

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 NUMBERS: [REDACTED],
[REDACTED], [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] 1922 in Budapest (Hungary). She changed her name in 1960 [REDACTED]to [REDACTED]. She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1883 in Gyoma (Hungary) and died on 15th September 1953 in Balassagyarmat; [REDACTED] was born on [REDACTED] 1889 in Mezósas (Hungary) and died on 23rd April 1970 in Budapest (Hungary). Between 1936 and 1944 she and her family lived in the ghetto of Mezőtúr. They then were deported to the Szolnok

camp and later to camps in Austria (Strasshof, Andlersdorf, Rutzendorf and St. Martin). From there they returned to Budapest in April 1945.

2. The Respondent is [REDACTED].
3. The Appellant submitted the following claims to the International Commission on Holocaust Era Insurance Claims (ICHEIC):
 - a) No. [REDACTED]
in which she claims the proceeds of a dowry insurance policy;
 - b) No. [REDACTED]
in which she claims the proceeds of a life insurance policy and
 - c) No. [REDACTED]
in which she claims the proceeds of an insurance policy that is not specified.
4. The ICHEIC submitted the claims to the Respondent. [REDACTED] answered in its decision letter dated 6th February 2003 with respect to the three claims mentioned above: *“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 claims”*.
5. The Appellant, upon receipt of the decision letter denying all three claims, submitted an appeal to the Appeals Office dated 8th 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 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.
7. The Appeals Office requested the Appellant by letter dated 18th June 2003 to sign an amended Appeal Form.
8. On 21st August 2003 the Appeals Office received the new Appeal Form, which is dated 27th June 2003 and mailed a copy of it to the Respondent on 26th August 2003.
9. [REDACTED] responded in a letter dated 11th September 2003 and requested the Appeals Panel for reasons it had set out before to *“reject the appeal submitted with respect to these claims and to confirm [REDACTED]’s previous decision”*.
10. On 12th 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.
11. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.

12. 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

13. The Appellant has submitted the following information in relation to her claims:

a) Claim No. [REDACTED]

- i) In answer to question 3 of the claim form she identifies “[REDACTED]” as the insurance company, which issued a dowry policy. She states that the policy was purchased in Budapest or Mezőtúr in Hungary. She is unable to provide any specific details relating to the policy, but states the date of maturity was “*when I married*”.
- ii) In answer to question 4 relating to ‘documents’ she writes, “*the insurance policies and other documents were left in our flat at Mezőtúr, [REDACTED].*”
- iii) She identifies her father [REDACTED] as the policyholder and herself as the insured person and named beneficiary.
- iv) In answer to question 11 regarding ‘further information’ she writes, “*my father [REDACTED] was the manager of the Mezőtúr branch of the [REDACTED]. The branch could have been registered under the name of [REDACTED]. From 1936 until 1943 my mother, [REDACTED] worked in the [REDACTED] main office in Budapest. My mother’s brother, [REDACTED], was one of the managers of the main office in Budapest until the 1940’s and my uncle, [REDACTED], also worked there. I am only relating this to show the close ties my family had with the [REDACTED] and why my father would have taken out his insurance there.*”

b) Claim No. [REDACTED]

- i) In answer to question 3 of the claim form she again identifies ‘[REDACTED]’ as the company, which issued a life insurance policy. She states that the policy was purchased in Budapest or Mezőtúr in Hungary and answers the question about “*date of maturity*” with “*upon death – ‘élet elvesztés’*”.
- ii) The answer to question 4 is the same as quoted above.
- iii) She identifies her mother [REDACTED] as the policyholder and insured person and her father as the named beneficiary.
- iv) In answer to question 11 she provides the same information as in claim number [REDACTED].

c) Claim No. [REDACTED]

- i) She again identifies “[REDACTED]” as the issuing company and Budapest or Mezőtúr as the place where the insurance policy was purchased, but does not specify the type of insurance policy. The question about “*date of maturity*” is also answered with “*upon death–‘élet elvesztés’*”.
 - ii) The answer to question 4 is again the same as quoted above.
 - iii) She identifies her father as the policyholder and insured person, and her mother as the named beneficiary.
 - iv) In answer to question 11 she again provides the same information as in claim no. [REDACTED].
14. The Appellant sets out the reasons for her appeal as follows: “*The documents were lost ... during ... the war*”.

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 “*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 in Eastern Europe were held locally and are no longer in our possession*”.
16. In a letter dated 11th September 2003 [REDACTED] repeated and reinforced the above and confirmed its decision.

THE ISSUES FOR DETERMINATION

17. The Appeals Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), for the purpose of the appeals procedure to consolidate claims nos. [REDACTED], [REDACTED] and [REDACTED]. They are dealt with by the Respondent in the same decision letter and simultaneously appealed by the Appellant.
18. The first 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), 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 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 (17.2.1). As far as possible non-life insurance contracts are concerned those claims are eligible pursuant to section 2 (2) of the Agreement and Section 1.3 of the Appeal Guidelines (Annex E).
19. 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 is not able to 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.

20. The Panel has concluded that the Appellant has not met her burden of proof in that her 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 very limited and not sufficiently detailed recollection of the existence of the three policies. The Appellant is only able to name possible policyholders, insured and beneficiaries and very general dates of maturity (death and marriage), in the case of claim number [REDACTED], however, without specifying the kind of insurance (regarding the few details she does give it is most likely that she intended to refer to a life insurance policy). She does not give any specific details regarding the sources of her knowledge about the existence of the policies, the only statement being that there were "*close ties*" of her family to [REDACTED] However, this statement alone is not sufficient evidence which could make it "plausible" that insurance policies were taken out. The Appellant states that her father "*would have taken out his insurance there*" (i.e. with [REDACTED] for which he and other members of his family were working). This language is an assumption rather than a statement based on recollections or facts about which the Appellant is certain.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 22nd day of January 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member