

## THE APPEALS PANEL

Established under an Agreement dated 16<sup>th</sup> 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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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

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### PRIVILEGED AND CONFIDENTIAL

**APPEAL NUMBER:** [REDACTED]

**CLAIM NUMBER:** [REDACTED]

### **BETWEEN**

[REDACTED]

Represent by  
Rechtsanwältin [REDACTED],  
Berlin, Germany

**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], born on [REDACTED] 1933 in Jassy (also Iasi, Romania). She is the daughter of [REDACTED]. [REDACTED] was born on [REDACTED] 1905 in Vatra-Dornei (former Austria-Hungary) and died on 31<sup>st</sup> March 1987 in Ramat Gan (Israel). He and his brother started a business in 1935 but had to give it up because of the war and persecution.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 3<sup>rd</sup> August 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that [REDACTED] issued a policy of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 27<sup>th</sup> June 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 10<sup>th</sup> October 2003 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 16<sup>th</sup> 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 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 Appeals 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 14<sup>th</sup> October 2003 to sign an amended appeal form.
8. On 5<sup>th</sup> December 2003 the Appeals Office received the new appeal form, which is dated 27<sup>th</sup> November 2003 and which was not signed.
9. After having been made aware of the missing signature the Appeals Office received a signed appeal form on 11<sup>th</sup> December 2003 and mailed a copy to the Respondent.
10. [REDACTED] responded in a letter dated 22<sup>nd</sup> December 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”*.
11. On 23<sup>rd</sup> December 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.
12. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.
13. The appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16<sup>th</sup> 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

14. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
- a) The Appellant identifies “[REDACTED]” as the insurance company that issued a policy.
  - b) She states that the policy was purchased in Jassy in Romania from an agent named [REDACTED].
  - c) In section 5 the Appellant identifies the policy as a life insurance policy and states that the currency was Lei. She states that the premiums were paid on an annual basis until 1941, when they stopped due to the Nazi persecution.
  - d) In section 6 the policyholder is identified as [REDACTED], born on 20<sup>th</sup> May 1905 in Vatra Dornei, Romania. He was the Appellant’s father. He died on 31<sup>st</sup> March 1987 in Ramat Gan, Israel.
  - e) [REDACTED] is also identified as the insured person in section 7 and the named beneficiary in section 8.
  - f) The Appellant answers questions 6.15, 7.14 and 8.14 (“*Do you know of any living heirs of the policyholder/insured person(s)/named beneficiary ?*”) with “no”.
  - g) In response to question 11 asking the Appellant for further information, she writes “*in 1935 my father started a business with his brother, in Jassy. He required bank loans for this, which he was granted. [REDACTED] was a banker as well as an insurance agent for [REDACTED]. He made the granting of the loan dependent upon my father taking out a life insurance policy so that the loan was guaranteed should anything happen to him. I do not know the amount of the sum insured but it must have been a considerable sum. It was all in vain as the payments could not be continued due to the war and the persecution, and in addition, after the war, no payments resulted out of the policy*”.
15. On the Appeal Form the Appellant’s representative writes: “*1. The objection is precautionary. 2. Copies of the supporting documents and evidence were not enclosed in the decision, so the decision was incomprehensible. 3. The decision is based on false facts. Policyholder was fleeing the Nazi persecution*”.

## THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In a letter dated 28<sup>th</sup> January 2002 the Respondent 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. Unfortunately we must 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.”*

17. In the decision letter dated 27<sup>th</sup> June 2003 the Respondent concludes that its provisional decision was correct and denies the claim.
18. A further statement was issued by the Respondent in response to the Appeals Process, dated 22<sup>nd</sup> December 2003, which adds, *“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 the ICHEIC. This is the reason why we have to confirm the rejection of this claim, and also the reason for our impossibility to produce the Panel any document related to the claim at issue, because no such document is available*

## **THE ISSUES FOR DETERMINATION**

19. The first 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, 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 1<sup>st</sup> January 1920 and 8<sup>th</sup> 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.
20. The Appellant has succeeded in establishing that a life insurance issued by [REDACTED] existed.
21. 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.
22. The Panel has concluded that the Appellant has met her burden of proof in that her evidence has the requisite authenticity and particularity. The Appellant has particularised the name of the local representative selling the insurance, the company that issued the insurance, where the insurance was issued and the circumstances under which the policy was issued. She

states that in 1935 her father started a business with his brother in Jassy (Iasi), for which he required bank loans. [REDACTED] who was the banker who granted these loans was at that time, also an insurance agent of [REDACTED]. In addition, Mr. [REDACTED] made the granting of the loan dependent upon her father taking out a life insurance policy so that the loan was guaranteed should anything happen to her father. Based upon this detailed recitation 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 loan was granted in 1935 and that security had to be offered in the form of a life insurance contract. Further, it is plausible under section 17.2.2 above that the Appellant is the person entitled to the proceeds of the policy as the only living relative of the policyholder, insured person and named beneficiary. Finally, with regard to section 17.2.3 above, there is no doubt that the policyholder is within the definition of Holocaust victim as set out in section 14 of the Agreement as he was persecuted by the National Socialist Regime after 1941 and had to give up his business, as a result of which he was unable to continue to pay the premiums on the life insurance policy.

23. That the life insurance policy, according to the Appellant, was taken out to secure an underlying bank loan does not alter this result. While the intent may have been that the bank would be the primary beneficiary under the policy as a secured lender, there is nothing to suggest that the underlying loan had not been reduced or paid off in its entirety by the time the insured event occurred. In this regard it is also significant that the Respondent has not interposed as a defense to the claim pursuant to section 17.3.3 of the Appeal Guidelines that another person other than the claimant has a higher entitlement to the proceeds of the policy.
24. [REDACTED]'s statement that it has not found a match with 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 valid defence against the plausibility of the Appellant's assertions.

## **VALUATION**

25. Under the Tripartite Agreement the valuation of policies are to be based solely on the Valuation Guidelines, which form Annex D of the said Agreement.
26. In cases, where, as here, a policy existed but the amount of the policy cannot be determined, section 7.1 of the Valuation Guidelines requires that an offer must be made and the offer be based on a multiple of three times (3x) the average value for policies in the respective country as shown in Schedule 3 (section 7.1 of the Valuation Guidelines).
27. Pursuant to Schedule 3 of the said Valuation Guidelines, the average value of life insurance policies in Romania is Lei 60,638. Three times Lei 60,638 gives Lei 181,914.
28. This value in Lei corresponds, pursuant 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.
29. Pursuant to Step 2 of Schedule 2 of the said Annex, this dollar value must 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.
30. For offers made from January 2001 the value must be updated by agreed multipliers as shown in Schedule 2 (section 2.2 of the Valuation Guidelines). According to Step 3 of

Schedule 2 of the said Annex, additions must be made to the value up to the end of 2000 for subsequent years. These interest rates have been agreed upon in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC which had consulted with the Foundation and the [REDACTED] as the other parties to 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. 7/12 of 5.0 %), which results in the amounts of US\$ 11,014.49430106344 for 2001, US\$ 11,565.219016116612 for 2002, US\$ 12,114.56691938215107 for 2003 and US\$ 12,467.908454530797142875 for 2004.

31. This total amount of US\$ 12,467.91 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, must 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 no later than the last day of the second month following the month of the decision, which is 31<sup>st</sup> July 2004.

Dated this 4<sup>th</sup> day of May 2004

The Appeals Panel

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Timothy J. Sullivan  
Chairman

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Rainer Faupel  
Panel Member

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Abraham J. Gafni  
Panel Member