

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

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] 1923 in Munkac, Czechoslovakia and presently resides in New York, USA. The Appellant’s father, [REDACTED], was born during 1877 in Munkacevo, Czechoslovakia, owned a wholesale and retail business and died in Munkac during October 1939.
2. The Appellant submitted an undated European Insurance Policy Claim Form in 1999 to the New York Holocaust Claims Processing Office (HCPO) in which she claims an endowment insurance policy for herself and her father’s life insurance that were issued by “[REDACTED]” in Czechoslovakia. The claim was transferred in 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC).

3. The Respondent is [REDACTED] ([REDACTED]). [REDACTED] was a predecessor company of [REDACTED]'s.
4. The ICHEIC submitted the claim to [REDACTED]. [REDACTED] states in its decision letter dated 16th March 2005 that it had searched the archives of [REDACTED], and also external German compensation and restitution records, but had found no evidence of a life insurance policy with the Appellant's father.
5. The Appellant submitted an appeal form received by the Appeals Office on 26th April 2005 in which she clarifies that she is claiming endowment policies for herself and sister, [REDACTED] (née [REDACTED]) and not life insurance from [REDACTED].
6. [REDACTED] responded in its letter dated 6th May 2005 and repeated its reasons for denial.
7. On 31st May 2005 the Appeals Office informed the Appellant and [REDACTED] 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. An oral hearing was not requested and this appeal is determined upon the documentation submitted.
8. [REDACTED] requested further information from [REDACTED] concerning whether it had searched its records for dowry policies for the Appellant and her sister and whether the records for Slovakia were complete. [REDACTED] confirmed in a letter dated 1st September 2005 that there was no evidence of a contractual relationship between [REDACTED] and the Appellant; the Appellant's father or sister for any policy. [REDACTED] also pointed out that it had purchased the accounts of only the German [REDACTED] branch in 1987 and that the German [REDACTED] was a subsidiary to [REDACTED] in Austria. The German [REDACTED] dealt with local business from its Berlin office and had no connection with any other [REDACTED] office outside Germany.
9. This appeal was stayed pending investigation between ICHEIC and [REDACTED] as well as between the Contracting Parties of the Agreement mentioned in paragraph 10 into whether [REDACTED] was responsible for all [REDACTED] policies. The Panel in December 2005 was informed by ICHEIC, after consultations with [REDACTED], the [REDACTED] and the German Foundation, that [REDACTED] is responsible for the German portfolio of [REDACTED] only.
10. The appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002 made by and among the German Foundation "Remembrance, Responsibility and the Future", the ICHEIC and the [REDACTED] ([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 Decision is made there.

THE CLAIM

11. The Appellant submitted in the claim form information detailing her claim for the proceeds of her father's life insurance life policy and her dowry policy. She states that "[REDACTED]" in Czechoslovakia issued the policies. In section seven the Appellant states:

“My father told us that he made an insurance policy for each of his daughters so that they would have money when they get married. Then the war came and we were taken away. I never collected on this income.

My father also had a life insurance policy which he told me about but I do not know the amount and I never collected on it.”

12. In the Appellant’s statement of appeal received on 26th April 2005 she states:

“I was the youngest in the family and my father was an older widower. He was worried that I should have a dowry. So I could get married. He made a dowry insurance for me and my sister, [REDACTED] ([REDACTED]). I still can see the insurance agent, in my mind’s eye, when he came to our house to pick up the money from my father. My father told me that we have this insurance so I shouldn’t worry. He repeated the name of the insurance company [REDACTED], so it should stick in my mind. Therefore, I am positive that we had this insurance for me and my sister. It was a dowry insurance, not a life insurance. Please try, I am sure you will find the documents to verify my claim.”

THE INVESTIGATION AND DECISION BY THE RESPONDENT

13. [REDACTED] denied the claim in its decision letter dated 16th March 2005 (paragraph 4).

14. In response to the appeal [REDACTED] confirmed its position in a letter dated 6th May 2005 stating that: *“From our point of view the claim had to be dismissed, because the claimant could not submit any documents, which could be adequately sustain the existence of an insurance policy.*

Unfortunately we could not find any evidence of an insurance contract in our records in this case. Even under the relaxed standards of evidence the claim had to be rejected.”

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 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 to establish 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 any policy was issued by the company.

17. In this matter the Appellant submitted anecdotal evidence that her father purchased policies from [REDACTED] in Czechoslovakia. Endowment policies are considered life insurance policies under the ICHEIC process. The Appellant's statements concerning the policies are not implausible.
18. The issue of whether the Appellant and her family were Holocaust victims has not been questioned, and the Appellant and her sister would be entitled to the proceeds of any insurance policies as either named beneficiaries or as heirs.
19. However, the issue for determination is whether [REDACTED] is responsible for the policies the Appellant claims were purchased in Czechoslovakia. The deciding Arbiter accepts, as is also the result of the discussion between the Contracting Parties (see paragraph 9), that [REDACTED] is responsible only for the German portfolio of [REDACTED]. It acquired and dealt with the German portfolio: there is no evidence to suggest that it ever issued policies in Czechoslovakia. In the respective databases there is no evidence of a contractual relationship between the German [REDACTED], the Appellant, her sister and her father. [REDACTED] is not responsible for [REDACTED] policies issued in Czechoslovakia because German [REDACTED] was a subsidiary company to the Austrian [REDACTED]. Therefore, the Appellant has not met the burden of proof pursuant to Section 17.2.1 (paragraph 15) that a German company is responsible for the policies claimed.
20. Considering the details set out above, the Panel concludes that [REDACTED]'s denial of the claim was in accordance with the rules of the Agreement and the Appeal Guidelines.
21. In fairness to the Appellant, this case will be referred to the ICHEIC Claims team so that the matter may be processed in Austria, since [REDACTED] was an Austrian company. If this processing is not deemed possible, then it is recommended that the Appellant's claim should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures pursuant to Section 8A2 of the Memorandum of Understanding.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated: January 2006

[REDACTED]