

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 NUMBERS: [REDACTED] &
[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], (formerly [REDACTED]), was born on [REDACTED] 1922 in Vienna, Austria and presently resides in Israel. The Appellant claims the proceeds of a life insurance policy issued to her father-in-law and an educational policy issued to her husband. The Appellant’s husband, [REDACTED] (formerly [REDACTED]), was born in Berlin on [REDACTED] 1922 and died in Israel on 27th April 1995. His parents were [REDACTED] and [REDACTED] (nee [REDACTED]) who escaped Nazi persecution in 1937 and died in Israel respectively on 22nd October 1953 and 9th January 1964.
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted two claim forms dated 15th March 2000 and 4th October 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims the life insurance policies purchased from [REDACTED]. ICHEIC claim files

[REDACTED] and [REDACTED] were processed. Related file [REDACTED] concerns [REDACTED], but is not the subject of this appeal (see paragraph 8 below). Both claim files [REDACTED] and [REDACTED] contain the same information, and for the purposes of this appeal, will be dealt with in one decision by the Panel.

4. The ICHEIC submitted the claims to [REDACTED] which included correspondence dated 22nd November 1958 from [REDACTED] to [REDACTED] concerning her husband's policy and a letter dated 18th November 1958 from [REDACTED] mentioning his educational policy issued by [REDACTED]. This letter states that both policies (his father's life policy and his educational policy) were "*cancelled by [REDACTED] on the 1st September 1937 as a result of failure to meet the premium payments.*"
5. [REDACTED] states in its final decision letter dated 18th August 2004 that it had searched the information provided and there was no evidence of a life insurance policy with [REDACTED] in its archives or external records.
6. The Appellant submitted an appeal form dated 2nd June 2005 to the Appeals Office. [REDACTED] responded in its letter dated 13th September 2005 and repeated its reasons for denial and that the Appellant's reference to [REDACTED] is a subsidiary company of [REDACTED] who may have issued the insurance.
7. On 9th September 2005 the Appeals Office informed the 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. No request for an oral hearing has been received. The appeal proceeds on a "*documents only*" basis.
8. The ICHEIC found a research database match that [REDACTED] purchased two policies from the insurance company [REDACTED] and set up related claim file [REDACTED]. The Appellant accepted an offer by [REDACTED] of US\$8,000 for two policies ([REDACTED] and [REDACTED]) on 21st November 2005.
9. 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.

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

10. The Appellant submitted in her claim forms that [REDACTED] sold a life insurance policy to [REDACTED] and an educational policy to her late husband. The 1958 correspondence submitted is as follows:
 - (a) A letter to [REDACTED] from lawyer [REDACTED] dated 18th November 1958. In this letter [REDACTED] writes to lawyer [REDACTED] in Berlin stating that Mr. [REDACTED] had a life policy with [REDACTED], possibly through the agency "[REDACTED]" in Berlin and requests that he investigates the matter.
 - (b) A letter to [REDACTED] insurance from [REDACTED] dated 22nd November 1958. This letter states: "*My husband, Mr [REDACTED], took out a life assurance policy*

with your company when we were living in Berlin at the time – we were there during the years 1920-1930. It was not possible for us to continue maintaining this policy, due to our having been forced to leave Germany, as well as the subsequent circumstances in which we found ourselves. I therefore assume that the premium payments for this policy fell into arrears after a certain period of time. Mr [REDACTED] passed away during 1953.

I would now like to know whether rights to this policy still exist and or when and for what reason (possibly as a result of the German government) the policy was restricted or cancelled.

I am not able to provide further details because this policy was handled personally by Mr [REDACTED], although I do know that the policy was certainly taken out. I am sure that you will be in a position to find out more about this policy, on the basis of the name and address provided. It is possible that an educational insurance policy was also taken out with yourselves in the name of our son, [REDACTED].

I would be grateful to you if you could provide me with the information that I seek.”

- (c) A letter to lawyer [REDACTED] from [REDACTED] dated 1st February 1958. This incomplete letter (1 page only) is in response to [REDACTED] letter dated 17th January 1958 [not before Arbiter as evidence] and discusses issues connected with applying for compensation regarding his family assets. He had read the transcript and “...the policy was cancelled by [REDACTED] on the 1st September 1937 as a result of failure to meet the premium payments... The failure to meet the premium payments must have resulted directly from the persecution. If this were not the case then my mother would be able to demand a payout from the insurance policy immediately. It is for this reason that she is now claiming compensation. [...] As I explained in my letter to Dr P on the 25.10.57, as far as we are aware an insurance policy was taken out with the [REDACTED], as was an educational insurance policy in my name. According to my mother, the insurance policies were taken out through a company called “[REDACTED]” and, as I have already stated, a “[REDACTED]” does indeed exist in Berlin, located at Kurfuerstendamm 24.”

11. The Appellant states in her appeal form dated 2nd June 2005: “Any relevant information that is known to me regarding the life assurance policy that ran and was fully paid until 1938, is contained in my Application from the 29/03/01. [...] All the relevant documents were attached to the application. It emerged from these documents that the [REDACTED] in Berlin had issued a life insurance policy in the name of Mr. [REDACTED], with his wife Mrs. [REDACTED] named as the legal beneficiary. The insurance policy was taken out through the [REDACTED] – research facility – [REDACTED] Group in Berlin. “[REDACTED]” [REDACTED], Kurfürstendamm 24. It was declared invalid during 1937 – 1938...”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

12. [REDACTED] denied the claim in its decision letter dated 18th August 2004: “...based on the information you provided in the application form and in compliance with the “Agreement” and its regulations, we have performed an intensive search in all the relevant archives and documents for clues. Regrettably the searches in our files were unsuccessful. [...]”

No reference, in any form, to the policy in question could be located in any of the external archives examined. Based on the information you provided in the application form, and in the following our intensive search in internal and external archives, the existence of life-

insurance policy taken out for [REDACTED] with [REDACTED] could not be established, even using the relaxed rules of evidence” provided for in the Agreement.”

13. In response to the appeal [REDACTED] reiterated its position in a letter dated 13th September 2005 stating that it had researched its archives without finding any results. Furthermore, [REDACTED] states: “[...] *The documents provided by the Claimant do not contain any conclusive information about a policy with [REDACTED]. The Claimant mentions in her claim and in her appeal that the policy was issued by the [REDACTED] this policy was a subsidiary of the [REDACTED]. We therefore believe that the policy in question might have been with the mentioned company and not with [REDACTED]. As the Claimant has not produced any additional information in her appeal, we are still of the opinion that based on the presently available information that based upon the existence of a life insurance policy taken out by [REDACTED] with [REDACTED] could not be established, even under the Relaxed Standards of Proof under the Agreement.*”

THE ISSUES FOR DETERMINATION

14. 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.
15. 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 a policy was issued by the company.
16. In this matter the Appellant asserts that her father-in-law and husband had purchased a life policy and an educational policy from [REDACTED] prior to the Holocaust. The 1958 correspondence (paragraph 10) has been duly considered.
17. There is no doubt that the Appellant and her husband’s family were Holocaust victims, and from the evidence presented, that the Appellant would be entitled to the proceeds of any insurance policies as heir.

However, the Appellant has not met the burden of proof that any policy was issued by [REDACTED]. There is insufficient evidence to convince the deciding Arbiter of the existence of any life insurance contract between the Appellant’s late husband and father-in-law and [REDACTED], especially since no additional details have been provided and

neither [REDACTED] nor the ICHEIC found a research match in their databases. However, a match was found by ICHEIC for two policies issued to the Appellant's father-in-law by the insurance company [REDACTED] and the Appellant accepted an offer in November 2005 by [REDACTED] for both policies (paragraph 8). Therefore, it is concluded that the policies claimed in this appeal relate to [REDACTED], and not [REDACTED].

IT IS THEREFORE HELD AND DECIDED:

The appeal in Claim numbers [REDACTED] and [REDACTED] is dismissed.

Dated: 9th January 2006

[REDACTED]