

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 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] 1939 in Brasov (Romania). He is the nephew of [REDACTED], who was the brother of his father, [REDACTED].

[REDACTED], the Appellant’s grandfather, was born on [REDACTED] 1875 in Oradea Mare (Romania) and died on 10th Mai 1946 in Brasov. He was a carpenter and ran a furniture workshop. [REDACTED], the Appellant’s grandmother, was born on [REDACTED] 1879 in Pace (Romania) and died in 1953.

[REDACTED] and [REDACTED], née [REDACTED] had four children: [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. [REDACTED], who was not married, was born on [REDACTED] 1906 in Tirgu Secuiesc (Romania) and died on 21st February 1976 in Brasov (Romania); [REDACTED], the Appellant's father, was born on [REDACTED] 1906 in Tirgu Secuiesc and died on 4th November 1968 in Natanya (Israel); [REDACTED] was born on [REDACTED] 1908 in Tirgu Secuiesc (Romania) and died on 15th August 1994 in Brasov; [REDACTED] was born on [REDACTED] 1909 in Tirgu Secuiesc (Romania) and died on 26th April 1953 in a train accident in Brasov. [REDACTED] was divorced and had no children.

2. The Respondent is [REDACTED].
3. The Appellant submitted claims dated 1st September 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]”, “[REDACTED]” and “[REDACTED]” issued policies of life insurance. The claim against [REDACTED], which is the subject of the appeal, was given ICHEIC claim number [REDACTED].
4. The ICHEIC submitted the claim to [REDACTED]. In a letter dated 17th November 2003 [REDACTED] writes, *“on the basis of the information given in your claims-form and after intensive research of all relevant internal and external archives the existence of a life insurance policy taken out by Mr. [REDACTED] could not have been established, 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 7th January 2004, which was accompanied by a copy of the decision letter, dated 17th November 2003, and two documents, which in translation are entitled *“warrant for payment”*.
6. The Appeals Office sent a copy of the appeal to [REDACTED] on 27th January 2004.
7. [REDACTED] responded in a letter dated 6th February 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”*.
8. On 2nd March 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 of receipt of the letter.
9. On 17th March 2004 the Appeals Office received a fax from the Appellant with a request for an oral hearing. By letter dated 19th March 2003 the Appeals Office informed [REDACTED] of this request.
10. On 17th June 2004 the Appeals Panel decided that an oral hearing would be conducted via telephone conference call on 7th July 2004, 10.00 (Israeli time), in German. The Appeals Office informed both parties of this decision by letter dated 18th June 2004.
11. The oral hearing took place on 7th July 2004. It was conducted in German and translated by an interpreter into English.

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.

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

THE CLAIM

13. The Appellant submitted the following information in relation to the claim for the proceeds of a life insurance policy in his claim form:

- a) The Appellant identifies “[REDACTED]” as the company that issued the policy.
- b) In section three he states that the policy was purchased in Brasov, Romania. With regard to question 3.3 he writes: “2 payment slips are attached: [REDACTED] (agent) [REDACTED] str., Brasov. My uncle had a life insurance, too”.
- c) In section four regarding “documents” the Appellant writes: “I am attaching two payment slips which show the name of the company ‘[REDACTED]’ – but he also had a life insurance policy”.
- d) With regard to the type of insurance policy, the Appellant indicates life insurance policy and “other” and writes: “he was the patron and had life insurance for himself and the employees”. It is stated that the policy was issued before 1933. The Appellant states that he is aware of payments resulting out of the insurance policy having been made to [REDACTED], but he cannot tell when and in what amount.
- e) In section six the policyholder is identified as [REDACTED], the Appellant’s uncle. With regard to other living heirs of the policyholder the Appellant writes: “he was divorced and had no children. I am the only child in the whole [REDACTED] family. All other members of the family are dead. I am attaching the death certificates”.
- f) The insured person is identified as [REDACTED].
- g) The beneficiary is identified as the Appellant. The Appellant provides the names of [REDACTED] and [REDACTED] as living heirs of the beneficiary.
- h) In section eleven regarding “further information” the Appellant writes: “I am attaching payment slips of the ‘[REDACTED]’ insurance company, inheritance certificate: [REDACTED], [REDACTED], [REDACTED] and death certificates”.

14. The Appellant submitted the following documentation with the claim form:

- a) Copies of death certificates of [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED];
- b) A copy of a document dated 24th August 1994, which states that at the death of [REDACTED], the Appellant’s uncle, all his property was to pass to [REDACTED] [REDACTED], the Appellant, as sole heir;

- c) A copy of a document dated 19th August 1976, which states that at the death of [REDACTED], the Appellant's aunt, all her property was to pass to [REDACTED], her brother;
 - d) Two copies of documents entitled (in the English translation of the Rumanian original "[REDACTED]") "*table of arrears in respect of medical and accident insurance contributions due monthly*". Both of the documents are from the employer '[REDACTED]'. One is for the employee [REDACTED] and the other is for the employees [REDACTED] and [REDACTED]. The name "[REDACTED]" appears on both documents as the employer.
15. The Appellant sent two further documents with his appeal form, which he asserts are receipts in respect of payments for life insurance made by [REDACTED] in 1933. The translations of these documents make no reference to "[REDACTED]" and according to the translations are "*warrants for payment*" issued by the [REDACTED], Brasov.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In the decision letter dated 17th November 2003 [REDACTED] writes: "*based on the information that you have provided in the claims-form we have intensively searched all relevant archives and records in accordance with the 'Agreement' for information on the specific life insurance policy. The internal research in our records did, however, not show any success because of the lack of specific and detailed information, e.g. on the policy number. The only search criterion available to us were the names mentioned by you. The research of our list of former insured persons and other persons who were parties to the contracts remained without any result. In addition external (i.e. state-run) archives of German compensation and restitution authorities were researched in order to ascertain if the policy on which you are claiming was part of a decision of previous restitution and compensation proceedings...None of the relevant archives contain any reference regarding this specific life insurance policy. On the basis of the information given in your claims-form and after intensive research of all relevant internal and external archives the existence of a life insurance policy taken out by Mr. [REDACTED] could not have been established, even under the 'Relaxed Standards of Proof' of the 'Agreement' "*".
17. In a letter to the Appeals Office dated 6th February 2004 [REDACTED] writes: "*the only information related to former South-Eastern European activities in [REDACTED]'s possession consist of a reduced number of statistical and some technical registers sorted by policy numbers still available out of [REDACTED]'s former main archive in Berlin, which was destroyed in February 1945. These registers, which contain no names of policyholders whatsoever were thoroughly analysed and recorded together with all the information obtained as a result of internal and external searched into one electronic database to perform all possible searches. 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 [REDACTED] or by the ICHEIC. This is the reason why we have to confirm the rejection of this claim*".
18. In response to an email sent by the Appellant to [REDACTED], a copy of which was faxed to the Appeals Office on 17th March 2004, [REDACTED] writes: "*Unfortunately it is not true that copies submitted to us by the claimant with his new letter enable us to make investigations as to a contractual relationship of his uncle. In fact, these copies prove that his uncle has paid social security contributions to the state-run Romanian Social Security Fund for his company '[REDACTED]',, but **not** to [REDACTED]. Further copies of*

documents attached to the ICHEIC claim, moreover, are proving this fact. The claimant is wrong in considering this as an evidence for a private insurance policy”.

THE ISSUES FOR DETERMINATION

19. 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 1st January 1920 and 8th 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. 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.
21. The Panel concludes that the Appellant has not met his burden of proof that [REDACTED] issued a life insurance policy to his uncle. His evidence lacks the requisite authenticity and particularity, and there is no corroborative evidence (such as letters or statements from third parties) to support the Appellant’s recollection of the existence of a life insurance policy issued by [REDACTED]. The documents submitted by the Appellant in the claims procedure do not prove the existence of a contract between his uncle and [REDACTED], for either life insurance or business insurance, since these documents are not “*payment slips*”, as the Appellant refers to them, but “*tables of arrears*” for payments due on behalf or in the interest of employees of the company “[REDACTED].” Moreover, the Appellant’s comments that the documents sent with his appeal form are receipts in respect of life insurance payments made by his uncle in 1933 are based on a misinterpretation of the word “[REDACTED]” which appears on these documents. These documents are not receipts in respect of payments for life insurance, but “*warrants for payment*” issued by the [REDACTED] of Brasov to the company of “[REDACTED]”. The company “[REDACTED]” was owned by the Appellant’s uncle and had no relation under company law with [REDACTED]. Finally, neither [REDACTED] nor the ICHEIC found a research match in its databases when processing the claim. Although the Appeals Panel is aware that the Respondent’s databases are very limited, it must take into consideration that no matches were found.
22. Nevertheless, given the financial circumstances of the Appellant’s family, the business background not only of his grandfather but also of the Appellant’s aunt, [REDACTED],

and his uncle, [REDACTED], and the widely recognised advantages of insurance, the Panel regards it as sufficiently plausible that an insurance policy was in existence even though it is not clear with which company. Therefore, the Panel concludes that the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures upon final consideration and dismissal of all his possibly outstanding named company claims related to the same information within the ICHEIC process. The Panel will inform the ICHEIC accordingly.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed

Dated this 8th day of July 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member