

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

Fax: ++ 44 (0) 207 269 7303

Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBERS: [REDACTED]
[REDACTED]
CLAIM NUMBERS: [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], born on [REDACTED] 1937 in Ramat Gan, Israel. He is the grandson of [REDACTED] who was born on [REDACTED] 1880. He fled to England to escape the Holocaust [REDACTED] The Appellant is also the grandson of [REDACTED], who was born on [REDACTED] 1873 in Ostrowo, District of Posen (then Germany, now Poland). He was sent to the ghetto of Lodz in 1942.
2. The Respondent is [REDACTED] as the successor of [REDACTED].

3. The Appellant submitted nineteen separate claims relating to different members of his family to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that a company he could not name issued a policy of life insurance.
4. The ICHEIC forwarded all of the unnamed claim forms to the Member companies and German companies. As noted hereafter, the records of the Respondent discovered information relative to only two of the individuals named in those claim forms. Those two claims are the sole subjects of this appeal. The claim form submitted with respect to [REDACTED] on 11th July 2000 was assigned claim number [REDACTED], and the claim form submitted on 13th July 2000 with respect to [REDACTED] was assigned claim number [REDACTED].
5. [REDACTED] found name cards for policies issued to [REDACTED] and [REDACTED] by [REDACTED], a predecessor of the Respondent, and informed the Appellant in a letter of 31st July 2003. In this letter the Respondent denied both claims (numbers [REDACTED] and [REDACTED] respectively) on the grounds that all policies had been paid out.
6. The Appellant submitted two appeal forms to the Appeals Office dated 15th October 2003, which arrived on 13th November 2003. In the appeal forms the Appellant set out his reasons for this appeal and submitted copies of the name cards found by the Respondent.
7. The Appeals Office mailed copies to the Respondent on 13th November 2003.
8. [REDACTED] responded by letter dated 27th November 2003 (see paragraph 17).
9. On 13th January 2004 the Appeals Office informed both parties that the appeal would 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.
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 submitted in his claim forms the following information relating to the claim for the proceeds of two life insurance policies.
 - a) Claim number [REDACTED]
 - i) No information is provided about the identity of the insurance company that issued the policy or any other insurance policy details.
 - ii) The policyholder is identified as [REDACTED], the Appellant’s grandfather, who was born on [REDACTED] 1873 in Ostrowo,

- iii) The insured person is identified as [REDACTED].
 - iv) The named beneficiary is unknown.
- b) Claim number [REDACTED]
- i) No information is provided about the identity of the insurance company that issued the policy or any other insurance policy details.
 - ii) The policyholder is identified as [REDACTED], the Appellant's grandfather.
 - iii) The insured person is identified as [REDACTED].
 - iv) The named beneficiary is unknown.

13. In the appeal form relating to claim number [REDACTED] the Appellant writes, *“I do not agree with the decision about my grandfather's life insurance – [REDACTED] – policies. As to my opinion, the copy attached to your letter, is not a document. There is not the Firm's name, what life insurance plan, where from the payment was, and confirmation that the money really was paid to my Grandfather. Ransom of life insurance 11 years before the Holocaust, in which my grandfather was murdered, seems no reasonable, only if it was under pressure. Has somebody forced my grandfather to stop his life insurance, so that nobody would pay his relatives after pursuing him from Berlin to Ghetto Kovno where he was murdered.”*

14. In the appeal form relating to claim number [REDACTED] the Appellant writes, *“I do not agree with the decision about my grandfather's life insurance policies – [REDACTED]. As to my opinion, the copy attached to your letter is not a document. There is not the Firm's name, which life insurance plan, where from the payment was made, and confirmation that the money was really paid to my Grandfather. Ransom of the money of life insurance 9 years before the Holocaust, in which my Grandfather fled to England in the last minute, seems not reasonable, only if it was under pressure. Has somebody forced my Grandfather to stop his life insurance, so that nobody would pay his relatives after his death?”*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. The Respondent found name cards for the Appellant's grandfathers, [REDACTED] and [REDACTED]. Copies of these cards were enclosed with the decision letter dated 31st July 2003. The information found in the respective name cards is set out below.

[REDACTED]
[REDACTED]
[REDACTED] 1873

ausgezahlt am 5.6.1928

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] 1880

ausgezahlt am 10.2.1930
" " 20.1.1930

I. [REDACTED]
[REDACTED]

II [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

16. In this decision letter the Respondent states, “we have found a document relating to your grandfather, Mr. [REDACTED], and a document relating to your grandfather, Mr. [REDACTED], but no documents relating to yourself, Mr. [REDACTED], in our company archives. In accordance with the Agreement we are able to confirm the existence of policy No. [REDACTED] taken out by Mr. [REDACTED] and policy numbers [REDACTED] and [REDACTED] taken out by Mr. [REDACTED] with [REDACTED].”

With regard to life insurance policy number [REDACTED] for [REDACTED] [REDACTED] states: “What we found was that a name card exists for your grandfather, Mr. [REDACTED]. This card relates to life insurance policies taken out with [REDACTED], a predecessor company of the [REDACTED] under the policy numbers [REDACTED] and [REDACTED] respectively [REDACTED]. The [REDACTED] is a predecessor company of [REDACTED].

As a result of inflation, the life insurance numbers [REDACTED] and [REDACTED] were included in the upgrade certificate number [REDACTED]. This means that the upgrade certificate number [REDACTED] comprises the afore mentioned life insurances.

Moreover, the name card contains the remark ‘ausgezahlt am 5.6.1928’ which stands for English ‘paid out per 5.6.1928’. According to the ICHEIC’s guidelines for evidence which follow when making our decisions, all kinds of documents are to be classified as sufficient for the existence of life insurance policies as long as they are credible. The same applies to documents proving or indicating that life insurance benefits were paid out.”

Addressing life insurance policy numbers [REDACTED] and [REDACTED] for [REDACTED] the Respondent writes, “what we found was that a name card exists for your grandfather, Mr [REDACTED]. This card relates to one life insurance policy taken out with [REDACTED], a predecessor company of [REDACTED] under the policy numbers [REDACTED] respectively [REDACTED] and another insurance policy taken out with

[REDACTED] under the policy numbers [REDACTED], [REDACTED] and [REDACTED] respectively [REDACTED].

As a result of inflation, the life insurance [REDACTED] was included in the upgrade certificate [REDACTED] and life insurance numbers [REDACTED], [REDACTED] and [REDACTED] were included in the upgrade certificate number [REDACTED]. This means that the upgrade certificate number [REDACTED] comprises the afore-mentioned life insurance number [REDACTED] and upgrade certificate number [REDACTED] comprises the afore-mentioned life insurance numbers [REDACTED], [REDACTED] and [REDACTED].

Moreover, the name card contains the remarks 'ausgezahlt am 10.2.1930' which stands for English 'paid out per 10.2.1930' and 'ausgezahlt am 20.1.1930' which stands for 'paid out per 20.1.1930'. According to the ICHEIC's guidelines for evidence, which we follow when making our decisions, all kinds of documents are to be classified as sufficient for the existence of life insurance policies as long as they are credible. The same applies to documents proving or indicating that life insurance benefits were paid out."

[REDACTED] concludes, "in your case, the name cards we found clearly shows that the life insurance policy number for [REDACTED], [REDACTED], was paid out as per 5.6.1928 and life insurance policy numbers for Mr. [REDACTED], [REDACTED], was paid out per 10.2.1930 and [REDACTED] was paid out as per 20.1.1930. Please find attached copies of the name cards, which prove that the policies were paid out in full to the person entitled. Hence, no more claims may be made under these policies."

17. *[REDACTED] responded to the Appellant's reasons for appealing the decision in a letter dated 27th November 2003. This letter refers to both claims and states, "the name cards consider the notation 'ausgezahlt am 5.6.1928' respectively 'ausgezahlt am 10.2.1930'/'ausgezahlt am 20.1.1930', which prove that the policies were paid out on 05.0.1928 respectively on 10.02.1930 and 20.1.1930. According to the ICHEIC's guidelines for evidence, which we follow when making our decisions, all kind of documents are to be classified as sufficient for proving or indicating that policies were paid out or expired as long as they are credible. The fact that the policies were paid out, is indicated on the name cards and credible.*

Considering the long time passed and the termination of the legal and practical retention time no further documents exist in respect of the insurance policies so that there is no indication of how high the sum insured was, nor of the history of the policy, except that the policies were paid out to the persons entitled and no more claims are valid on these policies."

THE ISSUES FOR DETERMINATION

18. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), to consolidate claim numbers [REDACTED] and [REDACTED]. They were denied by the same decision letter based on similar considerations and are appealed with the same arguments. They are ‘*related appeals*’ in that they have been submitted by the same Appellant ([REDACTED]), although relating to different life insurance policies, issued by the same company to the Appellant’s grandfathers.
19. There is no doubt that the Appellant’s grandfathers, [REDACTED] and [REDACTED] had insurance policies with [REDACTED], that the Appellant could be entitled to the proceeds of these policies and that his grandfathers were Holocaust victims. Therefore, the claim of the Appellant is within the scope of the Agreement dated 16th October 2002. However, the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. Section 17.3 Appeal Guidelines provides that the claimant is not entitled to payment from the Foundation funds if:
 - 17.3.2 *the insurance policy in question was fully paid as required by the insurance contract. However, where it appears that the policy was paid or surrendered into a blocked account the provisions of Section 5 of the Valuation Guidelines shall apply.*
20. As far as the upgrade certificate number [REDACTED] for [REDACTED] is concerned (Aw is the abbreviation of “*Aufwertungsschein*” which is the German word for upgrade certificate) the term “*ausgezahlt am 5.6.1928*” demonstrates that a payment in relation to the policy referenced on the name card was made on 5th June 1928.
21. As far as policy number [REDACTED] and upgrade certificate number [REDACTED] for [REDACTED] are concerned the terms “*ausgezahlt am 10.2.1930*” and “*ausgezahlt am 20.1.1930*” demonstrate that payments in relation to the policies referenced on the name card were made on 10th February 1930 and 20th January 1930 respectively.
22. There is no basis in the instant case to apply the presumption that the payments were paid into blocked accounts since payment of the policies was made prior to the dates defined in Section 5 of the Valuation Guidelines i.e. 1933-1939, as to which such assumption would apply.
23. The Panel acknowledges that the name cards submitted by the Respondent do not, on their face, contain specific life insurance company information. These name cards, however, were found in the Respondent’s archives and are the only existing documents referencing the life insurance policies of the Appellant’s grandfathers. Without these documents, there would have been no plausible evidence supporting the existence at any time of life insurance policies, and Claimant’s mere assertions, containing no other information would, clearly, have failed to satisfy his burden of proof. Moreover, under the relaxed Standards of Proof (Annex B of the Agreement) it is recognised that some company records will have been destroyed, either during the war or in the normal course of business. Furthermore, Part

C of Annex B permits the Respondent “to use any evidence available to them from their own records or external archives to prove the status of the policy. In this context so-called ‘negative evidence’ (e.g. an inference from the absence of a policy from certain company registers that the policy did not exist or was cancelled or paid) is in principle admissible in determining a claim and in an appeal, subject to sufficient supporting evidence being available from the audit proves and elsewhere, to show that the company records in question are trustworthy and comprehensive.” The Appeals Panel is bound by the Agreement and its Annexes, including among others Annex B, which were negotiated and agreed upon by the three Parties and must be considered when making a decision on a claim or an appeal. The Panel, therefore, accepts the documentary evidence presented by the Respondent as evidence that the only life insurance policies as to which any proof has been presented were also paid in the years noted above, prior to the commencement of the Holocaust.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 8th July 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member