

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], née [REDACTED], born on [REDACTED] 1937 in Reichenberg (Liberec), Czechoslovakia (nowadays Czech Republic). She is the daughter of [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1909 in Reichenberg (Liberec), at that time Austria-Hungary, and died on 25th April 1945 in Nordseebad Wangerooge (Germany).
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim dated 1st October 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that [REDACTED] issued a life insurance policy.
4. The ICHEIC informed the Appellant by letter dated 20th November 2000 that it received her claim and it informed her that the claim number was [REDACTED].
5. In a letter dated 6th December 2000 the ICHEIC referred to the fact that the Appellant had answered 'No' to question no. 1 of the claim form, which asks whether the policyholder and/or the insured and/or the beneficiary was a victim of the Holocaust, and informed her that the Commission's process was dealing (only) with insurance claims of Holocaust victims, survivors, and their heirs and beneficiaries; ICHEIC asked her to read again the definition of a Holocaust victim as set out in question no. 1 and gave her the following information: *"If you believe that this does not apply in your case then we are unable to deal with your claim through the Commission's process. Alternatively, if you answered the question incorrectly, please amend your answer on the copy of your claim form enclosed, initial the change, and return the amended claim form to us. We will then be able to begin processing your claim"*.
6. The Appellant responded in a letter dated 13th December 2000 and informed the ICHEIC *"that our family did not suffer in the Holocaust. I respect this condition, but I am surprised it was not pointed out to me in the instructions of the Czech Ministry of Foreign Affairs, ... This fact complicated my very complex negotiations with the [REDACTED] insurance company. By giving the details of the policy to your organisation and by signing the agreement with the claiming process I got to the situation when the future development in this matter gets out of my control. ... Therefore I ask you to send your written declaration confirming that you are not going to claim policy no. [REDACTED] from 1938, in the name of [REDACTED]. In the future I will have to deal directly with the [REDACTED]-Düsseldorf and your declaration will help me stop a potential duplicate claim, which might give an excuse to the insurance company"*.
7. On 6th May 2001 a claims processing support unit informed her in a telephone call that *"as far as we are concerned her [REDACTED] insurance co. will never know that she has sent out to us any form and we never started to process her claim forms"*.
8. The Appellant confirmed this telephone conversation in a letter dated 7th May 2001 that summarised the conversation as follows: *"The woman told me the following: Material losses from the Holocaust are not comparable to the suffering in concentration camp and therefore your Commission is not going to help me. I would like to tell you that I fully respect this basic condition. However, under these circumstances I no longer want you to deal with my claim, as I am going to do it myself. Please send me a written declaration that you are not going to claim the compensation of the policy no. [REDACTED] of [REDACTED] from 1938. I will need this document for my future direct negotiations with [REDACTED] Düsseldorf. I can't force you to help me, but on the other hand I won't let you cash in my policy"*.
9. On 28th June 2001 the ICHEIC again sent a letter with the content of the letter dated 20th November 2000 (see above paragraph 4) and informed her that the claim number is [REDACTED]; in another letter dated 17th August 2001, which had the same content, the ICHEIC informed the Appellant that the claim number is [REDACTED].
10. In a letter dated 3rd September 2001 the ICHEIC acknowledged receipt of the Appellant's letter dated 7th May 2001 and that it will not process her claim any longer.

11. The Appellant responded in a letter dated 8th September 2001 that reads: *“In reply to your letter of 17th August 2001 I am writing to ask you to keep my original claim number which was [REDACTED]. This claim was acknowledged in November 2000 and has all the necessary personal documents as well as documents regarding the insurance policy. I assume that the complications regarding my claim are caused by the fact that I am a Czechoslovak citizen but of German origin. It is however against basic human rights that I should be discriminated against because of my German origin. I would also like to point out that Mr. [REDACTED] from ICHEIC was notified about my case and that Dr. [REDACTED] from the Czech Foreign Office was asked to comment on it”.*
12. Finally, in a letter dated 17th March 2003 the ICHEIC informed the Appellant that her claim can be processed after an Agreement dated 16th October 2002 made by and among the Foundation “Remembrance, Responsibility, and the Future”, the International Commission on Holocaust Era Insurance Claims, and the [REDACTED] had come into force.
13. In a letter dated 15th October 2003 [REDACTED], the Respondent, informed the Appellant that it had received her claim form on 7th October 2003.
14. In its decision letter dated 12th January 2004 [REDACTED] stated: *“Based on the information that you have provided in the claim form ... we have been able to find out ... that this policy was part of a former insurance portfolio of [REDACTED] in former Czechoslovakia and that the policy was taken out 1st February 1938 with a sum insured of 30,000.00 Czech crowns first – later converted into 3,600.00 Reichsmark with a premium of 124.80 Czech crowns net or 14.35 Reichsmark to be paid every 6 months. The maturity was on 1st February 1958 or in the case of previous death. We do not have any further information; mainly we do not know which provisions as to the policy were made in the period after 1945 by third parties. ... As you know the ‘Agreement’ between ICHEIC, the Foundation and the [REDACTED] stipulates in Article 2 (1) b and e that a claim is eligible for compensation only if the policy holder, the insured person or the beneficiary of the policy was a Holocaust victim as per the ‘Agreement’ on the one hand and, on the other hand, the loss of his/her property was due to the persecution by bodies of the National Socialist Regime in Germany or other government bodies, as e.g. in Czechoslovakia prior to 1945. As you explained in your claim yourself, the policy in question was neither terminated, withdrawn, nor confiscated prior to 1945. As can be taken from the submitted receipts for paid premiums your father had uninterruptedly been able during the war until his death to pay premiums to the Prague Head Office of [REDACTED]. Moreover, we can take from the documents available with us that your father deceased in 1945 as soldier of the German Wehrmacht; we therefore cannot see that he was a victim of persecution as per the above description. In view of these facts you are not eligible for compensation as per the ‘Agreement’, even if it is to be assumed that the sum insured had not been paid out due to the fact that the Communist regime had seized the funds of the Head Office of [REDACTED] in Prague, which was under sequestration. We are confident that you will understand our decision not to submit an offer under the given circumstances”.*

The Appellant sent a letter dated 19th January 2004 to the ICHEIC; she referred to the letter dated 17th March 2003 that she had received from the ICHEIC (see above paragraph 12) as well as to the afore-mentioned decision letter and asked what further steps she should take. She wrote: *“Could you please inform me whether you will help me to cash the proceeds of the policy and whether there will be costs for me ? Should I follow [REDACTED]’s advise and file an appeal at the Appeals Panel or is this not necessary? It cannot be denied that my claim is justified and that the insurance contract shows that [REDACTED] has to pay the proceeds. I could not influence and I cannot be blamed for the political situation during wartime”.* Attached were copies of the two above-mentioned letters with highlighted parts of text.

This letter was not answered.

15. The Appellant submitted an appeal to the Appeals Office dated 1st March 2004, which was accompanied by an attachment setting out the reasons for the appeal and was received at the Appeals Office on 8th March 2004. Attached were copies of documents that the Appellant already had sent in the claims procedure.
16. On 10th March 2003 the Appeals Office mailed a copy to the Respondent.
17. [REDACTED] responded in a letter dated 22nd March 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*”.
18. On 14th April 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.
19. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
20. 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

21. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in her claim form:
 - a) The Appellant’s father, [REDACTED], who was born on 20th June 1909 in Reichenberg, Austria-Hungary, and died as a German soldier on 25th April 1945, took out the policy with [REDACTED] of Prague.
 - b) The policy number was [REDACTED] and was for the insured sum of 30,000 Kc.
 - c) The monthly premiums were 124.80 Kc.
 - d) The duration of the policy was 20 years (from 29th January 1938 until 1st February 1958).
 - e) The policyholder and insured person was the Appellant’s father, the named beneficiary was the Appellant.
 - f) The questions “*Are you aware of any payment resulting out of the insurance policy ?*” and “*Have you or anybody else participated in any compensation/restitution procedure for this claim ?*” are answered “*no*”; additional information is given in answer to the question “*If no application was made, why not ?*” , namely: “*I had no contact to the Western states until 1989. In 1991 I claimed for the proceeds at [REDACTED].*”, and “*If you applied, but no payment was received, why not ?*” , namely: “*The insurance*

company was confiscated after 1945 in Czechoslovakia and therefore does not feel under any obligation”.

22. In addition she submitted among others the following copies of documents:

- a) A letter dated 27th February 2001 from Dr. [REDACTED], special emissary at the Czech Ministry of Foreign Affairs, advising the Appellant to answer “yes” to question no.1 of the ICHEIC claim form.
- b) A letter dated 25th November 1998 from the Bundesministerium der Justiz (German Federal Ministry of Justice) informing the Appellant, being a Czech citizen and living outside Germany, that § 8 of the Law regulating claims from life insurance and pension contracts [*“Gesetz zur Regelung von Ansprüchen aus Lebens- und Rentenversicherungen (LVRG)”*] did not change and thus claims concerning foreign life insurance contracts (*“Auslandslebensversicherungen”*) cannot be made at present; in addition, the Appellant was made aware that as far as German insurance companies announced that they plan to regulate claims of Holocaust survivors this will be done in connection with the class actions filed in the United States of America and rather for moral reasons, not out of legal reasons.
- c) A letter dated 17th November 1998 from [REDACTED] in which policy details are outlined and the Appellant is informed that, due to nationalisation of the Czechoslovakian branch of [REDACTED] documents no longer are available and that since the end of the war the legal and financial base of [REDACTED] for fulfilling insurance contracts in the country had been taken away.
- d) A previous letter dated 25th November 1993 from the Bundesministerium der Justiz (German Federal Ministry of Justice) informing the Appellant about the implications of § 8 of the Law regulating claims from life insurance and pension contracts [*“Gesetz zur Regelung von Ansprüchen aus Lebens- und Rentenversicherungen (LVRG)”*] on her claim.
- e) A letter dated 29th October 1993 from the Federal Insurance Authority (*“Bundesaufsichtsamt für das Versicherungswesen”*) also informing the Appellant about the implications of the Law regulating claims from life insurance and pension contracts [*“Gesetz zur Regelung von Ansprüchen aus Lebens- und Rentenversicherungen (LVRG)”*] on her claim.
- f) A letter dated 22nd October 1993 from [REDACTED] informing the Appellant about details of the life insurance policy taken out by her father.
- g) Copies of Birth and Death Certificates and of the insurance policy No. [REDACTED].

23. In her reasons for appeal the Appellant writes: *“Firstly, I would like to state that I belong to the minority of Germans from the Sudetenland, who remained in Czechoslovakia after the war. Although we were Czech citizens at the time, my father was called up to the German army and was killed for the German Reich. After the fall of communism, I lodged an application with the insurance company [REDACTED], demanding payment of my father’s policy. Since 24th January 1992 [REDACTED] has been denying my claim. This claim, however, arises from an insurance contract taken out on 1st February 1938. All premiums were paid for seven years, until the death of my father. That should suffice for the payout of the insured sum, even if I am not a “Holocaust victim” within the meaning of the “Agreement”. All policyholders were compensated after the war. 1. The Czechs from the*

First Czechoslovak Insurance Institute, immediately after 1945. 2. Those Germans from the Sudetenland, who were driven out of Czechoslovakia, received payments following the LRVG law of 5th August 1955. 3. Holocaust victims were paid out on the basis of the 'Agreement'. The only ethnic group, which has been excluded from every compensation program, is the German minority living in Czechoslovakia. The German Reich used my father. I, therefore, find it unfair that only his policy should not be paid out. I, therefore, ask the German Appeals Panel, to assess my application and to help me. Given that I am the only person who is being discriminated against, I am asking you to make an exception”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

24. The Respondent admits that [REDACTED] issued a policy of life insurance as described in its decision letter dated 12th January 2004 (for details see above paragraph 14).
25. However the Respondent repeatedly claimed that neither the Appellant nor her father are Holocaust Victims as per the rules of the Agreement. The Respondent states that the Appellant does not deny this fact. Furthermore, [REDACTED] writes, *“in this case there could be no consideration of the fact that the claimant and her late father, who, as early as in 1946, had already filed a claim for compensation, had not been able to receive compensation payments from German authorities for decades, as they did not fulfil the legally stipulated requirements as to their residence to justify such a claim. With reference to the pending intra-state regulations this fact has, moreover, been mentioned to the Claimant several times before – last, by the Federal Ministry of Justice in the year 1998.”*

THE ISSUES FOR DETERMINATION

26. 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”*. 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 are a Holocaust victim in the sense of Section 14 of the Agreement.
27. 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: ... Czechoslovakia – Sudetenland (1938), Czechoslovakia - Bohemia Moravia and Slovakia (1939) ...”*.
28. The loss or deprivation of financial assets, which the Appellant suffered, was – as the Appellant knows - not the result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime or local 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 Czechoslovakia. The Appellant states herself that neither she nor her father

is a Holocaust victim in the sense set out above. Organs of National Socialist Germany or local governmental authorities never confiscated her father's policy during the Holocaust Era and all premium payments could be made from the date of issue (1938) until the date when the insured event occurred - which was the Appellant's father's death as a "Wehrmacht" soldier in Northern Germany in 1945.

29. The Panel, nevertheless, acknowledges that the result of the claim and appeal procedures might appear rather dissatisfying. Initially, the Appellant was aware that the claim procedure only covers claims of Holocaust victims as described above (see paragraphs 26 and 27) and, therefore, explicitly withdrew her claim from the ICHEIC route. The rather misleading letter dated 17th March 2003 (see paragraphs 12 and 14) did not point out clear enough that her case is neither covered by the ICHEIC claims procedure nor by the procedure set up by the Agreement dated 16th October 2002 and might have given unjustified hopes to her. Her doubts, however, about her chances of being awarded in an appeals procedure were justified. The Appeals Panel is bound by the Agreement dated 16th October 2002 and, therefore, may not enter a decision disregarding the provisions of this Agreement and make an award in favour of someone who is or was not a Holocaust victim. The Panel is not allowed to make an "exception" as required by the Appellant in her reasons for appeal, because this would mean to disregard the provisions of this Agreement. As the Federal Ministry of Justice has pointed out in the correspondence with the Appellant, a solution for claims of persons like the Appellant might only be found in negotiations between the States involved and changes of the law quoted in no. 22b) above.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 15th day of June 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member
Signing on behalf of all the
Members of the Appeals Panel

Abraham J. Gafni
Panel Member