

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], who was born on [REDACTED] 1929 in Vezseny, county of Szolnok (Hungary).
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that “[REDACTED]” issued a joint capital, disability and accident insurance to her father [REDACTED]. In response to the question “*Was the policyholder and/or insured and/or beneficiary a victim of the Holocaust?*”, she answered “yes”.

The ICHEIC submitted the claim to the Respondent as the legal successor to [REDACTED]. [REDACTED] stated in its decision letter dated 20th May 2003 “*Unfortunately we have to inform you that, based on the information you provided and our search, no evidence was given as to the status of “Holocaust victim” according with the ICHEIC definition; therefore we are declining your claim*”.

4. The Appellant submitted an appeal to the Appeals Office dated 10th July 2003, which the Office received on 21st August 2003 and which was accompanied by an attachment setting out the reasons for the appeal.
5. The Appeals Office forwarded a copy of the appeal to [REDACTED] on 28th August 2003.
6. In a letter dated 18th September 2003 [REDACTED] repeated the reasons for declining the claim it had set out before adding: “*with respect to the appellant’s statement dated July 10, 2003, it must be remarked that the simple registration of the claim by the ICHEIC, as well as the simple issue of an insurance policy during the ‘ICHEIC relevant period’, are not sufficient to fulfil the main condition provided for by the ICHEIC-German Foundation rules, that is the status of Holocaust Victim. Also the appellant’s recollection that ‘due to World War II in 1943 we had to escape...’ does not seem to distinguish her family’s status from the condition of many millions of European families who were even more severely damaged by World War II, without being Holocaust victims at all. On the other hand, both the appellant’s statement – in the claim form – that all the premiums were paid (of course, up to the nationalization laws of June 1946), and her recent declarations – according to which ‘after the marching of the Soviet army all documents vanished and the house was pulled down too. From 1945 my father was sentenced to slave labour...’ clearly show that her family’s hardships actually started because of the Communists*”.
7. The Appeals Office forwarded this letter to the Appellant on 19th September 2003 and asked her at the direction of the Appeals Panel whether she was a Holocaust victim as defined in Section 14 of the Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002. The Office also informed both parties that the appeal will be on a “documents only” basis unless either party requests an oral hearing within 14 days of the date of receipt.
8. The Appellant responded in a letter dated 9th October 2003 stating:

“1./ The policyholder ,Mr. [REDACTED] was a victim of the Holocaust.

2./ When the so called “Jewish law” came into force in Hungary at Kerekduvar in the farm, where my father was manager Jewish men were hidden, that’s why we had to escape from there.

3./ In consequence of them the whole property and value, besides them a valuable tenure of land as well as a 50 hectares estate which was own land were taken away too”.

9. By letter dated 20th October 2003, [REDACTED] responded: “In our opinion, the Appellant’s statements of October 9 are not supported by any reliable evidence and – moreover – they are not consistent with the previous declarations made by the same Appellant in the original claim form, in the subsequent correspondence (please see attached her reply dated October 23, 2002 to our request for clarifications), and in the grounds for appeal dated July 10, 2003.

- As a matter of fact, the above mentioned Appellant’s declarations show that the policyholder/insured – who does not appear to be of Jewish origins – kept his position during the war as the manager of a large agricultural domain, without suffering any persecution. In this position, he was able to help and support Jewish people and other forced labourers who worked in his farm. This fact, which deserves the highest acknowledgement and appreciation, cannot be regarded as an evidence of having been a Holocaust Victim in the light of the German Foundation/ ICHEIC definition.
- The damages and hardships suffered by the policyholder/insured and all his family appear to have been actually due to the defeat of the Hungarian army and to the Invasion of the soviet troops, which forced them to ‘move in hurry in 1944’ (see the October 23, 2002 Appellant’s letter), and caused the loss of their possessions. Such an occurrence, which harmed millions of European families during those terrible years, does not qualify of course the Appellant’s family with the status of Holocaust Victims.
- On the other hand, the Appellant’s statement according to which all the insurance premiums were paid (of course, up to the nationalization laws of June 1946 at the latest) is not consistent with the status of Holocaust Victim, as after the nazi inversion of Hungary, no Holocaust Victim in our experience was any longer able to fulfil contractual obligations, because of the increasing persecutions.”

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 there.

THE CLAIM

12. The Appellant has submitted the following documents in relation to her claim:

- a) Copy of an insurance policy issued by [REDACTED], policy no.[REDACTED]. The capital insured was 2000 golden pengo. The contractor and insured party is identified as [REDACTED], with the beneficiary named as “the insured gentleman, on his death his

wife [REDACTED] née [REDACTED] and the insured gentleman's children". The term of insurance is given as 20 years with the expiration of insurance given as 26 July 1955. The annual premium is given as 139 golden pengo and 85 filller. The insurance policy is dated 26 July 1935;

- b) Copy of a document entitled 'family insurance' dated 26 July 1935 regarding policy no. [REDACTED];
 - c) Copy of a calculation table regarding insurance premiums for policy no. [REDACTED];
 - d) Many copies of premium payments for policy no. [REDACTED], the earliest copy dates from January 1936 and the latest is March 1943;
 - e) Copies of death certificates of her parents [REDACTED], who died on 10th November 1956 in Mezöhegyes (Hungary), and of [REDACTED], nee [REDACTED] [REDACTED], who died on 4th April 1991 in Szolnok (Hungary).
13. A further statement was received by fax as an attachment to [REDACTED]' letter dated 20th October 2003. In this statement the Claimant writes, "*replying on your letter in which you have been enquiring on our life between 1939 and 45. I can inform you: My father was employed as domanial chief steward on (Jászberény) Kerekudvar agricultural domain between 1939–45. He managed this big farm alone and so he was not soldier in that time. Besides this employment my Father leased a small –100 acre land to our own 15 acres and we run this farm too. We had to move to Erdötarcsa in hurry in 1944 (where my grandparents lived), leaving everything behind. We lost everything, there were only some clothes what we wore only. After the war (in 1945) my Father was immediately arrested, thanks to the jewish people he could attest by documents (a letter is enclosed) which way He helped them imperiling his (and his family) life (39-45). There were many inmate of forced labour on Kerekudvar agr. domain and my Father gave them foodstuffs regularly free or for almost nothing and there was a Mr. [REDACTED] jewish painter who had lunch regularly in our house. My father was threatened many times to be taken to the ghetto as well but he did not care about it he wanted to save those people life but at the end he had to escape from there.*" She outlines the family's loss and states that the behaviour of her parents towards Jewish people resulted in her family losing everything. She enclosed a letter dated 23rd October 1945 in Hungarian with her statement, which according to the translation is a statement from the former estate doctor about the Claimant's father. It reads: "*Further to your request to give us a statement regarding your attitude over the past few years, we stated the following: In the past few years while the anti-Jew laws had posed increasingly more obstacles, even prohibitions for us to keep in touch, you have undertaken everything to keep up contact between us. When this had finally become unsustainable, you used every means to support us in that you helped us access different kinds of produce /wheat, milk, poppy seeds, pork, wood/ at the best possible prices. Whenever we were in contact in person, and we discussed the circumstances you always condemned our persecution and gave us encouragement in saying that our situation will change for the better*".

14. The Appellant sets out the reasons for her appeal as follows:

“The claim was accepted by international committee in number [REDACTED].

According to the section 17.2.1 of the ANNEX E the policy was issued in proper time.

Due to II. World War in 1943 we had to escape from Jászberény to Erdőtarcsa to my grand father only with our most necessary things.

After the marching of the soviet army all documents vanished and the house was pulled down too. From 1945 my father was sentenced on slave labour, after that was interned from where his Jewish friends managed to bring in six month later. Till 1946 he was living on casual works, the he became main agronomist in a state farm in Tede in Hajdúnánás. He dies in 1956.

The insurance was paid from end to end, but the certificates of the payment were disappeared with his personal things when he died. Anyway there was no payment for policy at all”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. [REDACTED] denied the claim for the reasons set out in its letters dated 20th May 2003, 18th September 2003 and 20th October 2003 (see above paragraph 4, 7 and 10).

THE ISSUES FOR DETERMINATION

16. The appeal is deemed to have been filed in a timely fashion because it was sent to the Post Office Box in the Netherlands where procedures for determining date of receipt were insufficient.

17. The Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002 covers, according to its introductory language, *“the settlement of individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice”*. A claim concerning non-life insurance is, according to Section 2 (2) lit. c) eligible for compensation, *“if the benefits of the policy were not paid out, because the policy holder became a Holocaust victim before an original insurance claim could be lodged, or if lodged before it could be settled or the benefits were confiscated by the German National Socialist Regime or by the government authorities as specified in the definition of Holocaust victim in Section 14”*. Losses and deprivations not connected with National Socialist injustice and specifically the Holocaust are not covered by the Agreement. Therefore, the sole issue for determination in this Appeal is whether the policyholder and or Appellant is a Holocaust victim in the sense of Section 14 of the Agreement.

18. For purposes of the Agreement, *“Holocaust victim”* means *“anyone who, as a result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime, was deprived of his/her life or freedom; suffered damage to his/her mental or physical health; was deprived of his/her economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss or damage to his/her property. For the purpose of this definition, persecution by governmental authorities of the*

following countries for the period in brackets until the end of the Second World War in the following countries is considered equal to persecution by the organs of the German National Socialist Regime: ... Hungary (1939) ...”.

19. The loss or deprivation of financial assets, which the Appellant suffered, was not the result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime or Hungarian authorities during the war. It was instead the result of the political and economic developments in the last years of the war and in post-war Hungary. The Appellant states that all premiums had been paid. According to the contract for policy no. [REDACTED] premiums had to be paid twice a year (on the 26th day of July and January) until expiry of the insurance contract (which was on 26th July 1955) or death of the insured (which was after the expiry of the contract in 1956). The Appellant offers no convincing evidence that the insurance contracts came to an end or that the insured sum was not paid out after they reached maturity because of persecution by the German National Socialist Regime or Hungarian authorities before 8th May 1945. Quite the reverse, in her letter to [REDACTED] of 8th December 2002 she states that her father was employed as “*dominial chief steward*” at an “*agricultural domain between 1939 and 1945*”. She continues that he was arrested “*after the war (in 1945)*” but released after Jewish people, whom he had helped during the National Socialist Regime in Hungary, testified in his favour. Finally she does not assert that leaving Jászberény and going to her grandparents in Erdőtracsa in 1944 was the result of persecution by the German National Socialist Regime or Hungarian authorities. The reason rather was the war. The father of the Appellant and the family had to leave Jászberény as a result of the war, as the Appellant herself has stated in the letter mentioned above giving the reasons for the appeal. Her later assertion in the letter dated 3rd October 2003 that her father, and the family had to escape, because Jewish men were hidden in the farm managed by her father, is not sufficiently detailed as to convince the Panel that the main reason for fleeing Jászberény was not the war as such.

On the basis of the Appellant’s assertions, her father appears to have conducted himself admirably under difficult circumstances. The fact that he was not a Holocaust victim does not diminish the human decency of his conduct, but it does not qualify him as a Holocaust victim within the context of our rules.

20. Accordingly, we find that the policyholder and/or beneficiary were not Holocaust victims within the meaning of Section 14 of the Agreement. The Appellant is, therefore, not entitled to compensation under the Agreement.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 7th day of January 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member