

## 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**

### **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 [REDACTED] (née [REDACTED]) was born on [REDACTED] 1955 in Tel-Aviv (Israel). Her father was [REDACTED] and her mother was [REDACTED] (née [REDACTED]). Her maternal grandfather Dr [REDACTED] (latterly [REDACTED]) was born [REDACTED] 1893 in Dux (Czechoslovakia) and died on 10<sup>th</sup> April 1971 in Tel Aviv. Her maternal grandmother [REDACTED] (formerly

[REDACTED]) [REDACTED] passed away on 8<sup>th</sup> January 1975 in Tel-Aviv. The Appellant has two sisters, [REDACTED] (née [REDACTED]) and [REDACTED] (née [REDACTED]), and two brothers, [REDACTED] and [REDACTED]. [REDACTED] died on 27<sup>th</sup> April 1996. The Appellant appeals in her own right and on behalf of her siblings as co-heirs of their mother's estate.

2. The Appellant, represented by Advocate [REDACTED], submitted a Claim Form dated 4<sup>th</sup> February 2002 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which she claims “[REDACTED]” issued a life insurance policy to her grandfather [REDACTED]. This claim was processed by ICHEIC under number [REDACTED]. On 7<sup>th</sup> February 2002 the Appellant submitted an identical Claim Form. This was processed by ICHEIC under number [REDACTED].
3. The ICHEIC forwarded the claims to the Respondent, [REDACTED] ([REDACTED]) and processed the claim under number [REDACTED].
4. [REDACTED] declined the Appellant's claims in its final decision letter dated 19<sup>th</sup> July 2004.
5. The Appellant submitted an Appeal Form dated 11<sup>th</sup> November 2004 which was received by the Appeals Office on 25<sup>th</sup> November 2004.
6. The Appeals Office forwarded the Appeal Form to [REDACTED] on 29<sup>th</sup> November 2004.
7. [REDACTED] sent a letter dated 28<sup>th</sup> December 2004 requesting affirmation of its original decision.
8. On 5<sup>th</sup> January 2005 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 its letter. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
9. 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.
10. 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 6<sup>th</sup> July 2004 this appeal was assigned to [REDACTED].
11. The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

## **THE CLAIM**

12. The Appellant submitted the following information in his ICHEIC Claim Form dated 7<sup>th</sup> February 2002 for the proceeds of a life insurance policy:
  - a) In section one the Appellant states that the policyholder and/or insured and/or beneficiary was not a Holocaust victim;

- b) In section three, she identifies “[REDACTED]” as the company that issued the policy;
- c) In section four the Appellant states that she can provide documentary evidence to substantiate her claim in the form of “*a document found among the papers left by the Grandparents – a list detailing the property owned by them*”;
- d) In section five she identifies the policy as life insurance policy number [REDACTED] (formerly No. [REDACTED]). The currency of issue was “*probably CKO*”;
- e) In section six she identifies the policyholder as her grandfather [REDACTED] born [REDACTED] 1893 in Dux (Czechoslovakia) and who emigrated to Israel in 1923;
- f) In section seven she states that the insured person is “*unknown, possibly Mr [REDACTED] and/or his wife*”.
- g) In section eight the beneficiary is described as unknown.
- h) In section eleven she states: “*A\* The claim is filed by [REDACTED] on behalf of all the Deceased’s grandchildren as appear in the family tree enclosed hereby, and Inheritance Decrees enclosed as well.*

“*B\*\* Regarding the name of the insured – probably the policyholder and/or his wife [REDACTED], details of which are enclosed in Annex A.*

“*C\*\*\* Possibly the Beneficiary is the wife (My Grandmother).*

“*D Enclosed hereby are the Inheritance Decrees of my grandparents and my mother*”.

13. The Appellant submitted copied documents, including:

- a) an undated, typed document entitled: “*List of Property. Name: Dr [REDACTED]/ [REDACTED] and his wife [REDACTED] nee [REDACTED]*” identifying [REDACTED] insurance policy number [REDACTED];
- b) the last Will and Testament of Dr [REDACTED] dated 4<sup>th</sup> July 1966;
- c) codicil to the last Will and Testament of [REDACTED] dated 15<sup>th</sup> April 1968;
- d) confirmation of Testament Order in the matter of the Testament of the deceased Dr [REDACTED] dated 13<sup>th</sup> July 1971;
- e) confirmation of Testament Order in the matter of the Testament of the deceased [REDACTED] dated 25<sup>th</sup> May 1975;
- f) Inheritance Order in the matter of the estate of the deceased [REDACTED] dated 28<sup>th</sup> July 1996.
- g) A Power of Attorney appointing Advocate [REDACTED] to act upon the Appellant’s behalf.

14. The Appellant also submitted biographical information such as her passport, a typed document entitled “*List of Heirs*” and a document setting out her family tree.

## **THE APPEALS PROCESS**

15. In her Appeal Form dated 18<sup>th</sup> November 2004 the Appellant set out her reasons for appealing [REDACTED]’s decision:

*“1. Although the insured himself was not a victim of the Holocaust, some members of the insured did perish in the Holocaust.*

*“2. The policy details are:*

*2.1 Policy Number [REDACTED]*

*2.2 Name of Policyholder & Insurer: [REDACTED]*

*2.3 Name of Insurance Company: [REDACTED]. Hence, it should not be complicated for the Insurance Company to find out in the Czech Republic or their archives all the relevant information.*

*“Therefore, I request to review the decision and to accept my appeal”.*

## **THE INVESTIGATION AND DECISION BY [REDACTED]**

16. [REDACTED] stated in its decision letter dated 19<sup>th</sup> July 2004: *“We have to inform you that, as you indicated in point 1 of the claim form, based on the information you provided and our search, no evidence was given to the status of “Holocaust victim” according with the ICHEIC-German Foundation definition; therefore we are declining your claim”.*

17. In its letter dated 28<sup>th</sup> December 2004, [REDACTED] states: *“...Unfortunately, with respect to the claim at issue, no record further to the ones already produced by the claimant was found either by [REDACTED] or by the ICHEIC. This is the reason why cannot produce to the Panel any document related to this claim, as no such document is available.*

*“We cannot but confirm that this case falls well out of the Holocaust victim definition contained in the Tripartite Agreement of October 16, 2002, and therefore out of the German Foundation framework. The same claimant declared, in S 1 of her claim form, that the policyholder/insured person/beneficiary fully supports this view, and no additional relevant information should be added at this late stage. Moreover, it has to be highlighted that no relationship at all exists between the persecutions carried out by the Nazi in Czechoslovakia and the non-payment of the life policy at issue. Therefore, we cannot but confirm our decision of July 15, 2004, and respectfully ask the Panel to dismiss this appeal”.*

## **THE ISSUES FOR DETERMINATION**

18. The Agreement concerning Holocaust Era Insurance Claims dated 16<sup>th</sup> 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. The sole issue for determination in this Appeal is whether either the policyholder or the Appellant was a Holocaust victim as defined in Section 14 of the Agreement.

19. For the 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 and deprivation of financial or other assets; or suffered any other loss or damage to his/her property...*".
20. As the Appellant acknowledges both in her Claim Form and Appeal Form, her grandfather Dr [REDACTED] was not a Holocaust victim, having emigrated to Israel in 1923. The Appeals Panel accepts that other members of her family perished in the Holocaust. However the policyholder and/or beneficiary were not Holocaust victims within the meaning of Section 14 of the Agreement. The Appellant is, therefore, not entitled to compensation under the Agreement.

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 28<sup>th</sup> day of April 2005

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[REDACTED]