

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] ([REDACTED]). He was born on [REDACTED] 1916 in Volhov, District of Novgorod, Russia.

He is the grandson of [REDACTED] ([REDACTED], [REDACTED], [REDACTED], [REDACTED]) [REDACTED] [REDACTED] ([REDACTED], [REDACTED], [REDACTED]). He was born in Vitebsk, Belarus in 1870 and died at an unknown concentration camp in 1941. The Appellant states that his grandfather was a prominent timber merchant; he owned timber warehouses in Latvia and Lithuania as well as a house in Riga, Latvia.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 5th February 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that an insurance company he could not name issued the insurance policy in Riga, Latvia. The Appellant adds *“the policy was printed on a letterhead with names Zurich, Switzerland”*.
4. The ICHEIC submitted the claim to the Respondent. In its final decision letter dated 24th September 2004 [REDACTED] stated: *“There are no entries corresponding to the data of your inquiry in our register. Since this register is complete, this means that there exists no contractual relationship with [REDACTED] or any company subsequently purchased by [REDACTED]. As indicated in the questionnaire, it might be possible that there were property and casualty insurance policies as well. Property and casualty insurance policies other than life insurance policies are administered in Munich. Our colleagues have checked their archives. These archives contain no or only a few documents referring to the years prior to 1945. Unfortunately, no insurance policies or claim files concerning the named persons and business could be found. ... In accordance with the rules of the International Commission, [REDACTED] can only make a payment when there exists some evidence that a contract may have taken out. Unfortunately, the information that you provided to us does not confirm this fact, and we are unable to offer you any form of payment”*.
5. The Appellant submitted an appeal to the Appeals Office dated 25th March 2005 in which the reasons for the appeal were set out.
6. The Appeals Office received the appeal form on 7th April 2005 and mailed a copy to the Respondent.
7. [REDACTED] responded in a letter dated 22nd April 2005 and requested the Appeals Panel for reasons it had set out before to reject the appeal.
8. On 13th May 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 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 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 of 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 Decision is made there.

THE CLAIM

11. The Appellant has submitted the following information in relation to the claim for the proceeds of an insurance policy in the claim form:

- a) In section three, the Appellant is unable to identify an insurance company but he states that the policy was purchased in Riga, Latvia. The Appellant adds "*the policy was printed on a letterhead with names Zurich, Switzerland*".
- b) In section four, he states that he is unable to provide documents that could substantiate his claim.
- c) In section five, asking for known details about the policy, he confirms the type of insurance to be property insurance. He states that he has no further information about the insurance policy. The Appellant is not aware of any payments resulting out of the insurance policy.
- d) In sections six and seven, he identifies the policyholder and insured person as his grandfather [REDACTED]. He does not know of any other living heirs.
- e) In section eight, the Appellant is unable to name a beneficiary.
- f) In section nine, asking about previous compensation or restitution procedures, the Appellant confirms that he does not know of participation in any compensation or restitution procedure for this claim. He adds that he did not make an application because he "*didn't know that it was free of charge*".
- g) In section eleven, the Appellant provides further information: "*My grandfather was a prominent timber merchant. He owned timber warehouses in Latvia and Lithuania and a two storey house in Riga. He used to say that Swiss insurance companies were the most reliable*".

12. In addition, the claim file contains, among others, copies of:

- a) A letter from the Appellant (received 11th July 2002) informing about his new address. Moreover, the Appellant states that the property insurance policies were purchased by his grandfather [REDACTED] from [REDACTED] in Latvia and [REDACTED] in Lithuania. He adds that the house, the timber factory, the warehouses and the timber were insured against fire in Latvia and Lithuania; the timber industry was destroyed by the Nazis in 1941.
- b) A letter from the Appellant dated 17th December 2002 stating that he submitted two claims; he requests some information about his claim with [REDACTED].

13. The appeal file contains a letter from the Appellant to the Appeals Office dated 3rd June 2005 stating: *“I will not be able to participate in the hearings by the reasons indicated below. I am 88 now, the veteran and invalid of the World War II. I don’t speak English and can’t pay to the lawyers, too. I should be grateful if you would proceed to consider my case on the basis of exchanging the written documents and correspondence in Russian. I am enclosing the “[REDACTED]” explanation: “[REDACTED]”, letter of 09/24/2004, 3 pages. My arguments to appeal were the following: As come of this letter the owners of the warehouses, shops and other property (and my grandfather was one of the owners), did not insure their property against fire and natural hazards. I can’t believe that the insurance documents were withdrawn from archives in due time to avoid the payment. In its decision to dismiss my appeal of 09/24/2004 “[REDACTED]” explained that after searching in archives they had not found any documents. I’d like to ask in what archives they were searching for? As indicated above, the property was registered in Munich, and the archives did not contain any or contained few documents there as to years till 1945. Or, were they looking out for a black cat in the dark room when it was not there? The insurance company “[REDACTED]” confirmed their decision of dismissal, as was written in the letter of 09/24/2004 and asked the Commission on Appeals to dismiss my appeal (“[REDACTED]” letter of 04/22/2005). Dear Sirs, I ask you to demand the definite arguments from “[REDACTED]”, on which basis they made their decision of dismissal and asked the Commission to dismiss my appeal. Hope you will consider my case and decline the request of “[REDACTED]””.*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. [REDACTED] declined the claim for the reasons given in its decision letter dated 24th September 2004 (paragraph 5) and in its letter dated 22nd April 2005 written in response to the appeal (paragraph 7).

THE ISSUES FOR DETERMINATION

15. The main issue for determination in this appeal is whether the Appellant has met the 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.
16. 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.

17. There is no doubt that the Appellant and his family living in the Holocaust era were Holocaust victims and that he could be entitled to proceeds of an insurance policy issued to his grandfather.
18. It is concluded, however, that he did not establish that a property insurance policy issued by [REDACTED] to his grandfather existed. 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 assertion. The only statement he was able to make is that the issuing company was [REDACTED], that the policy was issued in Riga, Latvia and that his grandfather was the policyholder and insured person. The paucity of information coupled with the absence of research matches lead to the conclusion that the Appellant has not met even the reduced burden of proof under the provisions of the Agreement that it was [REDACTED] which issued a policy of property insurance to his grandfather.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 28th day of July 2005

[REDACTED]