

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]

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 was born on [REDACTED] 1917 in Valpovo ([REDACTED]). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1887 in Kecel (former Austria-Hungary, now Hungary) and died on 31st July 1942 at the concentration camp Jasenovac ([REDACTED]). [REDACTED] was born on [REDACTED] 1895 in Valpovo (former Austria-Hungary, now Croatia) and died on 31st July 1942 at the camp of Stara Gradiska ([REDACTED]). The Appellant has a sister, [REDACTED], née [REDACTED], who was born on [REDACTED] 1923 in Belisce and lives now in Frankfurt am Main (Germany).
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 an insurance company that she cannot identify but which could have been “[REDACTED]” or “[REDACTED]” issued “*property insurance*” to her father.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 20th May 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 22nd August 2003, which was accompanied by an attachment.
6. The Appeals Office received this on 25th September 2003 and mailed a copy to [REDACTED] on 1st October 2003.
7. [REDACTED] responded in a letter dated 30th October 2003 and requested the Appeals Panel to “*reject the appeal submitted with respect to this claim, and to confirm [REDACTED]’s previous decision on it*”.
8. On 3rd November 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 and forwarded a copy of the letter dated 30th October 2003 to the Appellant.
9. In a non-dated letter, which the Appeals Office received on 17th November 2003, the Appellant informed the Appeals Panel that she would not be able to respond within 14 days because she was ill. The Appeals Panel extended this time limit for another 14 days, and the Appeals Office informed the Appellant of this extension by letter dated 28th November 2003. On 18th December 2003 the Appeals Office received a letter dated 17th November 2003 that the Appellant’s sister, [REDACTED], already had sent in her appeal no. [REDACTED] (claim number [REDACTED]). Attached to this letter were a certificate of birth of the Appellant’s father and a letter from “[REDACTED]” dated 11th March 1946.
10. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
11. 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

12. In the Claim Form the Appellant gave the following information about her claim:
 - a) Question 3.1 (concerning ‘*name of company*’) she answered with “*I don’t know.*” However, the Claimant states that the policy was purchased in Osijek, [REDACTED] and in answer to question 3.3 she states, “*I think that the insurance company could be*

either [REDACTED] or '[REDACTED].'" (The claim was subsequently sent only to [REDACTED] as the 'named company'.)

- b) In answer to question 4 relating to 'documents' the Appellant writes "*from the attached letter it can be seen that the business '[REDACTED] and [REDACTED]' existed – a shop with manufactured, haberdashery and fashionable goods and ready-made clothes – which was confiscated together with the whole inventory immediately in 1941 by the independent country of Croatia (NDH).*"
- c) The Appellant identifies that type of insurance policy as 'property insurance', but she does not provide any specific details concerning the policy number, sum insured, date of issue or date of maturity.
- d) The Appellant does however state that the premiums were all paid to the best of her knowledge and were paid until 1941 when the shop was confiscated. The policyholder is identified as [REDACTED], born 9th September 1887, the Appellant's father.
- e) In answer to question 7 concerning the 'insured person' the Claimant writes, "*property – firm '[REDACTED] I [REDACTED]' ([REDACTED] and [REDACTED]) See note on page 11.*". The address of the insured business is stated as "*[REDACTED] – Road (I don't remember the number), Osijek, Yugoslavia.*" The beneficiary is identified as the Claimant's father. [REDACTED] is identified as a 'living heir'. Information given in question 11 relates to the full name of the business.

RELATED CLAIMS

13. Claim no. [REDACTED]

This appears to be a copy of the claim form number [REDACTED].

- a) The Appellant again does not name an insurance company, but states "*I think that the company could be either [REDACTED] or '[REDACTED].'*"
- b) Also in answer to question 4 regarding documents, the Appellant writes, "*from the attached letter it can be seen that the business '[REDACTED] and [REDACTED]' existed – a shop with manufactured, haberdashery and fashionable goods and ready-made clothes – which was confiscated together with the whole inventory immediately in 1941 by the independent country of Croatia (NDH).*"
- c) The Appellant provides – as in claim number [REDACTED] - no specific details relating to the policy, but states that it was 'property insurance'.
- d) The Claimant identifies also in this claim her father [REDACTED] as the policyholder. In answer to question 7 concerning 'insured person' the Appellant writes, "*property,*

firm [REDACTED] I [REDACTED]”. The named beneficiary is identified as her father.

- e) In this Claim File is a document dated 12th June 1946, which according to the English translation is addressed to [REDACTED] and states the following: *“On the basis of the decision, brought about by the District National Court in Osijek, under the current number IV.R.1389/45 dated 30.XI.1945, it is hereby confirmed that the real estate which was confiscated from you and made state property under the former National Republic of [REDACTED]...is to be returned to you as to a rightful owner to be your possession and for you to have the unlimited right to dispose of it as you wish...In the same decision it was also confirmed by the District National court in Osijek, under the same current number, that you are also made the owner of the real estate that belonged to your sister [REDACTED], but was confiscated from the rightful owner [REDACTED] from Osijek, registered under..., which also consists of ½ part house, also situated in [REDACTED]. The real estate is passed on to you as the nearest direct relative of the former owner for you to manage and own the property, as well as to enjoy it, you are also the rightful owner of all the income that goes with the property.*

This claim does not appear to have been processed.

14. Claim no. [REDACTED]

- a) The Appellant identifies the insurance company that issued the policy as ‘[REDACTED]’ and states that the policy was purchased in Osijek, Croatia. In addition she writes, *“I remember that there was a sign on the house with the name of the insurance company ‘[REDACTED]’ “*.
- b) In answer to question 4 regarding ‘documents’, she writes, *“I enclose the correspondence from the National Regional Board in Osijek, the department for National Property from which can be seen that there was a house in [REDACTED] street number [REDACTED] which was confiscated in 1941 and returned in 1945.”* The policy is identified as ‘house insurance’, with no specific policy details provided.
- c) [REDACTED] the Claimant’s mother is identified as the policyholder.
- d) In answer to question 7 concerning ‘insured persons’ the Claimant writes, *“house in [REDACTED] street number [REDACTED] 18, Osijek, Yugoslavia.”* The beneficiary is named as ‘[REDACTED]’.
- e) A further document, dated 9th May 1942, was sent with the Claim Form. The translated version states that there is a decision of the State Treasury dated 23rd February 1942. The decision of 9th May 1942 reads: *“nationalisation of property belonging to Jews and Jewish Court for state businesses”*. An extract reads as follows: *“namely an entry of deletion of the former owners of [REDACTED] and [REDACTED] is to be made in relation to the business [REDACTED] and [REDACTED] traders in manufactured goods, haberdashery, fashionable and ready-made clothes based in Osijek. The*

Independent State of Croatia is to be registered as its sole owner. It is ordered for the business to be transferred from the Trade Register for state businesses into the Register for independent businesses... ”.

15. In both claim forms the Claimant identifies [REDACTED] as a ‘living heir’.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In the final decision letter issued by [REDACTED] dated 20th May 2003 and quoting solely claim no. [REDACTED], [REDACTED] writes, *“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.”*

[REDACTED] continues, *“unfortunately we have to inform you 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.”*

THE ISSUES FOR DETERMINATION

17. The main 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 of the Agreement), section 17, in conjunction with section 2 (2) of the Agreement and section 1.3 of the Appeal Guidelines as the Appellant here is claiming for the proceeds of a non-life insurance policy.
18. Pursuant to this the Appellant must establish, based on the Relaxed Standards of Proof, that it is plausible that the claim relates to a non-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 by the occurrence of the insured risk.
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 company.
20. The Panel is not satisfied that the Appellant has met her burden of proof in so far as a policy insuring property was taken out at “[REDACTED]”. A valid claim would exist against the respondent only if a policy were issued by this company, because [REDACTED] is not liable for contracts taken out with “[REDACTED]” as “[REDACTED]” was not a subsidiary of [REDACTED]. Regarding the Appellant’s assertions, it is only plausible that a policy was taken out from “[REDACTED]”. Both, the Appellant in this appeal, as well as her sister in another appeal for the proceeds of a life insurance policy (appeal no. [REDACTED]) mentioned repeatedly that there was a sign- “[REDACTED]” on the wall of

the insured estate indicating that this company was the insurer. Even if this does not exclude the possibility of a second insurance policy issued by a different company, the Appellant stated that there was only one insurance for her father's property issued by [REDACTED] or "[REDACTED]". Under these circumstances the Appellant has not made out a plausible claim that her father had an insurance policy, which was not paid out by [REDACTED] as a successor of the issuing company.

21. Since the Panel is convinced that there was an insurance policy in existence, even if the Appellant was not able to establish that it was with [REDACTED], the Panel concludes that the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures upon final consideration and dismissal of all her possibly outstanding named company claims related to the same information within the ICHEIC process. The Panel will inform the ICHEIC accordingly.

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