

## **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

Fax: ++ 44 (0) 207 269 7303

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]

**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] 1921 in Krefeld (Germany). He is the grandson of [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1872 in Krefeld and declared dead on 8<sup>th</sup> May 1945. She was living in a Jewish rest home in Reydt (Germany) until 25<sup>th</sup> July 1942 when she was deported, first to Theresienstadt and later to Auschwitz, where she perished.

[REDACTED] had two sons, [REDACTED] and [REDACTED], who emigrated from Germany. The Appellant is the only living descendant of his grandmother. [REDACTED] was the Appellant's father.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 23<sup>rd</sup> May 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]” issued life annuity insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 6<sup>th</sup> November 2003 *“based on the information you provided in the claim form and our thorough search in all internal and external archives to be considered, no supporting evidence of the existence of a life insurance or annuity assurance contract for Mrs. [REDACTED] with [REDACTED] could be found, even under the “Relaxed Standards of Proof” of the Agreement. According to the Foundation Law and the Agreement a claim has to be denied, if there is no sufficient and adequate evidence of a contractual relationship with the insurance company named in the inquiry. We are confident that you will understand our decision not to submit an offer under the given circumstances”*.
5. The Appellant submitted an appeal to the Appeals Office dated 12<sup>th</sup> November 2003, which set out the reasons for the appeal and arrived at the Appeals Office on 19<sup>th</sup> November 2003.
6. On 27<sup>th</sup> November 2003 the Appeals Office erroneously copied the appeal (which is in German) to [REDACTED], the [REDACTED]. Having been made aware of the error the Appeals Office on 10<sup>th</sup> December 2003 sent a copy of the appeal directly to [REDACTED].
7. [REDACTED] responded in a letter dated 12<sup>th</sup> January 2004, which arrived at the Office on 13<sup>th</sup> January 2004 by fax. In this letter [REDACTED] gave the reasons as set out before for being unable to provide any additional documents relating to the claim.
8. On 13<sup>th</sup> January 2004 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.
9. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.
10. 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**

11. The Appellant has submitted the following information in relation to his claim in the claim form stamped with the date 12<sup>th</sup> June 2000:

- a) He identifies “[REDACTED]” as the company that issued a policy. He states that the policy was probably purchased in Krefeld, Germany.
  - b) In section five, the type of policy is identified as “*life annuity policy*”. The policy number and sum insured are unknown. The currency is identified as “*Deutsche Mark*” (Reichsmark is meant). The date of issue is stated as being “*unknown*”, but “*1938*” is inserted in brackets. The date of maturity was “*until the end of his life*”. The mode of payment is identified has a probable single payment and to the best of his knowledge all premiums were paid.
  - c) In section six, the policyholders are identified as [REDACTED] and [REDACTED], born on [REDACTED] 1894 and [REDACTED] 1896 respectively. It is stated that the Appellant is the son of [REDACTED] and the nephew of [REDACTED].
  - d) The insured person is identified as [REDACTED], née [REDACTED], born on [REDACTED] 1872 in Krefeld, Germany. [REDACTED] is identified as the Appellant’s grandmother.
  - e) The beneficiary also is identified as [REDACTED].
  - f) In section eleven concerning further information the Appellant writes, “*my grandmother [REDACTED] née [REDACTED] was bought a life annuity policy with the [REDACTED] group by her sons [REDACTED] and [REDACTED], to provide her with financial security for the rest of her life, as her sons were unable to support any more as they were emigrating from Germany*”.
12. There is a second claim form stamped 12<sup>th</sup> June 2000 and 12<sup>th</sup> September 2000 on the file. The information provided in this claims form differs slightly from the information given in the first claim form:
- a) In section six, [REDACTED] and [REDACTED] have been crossed out as the policyholders and replaced by [REDACTED], née [REDACTED], born 5<sup>th</sup> June 1872.
  - b) The insured person and beneficiary are still identified as the Appellant’s grandmother.
  - c) In section eleven, however, the Appellant has given additional information. He writes, “*As this was a life annuity policy, all that was due was a monthly annuity to my grandmother for as long as she lived. The policy lapsed when she died. I do not know whether the annuity was paid to her for as long as she lived, as my grandmother was deported to Theresienstadt and then Auschwitz. I also believe it possible that my mother died a violent death, that the [REDACTED] group had to pay for some time after her death 8<sup>th</sup> May 1945*”.
13. There are two declarations of consent on the claim file and both show the policyholder and insured person to be the Appellant’s grandmother, [REDACTED], with the Appellant being the beneficiary. Finally, there is an explanation for the afore-mentioned two claim forms,

which differ slightly: the claim file contains a small handwritten sheet of paper, which is signed by the Appellant and reads: “*I corrected all marked answers on the claim form and added a supplement referring to number 8 on page 11. In case of there is an error in the “Declaration of Consent” in number 3 I request to inform me about that*”.

14. In his reason for grounds of appeal the Appellant writes, “*re; annuity of Mrs [REDACTED], née [REDACTED]. Before they emigrated from Germany her sons [REDACTED] (my father) and his brother [REDACTED] purchased a so-called annuity from the [REDACTED] Group for their mother in order to provide her with financial security. In mid-1938 my grandmother moved to the Jewish retirement home in Rheydt, prior to this she lived in Krefeld. She was deported to Theresienstadt on 25<sup>th</sup> July 1942 and later to Auschwitz, where she was declared dead on 8<sup>th</sup> May 1945 (Amtsgericht Rheydt 1950). I know that the pension was paid in Rheydt. It is outside my knowledge whether it was paid later too. I assume that the insurance was taken out in Krefeld. I simply cannot understand that the [REDACTED] Group cannot find any documents either in Cologne, Krefeld or Rheydt. I am the sole heir of Mrs [REDACTED], née [REDACTED]. I proved this in my application*”.

## **THE INVESTIGATION AND DECISION BY THE RESPONDENT**

15. In the decision letter issued on 6<sup>th</sup> November 2003 the Respondent writes: “*We refer to your enquiry regarding a life insurance or pension policy respectively taken out with [REDACTED] for your grandmother...Nowhere, in any form whatsoever, could we find a reference to the policy in question in any of the external archives that came into consideration. Based on the information you provided in the claim form and our thorough search in all internal and external archives to be considered, no supporting evidence of the existence of a life insurance or annuity assurance contract for Mrs. [REDACTED] with [REDACTED] could be found, even under the “Relaxed Standards of Proof” of the Agreement. According to the Foundation Law and the Agreement a claim has to be denied, if there is no sufficient and adequate evidence of a contractual relationship with the insurance company named in the inquiry. We are confident that you will understand our decision not to submit an offer under the given circumstances*”.

## **THE ISSUES FOR DETERMINATION**

16. The main issue for determination in this appeal is whether the Appellant has met his 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.
17. 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.
18. The Panel concludes that the Appellant has not met his burden of proof, that it was [REDACTED], which issued a life insurance or annuity assurance policy. His evidence insofar lacks the requisite authenticity and particularity and there is no corroborative evidence (such as letters or statements from third parties, previous attempts to get information or to collect proceeds) to support the Appellant’s recollection of the existence of an insurance policy issued by [REDACTED]. The Appellant’s statement that his father and his uncle bought a life annuity insurance for their mother, possibly in 1938, to secure her life in a rest home when they had to emigrate and his assumption that the pension was paid for some time until deportation in 1942 or even later (which, however, seems rather unlikely) certainly is not implausible. Nevertheless, beside his own statement and his assumption there is absolutely nothing to prove that a policy with the Respondent existed. The Appellant, in addition, was not able to refer to previous attempts, be it from his father’s or his uncle’s side, be it from his own side, to contact the insurance company to find out whether a policy existed or to cash the proceeds. Therefore, the Appeals Panel – even by applying the Relaxed Standards of Proof – was not able to conclude that the Appellant’s burden of proof is met.
19. Finally, neither the Respondent nor ICHEIC found a research match on their databases when processing the claim. The Appeals Panel is aware of the fact that the Respondent’s databases are limited; however, it had to take into consideration that no research matches were found anywhere.

**THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:**

The appeal is dismissed.

Dated this 21<sup>st</sup> day of May 2004

The Appeals Panel

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Timothy J. Sullivan  
Chairman

\_\_\_\_\_  
Rainer Faupel  
Panel Member

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Abraham J. Gafni  
Panel Member

Signing on behalf of all the  
Members of the Appeals Panel