer [REDACTED], who was until 1938 owner of a weaving mill in Warnsdorf. As the place where the insurance had been purchased he names Prague or Warnsdorf.
15. In answer to Question 9.1 of the Claims Form “Have you or anybody else participated in any compensation / restitution procedure for this claim ?” he states, that he has been granted a German pension, however that this pension is not related to the insurance claim. The question “*If no application was made, why not ?*” he answers with “*no definite knowledge of further existing policies*”.
16. He, as cited above, finally adds as any other information that might be helpful: “*possibility of further policies with [REDACTED] (?)*”.
17. In a letter dated 10th September 2003 the Appellant writes:” *... I would have presumed that Italy having been a war ally of Germany any life assurance copies could have been got hold of in the period of 1939 to 1944 could have been obtained from their Prague office or whatever local German occupied branch was concerned. It is this failure of not keeping records at their head office in Trieste, which is the basis of my complaint, as well as the premiums, which were collected by [REDACTED] in the prewar period, resulting in considerable profits accumulating to [REDACTED]. In view of this omission (or negligence) of not having kept records at their head office, they should have considered making token payments to claimants who are unable to produce documents where there exists a likelihood of life assurances were being taken out*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. 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 further informed him in a letter dated 27th March 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*”.
19. In a letter dated 13th August 2003 [REDACTED] repeated the above said, confirmed its decision and added: “*On the other hand we would point out that the existence of a [REDACTED] insurance policy has been initially regarded by the claimant as a simple “possibility” (3.1 of the claim form), while the same claimant admits (9.1) that no further claim for compensation was submitted before, because there was “no definite knowledge of further existing policies”, besides the ones issued by [REDACTED].*”.

THE ISSUES FOR DETERMINATION

20. 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.
21. The Appellant has not succeeded in establishing that a life insurance policy issued by [REDACTED] existed.
22. 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 does not 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 Member Company.

23. The Panel concludes 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 a life insurance policy issued by [REDACTED]. The Appellant's recollection is on the contrary vague. In the Claim Form he states that he does not know the name of the issuing company and that it "*possibly*" is [REDACTED] or "[REDACTED] (?)". He provides no details about the policy number, the insured sum or the date of issue or maturity. The question about the currency he answers with "*probably Czech Crowns*". He admits that he has "*no definite knowledge of further existing policies*" in answering the question why he or anybody else did not take part in any compensation / restitution procedure for the proceeds of policies issued by [REDACTED]. Finally he again states that there is the "*possibility of further policies with [REDACTED] or [REDACTED] (?)*". In a letter dated 15th February 2002 he writes to [REDACTED]: "*I am referring to the possibility of a claim for Mr. [REDACTED] (my father) for Life Insurances, which possibly may have been taken out in the period of 1920 to 1938*". Finally, there was neither a match with the details in the claim identified in the ICHEIC research database, including the contents of the German policyholder list, nor in the records of [REDACTED].
24. The Appellant's argument that it has been the failure of [REDACTED] not to keep records at their (former) head office in Trieste has no relevance to the decision in the case. It is without effect on his burden of proof. The fact that the Respondent has no existing records is not a valid defence against a claim which the claimant was able to present as plausible; but it is irrelevant as long as the claimant was not able to make his claim plausible as it is the case here.
25. Finally, under the Agreement cited at no. 11 above the Appellant cannot claim damages on the grounds that [REDACTED] did - negligently - not keep records in its headquarters and, is now unable to confirm whether an insurance policy existed. According to Section 2 of the Agreement (Eligible Claims) only unpaid insurance claims are the subject of decisions. Claims for damages are not listed as eligible claims in the Agreement; they are not within the Panel's jurisdiction.

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