

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], nee [REDACTED], who was born on [REDACTED] 1917 in Bistrita, in former Austria-Hungary, which is nowadays in Romania. She is the only daughter of [REDACTED] and [REDACTED]. [REDACTED] [REDACTED] was born on [REDACTED] 1889 and died on [REDACTED] 1956 in Holon (Israel).
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), by which she claims that [REDACTED] issued a life insurance policy to her father.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 6th February 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 9th May 2003, which was accompanied by an attachment 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. By letter dated 2nd July 2003 the Appeals Office requested the Appellant to sign a new Appeal Form. On 14th July 2003 the Appeals Office received the new Appeal Form, which is also dated 9th May 2003 and sets out again and more detailed, why she is unable to present any documentary evidence supporting her claim. The ICHEIC mailed a copy of it to [REDACTED] at the same day.
8. [REDACTED] responded in a letter dated 29th July 2003 and requested the Appeals Panel for reasons it had set 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 1st August 2003 the Appeals Office sent a copy of this letter to the Appellant. It informed both parties that the Appeal will be on a “*documents 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. On 15th August 2003 the Appeals Office received a fax from the Appellant with a request for an oral hearing in German, as the Appellant does not speak English. By letter dated 1st September 2003 the Appeals Office acknowledged receipt of the request for an oral hearing and informed the Respondent of that request. The Respondent informed the Appeals Office by fax dated 2nd September 2003 that it wants to take part in this hearing.
11. As the Appellant had stated in answering Question 9.1 of the Claims Form (“*Have you or anybody else participated in any compensation/restitution procedure for this claim (e.g. Deutsche Wiedergutmachung, Bundesentschädigungsgesetz (BEG), Bundesrückerstattungsgesetz (BrüG), US Foreign Claims Settlement Commission or other ?*“): “*Wiedergutmachung – 73 [REDACTED] Having been in a camp I have been receiving Wiedergutmachung since*

1980, 774.00 DM. *I don't know if this has anything to do with my father*", the Appeals Office also asked the parties in the letter dated 1st September 2003 for clarification, whether this payment is connected to a BEG procedure.

12. On 12th September 2003 the Appeals Panel decided that there would be an oral hearing of the Appellant by setting up a telephone conference call on Thursday, 16th October 2003, 17.30 (Israeli time) and that the interview will be conducted in German. The Appeals Office informed both parties about this decision by letter dated 12th September 2003.
13. By fax dated 16th September 2003 the Appellant sent a copy of a decision from the "Landesrentenbehörde Nordrhein-Westfalen" in Düsseldorf - [REDACTED] - dated 27th July 1982, which is a decision (settlement) on a claim for compensation payment for damages caused by physical harm according to Paragraph 28 ff. BEG. The Appellant stated in this fax: *"Referring to your Question 9.1 the answer relates to a pension which is paid to me because of a health damage. It has nothing to do with the life insurance of my father. Obviously the Claim Form has been answered as far as this question is concerned incorrect"*.
14. The oral hearing took place on 16th October 2003. It was conducted in German and translated by an interpreter into English.
15. 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.
16. The Seat of the Appeals Panel is Geneva, Switzerland, and the Panel Decision is made in that place.

THE CLAIM

17. The Appellant has submitted the following information in relation to the Claim for the proceeds of a life insurance policy. In answer to Question 3.1 of the Claim Form she identifies [REDACTED] as the name of the company that issued a life insurance policy. As the place where the insurance policy was purchased she names Vatra Dornei, the town where she and her family lived until 1941. As policyholder and insured she names her father [REDACTED] and herself as beneficiary. She is not aware of any payment resulting out of the insurance policy. The Appellant is not able to state policy number, currency, sum insured, date of issue, date of maturity or any other terms and conditions of the policy. In answer to Question 11 she states: *"I don't know when he started to pay the premiums. Father had a workshop for timber and crates near the town "*. In answer to why the payments were stopped the Appellant states: *"I don't know but I think that after we were thrown out of the factory further payments were impossible"*.
18. There is a letter on the Claim File dated 5th March 1999, which was written in Italian and sent to [REDACTED]. In this letter the Appellant states: *"My father [REDACTED] was insured with the „[REDACTED]“ insurance company and we lived in Dorna Vatra (Bucovina)"*. In another letter dated 19th January 2002, which the Appellant sent to the ICHEIC, she states: *„The insurance agent was surely from Vatra Dornei. „[REDACTED]“ insurance Company was well known during this period"*.

19. The Appellant has not produced any documents evidencing the existence of the policy. In answer to Question 3.3 of the Claim Form she states: *“On evacuation to Transnistria, when we were travelling with one rucksack, we left everything at home and when we returned 3 years later, the house was destroyed”*.
20. The Appellant sets out the reasons for her Appeal as follows: *“My father had a company outside the town. This went on for several years and then the government turned towards Germany. ... Jews were only allowed out of the house at certain times of the day. ... The people joined the Cuzists and went around on armed pillaging expeditions by day and night. This went on for several years. They visited my father’s company – it was a wood-wool factory – and would not let him in. Because he could not work, he was unable to pay the premiums to [REDACTED] any more. In 1941 we received an order to assemble at the station with rucksacks, in other words with hand luggage. They herded us onto trains of cattle trucks. Now, [REDACTED] has asked me to send receipts. It was a choice between eating and paying our premiums to [REDACTED], and I cannot send you copies after what we went through in that period of more than three years”*.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

21. A copy of the Claim Form was submitted by the ICHEIC to the Respondent. 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 issued in Eastern Europe were held locally and are no longer in our possession”*. They further informed her 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”*.
22. In a letter dated 29th July 2003 [REDACTED] repeated the above and confirmed its decision.

THE ISSUES FOR DETERMINATION

23. The first 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.

24. The Appellant has succeeded in establishing the existence of a life insurance policy issued by [REDACTED].
25. 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.
26. Taken together the written assertions of the Appellant and what she added in the oral hearing the Panel concluded that the Appellant has met her burden of proof. Her evidence has the requisite authenticity and particularity. The Appellant has particularised the company that issued the insurance and the place where the insurance was issued. During the oral hearing, confronted directly for the first time with the question how she got this knowledge, she answered promptly and without any hesitation that this was because her father talked to her about his insurance policies. With respect to the age of the Appellant, who was 24 years old when she and her family were deported in 1941, it is likely and credible, that she understood the details of a conversation about insurance policies and that she was old enough to evaluate the importance of such an information and to remember it. The Panel is satisfied that it is plausible under section 17.2.1 above that the policy was in force between 1920 and 1945 as the conversation between her father and her will most likely have taken place in that period of time. Furthermore, it is plausible under section 17.2.2 above that the Appellant is the person entitled to the proceeds of the policy as the beneficiary of that contract. Finally, there is no doubt that the policyholder and the Appellant are within the definition of Holocaust victim as set out in section 14 of the Agreement. The policyholder’s business was seized and he and his family were deported to a camp during the Holocaust era.
27. [REDACTED]’s statement that it has not found a match in its records and that those archives relating to policies issued in Eastern Europe were held locally and nowadays are no longer in its possession is no valid defence against the plausibility of the Appellant’s assertions.

VALUATION

28. In determining the present value of the policy, the existence of which was established under the relaxed standards of proof, the Appeals Panel had to calculate according to the rules laid down in the Valuation Guidelines (Annex D of the Agreement). Under section 7.1 of the Valuation Guidelines where a claimant satisfies that a policy existed, which was unpaid, and names the company that issued the policy, but the amount of the policy – as it is the case here - cannot be determined, the offer of the company shall be based on a multiple of three times (3X) the average value for policies in the respective country (shown in Schedule 3 of

the said Annex). According to the same provision the appropriate multipliers then have to be applied but the payment offered shall not exceed US\$ 6,000 per policy (capped amount).

29. For policies issued in Romania between 1920 and 1945 the average value set out in Schedule 3 of the said Annex is Lei 60,638.00, which has, according to Schedule 3 and section 7.1 of the said Annex, to be multiplied by 3 to get the base value of Lei 181,914.
30. This value in Lei corresponds according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.00509 laid down in Step 1 of Schedule 2 of the said Annex to the value of US\$ 925.94226.
31. According to Step 2 of Schedule 2 of the said Annex this dollar value has to be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$ 10,450.18434636 by end 2000.
32. According to Step 3 of Schedule 2 of the said Annex additions have to be made to the dollar value up to the end of 2000 for the subsequent years (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 % according to the month, in which the decision is made, plus two months, i.e. 12/12 of 4.75 %), which leads to the amount of US\$ 11,014.49430106344 for 2001, US\$ 11,565.219016116612 for 2002 and US\$ 12,114.56691938215107 for 2003.
33. This total amount of US\$ 12,114.57 of the policy in question is, according to section 7.1 of the said Annex, subject to a capped amount of US\$ 6,000. The respondent therefore has to pay the amount of US\$ 6,000.

THE APPEAL PANEL THEREFORE HOLDS AND DECIDES

1. The appeal succeeds.
2. [REDACTED] shall pay the Appellant the sum of **US \$ 6,000** within 60 days from the date of this Decision.

Dated this 17th day of October 2003

The APPEALS PANEL

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member