

## 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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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 is [REDACTED]. He was born on [REDACTED] 1951 in Berlin. He is the great nephew of [REDACTED], born on [REDACTED] 1874 in Pommern, Germany. He and his wife [REDACTED] were deported to the concentration camp Lodz in Poland where they died in 1942. They were declared to have died on 9<sup>th</sup> May 1945. [REDACTED] was a successful wholesale fish dealer in Berlin. In 1938 he was forced to give up his business because it was “Arianised”.

2. The Respondent is [REDACTED] (“[REDACTED]”).
3. By claim form of 20<sup>th</sup> December 2003, the Appellant claimed insurance taken out by his great uncle [REDACTED].
4. [REDACTED] declined the claim in its decision letter of 9<sup>th</sup> August 2005. It stated that it had found insurance policy number [REDACTED] in its archives, which had been taken out in 1928 by [REDACTED] with [REDACTED]. However, the insurance policy had never taken effect according to its records.

In his Appeal dated 12<sup>th</sup> September 2005 against [REDACTED]’s decision, the Appellant requested that the Respondent provide documentation regarding the insurance contract it had found and, further, documentation that showed that the contract had not taken effect. The Appellant stated that his uncle was a successful businessman, and that it was unlikely that he had not paid the insurance premiums.

5. [REDACTED] responded to the appeal by letter of 4<sup>th</sup> October 2005, providing a copy of a name card for insurance policy number [REDACTED] as the only available documentation regarding the insurance contract. It stated that the contract ended in 1928 without taking effect, which was indicated by the note “n.i.K.” on the document, which stood for “nicht in Kraft” (translated to “not taken effect”). The name card refers to a piano dealer born on [REDACTED] 1880.
6. By letter of 15<sup>th</sup> October 2005, the Appellant stated that the name card must refer not to his great uncle but to a different person since his great uncle was born on [REDACTED] 1874 and had run a wholesale fish business.
7. In [REDACTED]’s response dated 15<sup>th</sup> October 2005, it pointed out that it had not been told [REDACTED]’s date of birth previously and, therefore, was unaware of the confusion between the two persons. It stated that it had once again had searched its archives for the Appellant’s great uncle [REDACTED] born on [REDACTED] 1874 but that it was unable to find an insurance contract between him and [REDACTED].
8. In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel’s general decision in July 2004, this appeal was assigned to [REDACTED].

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.

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

## **CONCLUSIONS OF LAW**

9. The main issue for determination 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 1<sup>st</sup> January 1920 and 8<sup>th</sup> 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.

**10.** 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.

The Appellant did not provide any evidence for the existence of further life insurance policies. The name card [REDACTED] found did not refer to the Appellant’s great uncle but to another individual of the same name.

While it is possible that the Appellant’s great uncle had taken out life insurance since he was a wealthy man, [REDACTED] could not find any record supporting this claim that such policy would have been taken out with it.

In addition the Appellant has no independent documentary or anecdotal evidence supporting his claim.

The Appellant, therefore, has not met his burden of proof and provided a sufficient basis upon which the Appeals Panel might conclude that it was [REDACTED] which issued an insurance policy to the Appellant’s great uncle.

[REDACTED]’s decision to decline payment must be upheld.

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 26 day of January 2006

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[REDACTED]