

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]

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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]

Represented by:
Dr. [REDACTED],
Tel-Aviv, Israel

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], who, according to the ID documents presented, was born on [REDACTED] 1919 in Putna, district of Radauti (Romania). She points out that her family told her that she was born in May. She later changed her name from [REDACTED] to [REDACTED]. She is the daughter of [REDACTED] [REDACTED], who died when she was 15 years old. After her father's death her brother [REDACTED] became her guardian. He was born ca. 1900 in Radauti, Bucovina (Romania) and died in 1940 or 1941 in a concentration camp. The Appellant herself since 1940 for 4 years was in the ghetto of Czernowitz.
2. The Respondent is [REDACTED].

3. The Appellant's representative submitted a claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), by which she claims that [REDACTED] issued a policy of life insurance to her brother [REDACTED].
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 21st February 2003 "*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's representative submitted an appeal to the Appeals Office dated 11th and 15th May 2003, which was accompanied by an affidavit dated 11th May 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 of 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 Appeal 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 20th June 2003 to sign an amended Appeal Form.
8. On 21st August 2003 the Appeals Office received the new Appeal Form, which is dated 9th July 2003 and mailed a copy to the Respondent on 26th August 2003.
9. [REDACTED] responded in a letter dated 12th September 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*".
10. On 16th 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. On 9th October 2003 the Appeals Office received a fax from the Appellant's representative with a request for an oral hearing.
12. By letter dated 3rd November 2003 the Appeals Office asked [REDACTED] for copies of the correspondence with the Appellant, which was mentioned in its letters dated 21st February 2003 and 12th September 2003. On 5th November 2003 the Respondent provided copies of letters dated 22nd and 30th June 1965, which at that time had been exchanged between the Appellant and the Respondent. The Appeals Office forwarded further copies of these documents, which were in Italian, together with a translation into English to the Appellant's representative by letter dated 10th November 2003. In a further letter dated 10th November 2003 it informed the Respondent about the request for an oral hearing.
13. On 5th December 2003 the Appeals Panel decided to have an oral hearing by setting up a telephone conference call on Thursday, 8th January 2003, 16.45 (Israeli time) and that the interview should be conducted in German. The Appeals Office informed both parties about this decision by letter dated 8th December 2003.

14. The oral hearing took place on 8th January 2003 as a telephone conference call. It was conducted in German and translated by an interpreter into English. The Appellant's representative and a representative of the Respondent took part in this oral hearing, too.
15. 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

16. The Appellant has submitted the following information in relation to the claim for the proceeds of an insurance policy.
 - a) She states that the policy was purchased in Czernowitz, Romania.
 - b) She indicates that a life insurance, endowment, dowry or education policy was taken out, but provides no information regarding policy number, sum insured, date of issue, or date of maturity.
 - c) In answer to question 5.7 regarding any payments resulting out of the insurance policy, the Appellant writes, "*my brother sent me as a girl to [REDACTED] to pay the premium in cash.*" She states that the premium payments were "regular", "were high", and were made "*till the invasion by the Russians, 1940*".
 - d) In answer to question 5.11 regarding any approach made to the insurance company, she writes, "*the claimant, in 1950; rejected*".
 - e) The Appellant identifies [REDACTED], her brother and guardian in place of father, as the policyholder, and herself as the insured person and named beneficiary.
 - f) In answer to question 6.15 regarding other heirs of the policyholder, she writes, "*brother, [REDACTED], Neuss bei Düsseldorf, Germany*".
 - g) In answer to question 9 regarding "compensation", the Claimant has marked "no", but writes, "*Insurance company rejected payment 1950/1?*".
 - h) In answer to question 11 regarding "further information", she states, "*my father, [REDACTED] died when I was 15. As I was an orphan my brother, [REDACTED], became my guardian. I remember that my brother wanted to secure my future through an insurance policy with [REDACTED], Trieste, as he sent me few times to the office on [REDACTED], on the corner of [REDACTED] with the premium. My family was very well-off and therefore I assume that the insured sum to which I was the beneficiary, was considerable*".
17. Following [REDACTED]' decision letter, the Appellant's representative sent a letter dated 17th March 2003, in which he states "*the claimant was an orphan from the age of 15, so her wealthy brother looked after her and insured her with [REDACTED]. She clearly remembers the place of the office where she had to go to the premiums. The Claimant can*

confirm the above fact under oath, in return, [REDACTED] is in no good position claiming the lack of records”.

18. The Appellant’s representative sets out the reasons for the appeal i.a. as follows: “... 2. *My client confirmed by encl. affidavit the existence of an insurance contract, without details though, because she was too young to gasp them and having been persecuted then as Jewess, she had no possibility of preserving documents. ... 3.[REDACTED] on the other hand would have to prove by its ledgers, that there was no policy. However the reasons for the rejection of the claim is, that she has no records, which contradicts the spirit of the agreement with the Foundation Remembrance, Responsibility & Future”.* In the Appeal Form itself it is stated: “*The [REDACTED] however had not proved, that the applicant was not in her lists of insured, as [REDACTED] has no records at all”.*

19. The Appellant’s declaration in the affidavit reads:

“I the undersigned [REDACTED], born [REDACTED] after having been warned to tell the truth, otherwise being liable to punishment – do declare as follows:

- 1. I was born in Putna (Rumania) on December 26, 1919 as [REDACTED] [corrected to [REDACTED]] the daughter of [REDACTED] and [REDACTED] [corrected to [REDACTED]] I changed my name into Gila in Israel. My family name became by marriage [REDACTED] and was changed into [REDACTED].*
- 2. At the age of 15, when my father died, I became a full orphan and my elder brother [REDACTED] took charge of me.*
- 3. We lived at Cernauti (Czernowitz) in Rumania. My brother was a wealthy man and wanted to secure my future. For that purpose he contracted an insurance with the [REDACTED] company, which had a branch at Cernauti. Having been too young and inexperienced, I do not know whether he ... insured his life for my benefit or made an endowment policy for me.*
- 4. However, I remember entirely clearly, that he told me of that insurance in my favour and that he did send me to pay the premium at the branch office of the insurance company, which was situated at the corner of the streets [REDACTED] and [REDACTED] at Cernauti, The payment was made by a package of banknotes. I remember the last occasion when the treat of the Russian invasion was impending and my brother wished to secure his cash money.*
- 7. My brother perished in a camp, whereas I survived. ...”.*

20. In the oral hearing the Appellant repeated what she already had stated in writing and gave the following additional information:

- a) Her brother [REDACTED], as he told her, took out the insurance policy of which she was beneficiary after she had become an orphan and he did so at the request of their late father.
- b) Before the Russian Army went into Romania, she said, her brother often gave her money in order to make the premium payments. She said these premium payments were high and, were made four times a year. She clearly recalled the company’s office, which was situated at the corner of the streets [REDACTED] and [REDACTED] at Cernauti and which she remembered was a large and impressive building. She also recalled that her brother was travelling a lot before he was imprisoned in a concentration camp and that from time to time she had to keep receipts of the quarterly premium payments in order to give them to her brother on his return from journeys.

- c) After the war she had contacts with a Mrs. [REDACTED] who gave her an address of the Respondent in Trieste (Italy). However, the company refused payment because of political changes in Romania.
 - d) Finally she stated that she was entirely sure that “[REDACTED]” [REDACTED] was the company that issued the policy upon which she is claiming; [REDACTED] had presented her with a blue table clock bearing the name “[REDACTED]” which she had put on the desk where she used to do her homework for school.
21. The Appellant’s representative in the oral hearing again pointed out that from his point of view the Respondent is liable for having kept records only in Romania and not also in the former headquarters of the company in Trieste. Other companies, as e.g. [REDACTED], even if not obliged by law had kept records in their headquarters and thus later were able to trace insurance policies better than the Respondent.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

22. In its decision letter dated 21st 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: in such context, we have traced an exchange of correspondence with you in June 1965 (see enclosures). However, our documentation is limited because the archives relating to policies in Eastern Europe were held locally and are no longer in our possession*”. [REDACTED] concluded, “*unfortunately we have to inform you that, based on the information you provided in 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.*”
23. In a letter dated 12th September 2003 sent by [REDACTED] with regard to the Appeal Process, [REDACTED] writes, “*unfortunately, with respect to the claim at issue, no supporting evidence of a contractual relationship has been either provided by the claimant, or found by [REDACTED] or by the ICHEIC. We simply found among our records a vague exchange of correspondence dating back to June 1965, which has been already enclosed in our decision letter dated February 21, 2003. This is the reason why we have no further documentation to be produced to the Panel. The ICHEIC/German Foundation Standards of Proof do provide for ‘relaxed standards of proof’ to be applied while examining Holocaust Era-related insurance claims, but they do not establish a complete inversion of the burden of proof, as far as the existence of the contractual relationship is concerned. Therefore, it is still the claimant’s duty to produce sufficient evidence of the insurance contract, and in our opinion a simple ‘affidavit’ – where even the alleged insured person’s surname is not sure – cannot be regarded as such. As we tried to explain above, the claimant’s lawyer’s statement n.3 (‘[REDACTED] had not records at all’) is not correct, and we thoroughly researched all the surviving information, finding the exchange of correspondence of 1965, which however does not give any evidence about the existence of the alleged insurance policy. On the other hand, [REDACTED] cannot be blamed for the consequences of the nationalization/expropriation of its Romanian former independent branch office, as well as for its practice of keeping the policy archives, because that was done in strict compliance with the provisions of local laws. For the reasons outlined above, we respectfully ask the Panel to reject the appeal submitted with respect to this claim, and to confirm [REDACTED]’s previous decision on it*”.
24. The two letters in Italian, which were discovered by [REDACTED], have the following content:

- a) In the letter dated 22nd June 1965 from the Appellant to [REDACTED] it is stated that her brother [REDACTED] took out a life insurance policy for her with [REDACTED] in Czernovitz and she asks [REDACTED] to examine its records.
- b) In the letter from [REDACTED] to the Appellant dated 30th June 1965 [REDACTED] (in the translated version) replied: *“We are sorry we are not able to give you any information about the life policy taken out by your brother before the war with our Rumanian branch. If you could at least give us the policy number we could perhaps look into our records and gratify your legitimate wish. But as we don’t even know this detail, it is truly impossible for us to reconstruct the situation regarding the policy in question. At the end of the war, our company was completely banned from working in Romania and the other Iron Curtain countries, and our portfolio was officially transferred to a state insurance company. For obvious reasons, we certainly can’t ask that company for any information regarding policies that used to belong to our Rumanian portfolio.”*
25. The Respondent’s representative in the oral hearing pointed out that according to the local laws it was sufficient to keep records only locally and that there was no legal requirement to keep a second set of records at the headquarters. Nowadays not to have records could not be regarded as [REDACTED]’ fault, since [REDACTED] was expropriated in the Eastern European countries and in consequence had lost all existing records. He also said that the Respondent did its very best to investigate thoroughly the Appellant’s case by tracing all records available. Only this had let them find the correspondence from 1965 which they were able to present to the Appellant. However, this exchange of letters in the Respondent’s point of view does not prove the Appellant’s statement that her brother had a life insurance policy in favour of the Appellant. He finally pointed out that some of the Appellant’s statements in the oral hearing were completely new, for example the quarterly payment of the premiums and the details regarding the blue table clock.

THE ISSUES FOR DETERMINATION

26. The main issue for determination in this timely filed appeal (the “new” appeal form signed within the 120 days period) 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:
- 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.
27. 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 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 Company.

28. Taken together, the Appellant’s written statements and her oral testimony cause the Panel to conclude that she has met her burden of proof. Her evidence has the requisite authenticity and particularity. In conformity with documented efforts over many years since the war the Appellant in the present claim has clearly particularised the company that issued the insurance and the place where the insurance was issued. What she says with regard to her father’s conversations with her brother about an insurance contract for her is consistent, sufficiently credible and detailed. She clearly recalled that her brother made her aware more than once that he had taken out an insurance policy in her favour after she had become an orphan and that he had taken responsibility for her, because their late father had asked him to do so. The Appellant’s factual narrative is entirely consistent with circumstances such as here where parents die before their children have grown up and wish to make sure that the future of their minor children is secure. She also remembered additional relevant details such as the frequency of the premium payments, the building of the Respondent’s former branch office in Cernauti. Also, the anecdotal detail of the blue “[REDACTED]” table clock contributes to the authenticity of her assertions. That this and other details were presented for the first time in the oral hearing does not diminish the credibility of the Appellant’s words and does not prevent the Panel from relying on them as additional corroborative evidence.
29. The Panel is also satisfied that it is plausible under section 17.2.1 above that the policy was in force between 1920 and 1945 as the policy was taken out after the Appellant’s father death (which was in 1934 or 1935).
 30. 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 for the reasons set out above (paragraph 28).
31. 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 Appellant’s brother (the policyholder) died in a concentration camp and the Appellant herself (the beneficiary) was prosecuted and sent to the Czernowitz ghetto for 4 years.
32. Contrary to the argument of the Appellant’s representative, it is irrelevant for purposes of this decision that the Respondent did not also keep records in its Trieste headquarters. There was no legal obligation to do so. According to the local laws in Romania of the time [REDACTED] had to keep its records concerning the Romanian portfolio only locally. By doing so [REDACTED] satisfied its obligations with respect to keeping records of its insurance contracts. As the Respondent’s representative rightly pointed out, [REDACTED] cannot be held responsible that nationalisation ended access to the local documentation and that there is only limited documentation in their headquarters.
33. However, [REDACTED]’ 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 not a sufficient defence against the plausibility of the Appellant’s assertions who, under the relaxed standards of proof, has carried her burden.

VALUATION

34. In determining the present value of the policy, the existence of which was established under the relaxed standards of proof, the Appeals Panel had, since the value of the policy cannot otherwise be determined, 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).
35. 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, 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.
36. 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.
37. 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.
38. 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. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC which had been consulted with the Foundation and the [REDACTED] as the other two parties of the Agreement (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 %; 2004: 5.0 % according to the month, in which the decision is made, plus two months, i.e. 3/12 of 5.0 %). A calculation on this basis leads to the amount of US\$ 11,014.49430106344 for 2001, US\$ 11,565.219016116612 for 2002, US\$ 12,114.56691938215107 for 2003 and US\$ 12,295.999005874427958375 for 2004.
39. This total amount of US\$ 12,296 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 APPEALS 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 15th day of January 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member