

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

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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

DECISION

[REDACTED] 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] 1931 in Újpest (Hungary). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1891 and died on 14th October 1972; [REDACTED] was born on [REDACTED] 1900 in Újpest (Austria-Hungary) and died on 27th August 1891 in Budapest. The Appellant had a brother, [REDACTED], who died in 1981. He had a daughter, [REDACTED], who is the Appellant’s co-claimant.

The [REDACTED] family lived in Budapest until 1944. In April 1944 their business had to be closed after the German occupation in April 1944. Until 15th September 1944 they worked as war damage clearance workers. In September 1944 the Appellant and his brother were handed over to the Red Cross and the Appellant's parents went to a Swedish safe house but were then taken to the ghetto, to which the Appellant and his brother later came. The apartment of the [REDACTED] family was confiscated. In December 1944 the stocks of the business of the [REDACTED] family were sold off for the benefit of the Arrow-Cross state (the Hungarian Nazi Party).

2. The Appellant submitted a claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that [REDACTED] issued policies of life insurance.
3. The Appellant submitted a claim form dated 17th December 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED], *Direction Berlin, [REDACTED]*” issued a policy of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] confirmed in its decision letter dated 17th November 2003 the existence of “*policy No. [REDACTED]*” that had been taken out on 31st October 1934 and had an insured sum of Arany (Gold) Pengö 2,000.00. The annual premium was Pengö 84.00. Premium payments were stopped in 1944. A loan of Pengö 310.00 was paid back. [REDACTED] offered a payment of US\$ 3,310.55.
5. The Appellant submitted an appeal to the Appeals Office dated 5th December 2003, which was not filed by using the appeal form and was accompanied by several copies of insurance documents.
6. The Appeals Office received this appeal on 12th December 2003 and sent the Appellant an appeal form and a copy of the Valuation Guidelines (Annex D of the Agreement dated 16th October 2002) on 19th February 2004 and requested that the Appellant file the appeal form.
7. On 26th March 2004 the Appeals Office received the appeal form and further copies of insurance documents that show that the insured sum had been linked to the price of gold and mailed a copy to the Respondent on 29th March 2004.
8. [REDACTED] responded in a letter dated 6th April 2004 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*”.
9. The Appellant gave further comments in a letter dated 26th April 2004 that reads: “... As you can see into the letter of [REDACTED], they don't want to modify their standpoint. The calculation of [REDACTED] write: the paid sum 1832,00 Pengö. If you see the enclosed text (which is based in original appeal) it means 6229,21 \$ without multiplier and interest. I understand that he obstruct to pay so big money. ... I don't want the big sum ! For me is enough if the Court restores the original circumstances, [REDACTED] pay back the 1123,16 Goldpengö with a fair compound interest. The payment can be \$ or other valuta where the gold exchange has quoted ...”. Attached were explanations showing a calculation based on the decree 4560/1931 of the Hungarian Ministry of Finance, the gold price of April 2004 and the Valuation Guidelines.
10. On 4th May 2004 the Appeals Office informed both parties that the appeal will be decided 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.

11. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
12. 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.

In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel’s general decision dated 6th July 2004 this appeal was assigned to [REDACTED].

The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

THE CLAIM

13. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in his claim form:
 - a) In section three he asserts that “[REDACTED], *Direction Berlin [REDACTED]*” issued the insurance policy. He states that the policy was purchased in Budapest, Hungary.
 - b) In section four the Appellant indicates that a copy of the policy can be submitted, with all receipts.
 - c) In section five the insurance policy is identified as policy number [REDACTED] for the insured sum of Gold Pengö 2,000. The date of issue is stated as 1st November 1934 and the date of maturity as 1st November 1954. In answer to question 5.7 regarding payments from the insurance policy the Appellant writes, “*I know ‘no’. As apparent, there was a loan but it was paid back to the last penny.*” In question 5.11 the Appellant states that there has been much exchange of correspondence since 1990.
 - d) The policyholder is identified as the Appellant.
 - e) The insured person is identified as [REDACTED] (who was born [REDACTED]), the Appellant’s mother, who was born on [REDACTED] 1900 in Ujpest, Hungary. [REDACTED], the Appellant’s niece (daughter of his deceased brother) is identified as a living heir.
 - f) With regard to the beneficiary the Appellant indicates that there was no named beneficiary only “*legal inheritors*”.
 - g) In a statement attached to the claim form the Appellant describes the closure of his parents’ business following the German occupation; the confiscation of the family’s apartment; the taking of his parents to the ghetto (the Appellant and his brother were in the ghetto too); and, finally, liberation.
14. The following documents were submitted with the claim form:

- a) The calculation of policy number [REDACTED] for the policyholder [REDACTED], the Appellant's father, issued by [REDACTED]. [REDACTED] uses this particular method of valuating policies. The Claimant had an offer of USD 22, 439.26 for the aforementioned policy.
 - b) A poor copy of policy number [REDACTED] issued to Mrs [REDACTED] by [REDACTED] on 31st October 1934. The insured sum is 2000 Gold Pengö. The date of maturity is 1st November 1954.
 - c) An annex to policy number [REDACTED] regarding a loan of 310 Gold Pengö. [REDACTED] issued this document on 1st March 1941.
 - d) Interest rate invoice for policy number [REDACTED] [the translation provides an incorrect number] on 1st November 1943. The Claimant has written on the top of this receipt "*last repayment*". Below this receipt is the photocopy of fee invoice dated 1st February 1944 for policy number [REDACTED].
 - e) Alongside the two invoices there is a document which appears to be terms and conditions of the policy.
15. Also in the claim file are several letters from the Appellant. In a letter dated 4th October 2002 he writes: "*I would like to inform you that [REDACTED] has paid out on my father's life insurance (they refused it for 30 years). I have not been so lucky with regard to my mother's life insurance, where [REDACTED] [REDACTED] has owed us for 21 years, where the contract was signed not in dollars, but in gold currency. We have of course sent the claim here too, but no development has been achieved*".
16. In a statement submitted by the Appellant to the Appeals Office dated 12th December 2003 he writes, "*please help me, because my mother's policy has a real value which isn't written in Annex D. After the big 'Korona' inflation the peoples wanted stable money and they contracted in dollar or in gold. You can see on the policy the grund summe 'KETTOEZER ARANYPENGO' (1). It means two thousand gold pengö and one gold pengö was 0,29176 g pure gold (see in official newspaper my annex 2). There was written 1\$=5,7224 aranypengö, the difference is 27%. I have written to [REDACTED], but he doesn't accept it*".
17. The following documents were submitted with this statement:
- a) The above-mentioned Annex 2 – official newspaper - with reference to the gold value.
 - b) A copy of the letter sent to [REDACTED] dated 20th November 2003 in which the Claimant addresses the problems with the offer made by [REDACTED].
 - c) A copy of policy number [REDACTED].
 - d) Various extracts of policy related documentation, with reference to an official exchange rate of 5.74.
18. In the appeal form, received on 26th March 2004, the Appellant again refers to the fact that his mother's policy was taken out in Gold Pengö and provides his calculations for the policy. With the appeal form he sent the following documents.
- a) A copy of policy number [REDACTED].

- b) “Bills” for payments to [REDACTED] made by [REDACTED]. An amount of 10.42 Gold Pengö was paid on 1st December 1934 and an amount of 8.98 Gold Pengö was paid on 1st July 1942. The policy numbers are incomplete.
- c) One page of contractual information.
- d) An enlargement of some figures found at the bottom of the document mentioned in c).
- e) A copy of decree number 4560/1931 of the Hungarian Royal Ministry with regard to defining pengö debts in golden pengö. The Claimant highlighted the first part of paragraph 6 which states, “*as per the current regulations, Arany [Golden] Pengö equals 26315789 gram fine gold, the equivalent of which is payable in the legal tenders of the pengö value. As long as the payable balance exceeds 3760 pengö per fine kilograms, but does not reach 3840, for every one golden pengö one pengö is to be paid in legal tenders.*”
- f) A table of conversion rates for various weights. The Appellant highlighted 1 ounce = 480 grains = 20 pennyweights = 31.103 gram.
- g) This document appears to be a table drawn up by the Appellant to reflect his calculation of the value of the policy today.
- h) A table of interest multipliers.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

19. The Respondent, with regard to the offer made, writes in its letter of 17th November 2003: “*Due to the war-related loss of nearly all original documents we have been able to find out mainly on the basis of the document copies submitted by you that the a/m policy had been taken out on 31st October 1934 and an insured sum of 2,000 pengoes had been agreed upon. Moreover, an annual premium of 84.00 pengoes had been stipulated. According to your information the premiums had been paid until 1944. The final maturity was 1st November 1954. You also mention that a policy loan amounting to 310.00 pengoes was duly repaid. We do not have any further information, mainly we are not able to make any statement as to further agreements in the favour of third parties. Based on these facts we have evaluated your claim in accordance with the Valuation Guidelines which are part of the ‘Agreement’ subject to the above explanations alone to show the current value of the policy. For your better understanding, we have attached a valuation sheet to explain the calculation. This calculation leads to a current value in the amount of USD 3310.55”.*”
20. The Respondent gives further comments in its letter dated 6th April 2004 in which it states: “*As we have already tried to explain to the claimant in our letters dd 17th November and 27th November 2003 our calculation of the compensation was made strictly on the basis the rules of the Valuation Guidelines stipulated in the ‘Agreement’ of 16th October 2002. As per the rules thereof – which, by the way, were drawn up exclusively by ICHEIC – a claimant cannot be awarded the desired compensation as the sum insured was subject to nominal currency and a sum linked with the gold price. In order to avoid unnecessary repetitions, we may refer again to our relevant explanations in our letter dd 27th November 2003, which should be available with the Panel”*”

THE ISSUES FOR DETERMINATION

21. The only issue for determination in this appeal is whether the valuation as calculated by [REDACTED] is correct.

VALUATION

22. The valuation of a claim includes pursuant to section 1.2 and 1.3 of the Valuation Guidelines (Annex D) two phases. The first is the assignment of a base value to a policy; the second is the application of appropriate multipliers to the base value to produce the current value.
23. The base value of a policy, according to section 1.2 of the said Guidelines, is the value that the policy would have had at the date of the insured event, which in this case is the maturity date in 1954. The value at that time was (nominal) Gold Pengö 2,000. However, at that time Hungary had changed its currency to Forint, after the Pengö had suffered a hyperinflation. Nevertheless a calculation must be made on the basis of Pengö as described in the Valuation Guidelines (Annex D of the Agreement).
24. Deductions, as mentioned in section 3.3. of the said Guidelines, need to be made, because there is a valid suggestion that premiums were not fully paid until the date of the insured event, whereas the loan of Pengö 310.00 was paid back. Deduction for non-paid premiums after the date of deportation is restricted to a maximum of two years (section 3.3.2. of the Valuation Guidelines). The annual premium was Pengö 84.00. Deducting the this leads to a base value of Pengö 1,832.00,
25. Pursuant to section 7.3 of the Valuation Guidelines “*policies issued with a link to the price of gold should be treated as if they had been issued in the nominal currency*”.
26. The value of the policy in Hungarian Pengö corresponds, according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.1376 laid down in Step 1 of Schedule 2 of the said Annex, to the value of US\$ 252.08.
27. Pursuant to Step 2 of Schedule 2 of the said Annex, this dollar value must be multiplied by 11.286 resulting in a value to the end of 2000. This result is US\$ 2,844.97 by the end of 2000.
28. According to Step 3 of Schedule 2 of the said Annex, additions must be made to the dollar value up to the end of 2000 for the 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 issued after consultation with the Foundation and the [REDACTED] as the other parties to the Agreement (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 %; according to the month, in which the decision is made, plus two months, i.e. 13/12 of 4.75 %), which results in the amounts of US\$ 2,998.59838 for 2001, US\$ 3,149.528299 for 2002, and US\$ 3,310.55 for 2003.
29. It is appreciated that from the Appellant’s point of view there might be reasons to criticize the result of the valuation of the policy when calculated according to the Valuation Guidelines. It must be recognized, however, that the Appeals Panel and its Members as well as the Appellant by signing the appeal form, are bound by the Agreement and its Annexes, including the Valuation Guidelines. Neither the Panel nor an individual Panel Member may substitute a calculation pursuant to those Guidelines with a calculation based upon a

calculation regarding the gold price market, as the Appellant seems to have in mind. Section 7.3 states that “*policies issued with a link to the price of gold should be treated as if they had been issued in the nominal currency*”. The Respondent’s calculation takes this - correctly - into consideration.

30. For the foregoing reasons, the Appeals Panel concludes that the Valuation Guidelines as calculated by the Respondent were correct, and the Appellant is entitled to receive a sum in accordance with those calculations as reflected in this decision.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 25th day of August 2004

For the Appeals Panel

[REDACTED]