

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

Fax:

++ 44 (0) 207 269 7303

Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]
[REDACTED] Direct Appeal

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] 1929 in Warsaw, Poland. She is the daughter of [REDACTED] (also known as [REDACTED]) who was born on [REDACTED] 1899 in Podwoloczyńska, Poland and died in 1945 in Warsaw. Her mother, Dr. [REDACTED] ([REDACTED]) [REDACTED], née [REDACTED], was born in 1896 in Warsaw and died in 1943 in the Treblinka concentration camp.
2. The Respondent is [REDACTED] ([REDACTED]).
3. Prior to the formation of the International Commission on Holocaust Era Insurance Claims (ICHEIC) the Appellant contacted the Respondent claiming an insurance policy or policies issued to her father.
4. [REDACTED] acknowledged the Appellant's enquiry on 5th December 1997, stating that it was searching its archives for a record of:

"[REDACTED], born [REDACTED] 1898 in Podwoloczyńska; worked at Northern Transport Co. Export/ Import, Warsaw."

5. However, on 15th December 1997, [REDACTED] informed the Appellant that it could find no evidence of a contractual relationship with her father in its records. It confirmed this decision on 13th May 2005, offering the Appellant a right of appeal to the ICHEIC Appeals Panel within 120 days of receipt of its letter.
6. The Appellant appealed the decision on 25th August 2005 by submitting an Appeal Form directly to the Respondent, which stated:

"I heard my father say that he obtained insurance with [REDACTED] that was in 1939, when the Germans invaded Poland."

7. [REDACTED] forwarded the Appeal Form to the Appeals Office on 17th October 2005. It then forwarded all copies of its letters to the Appellant on 14th November and 6th December 2005.
8. On 14th December 2005, the Appeals Office informed the parties that the appeal would be decided on a "*documents only*" basis unless it received a request for an oral hearing from either party within 14 days of receipt of the letter.
9. No request for an oral hearing was received from either party. The appeal proceeds on a "*documents only*" basis.
10. As background, it is noted that the Appellant has brought other claims for insurance policies issued to her father over the last decade. In 1997, she approached [REDACTED] ([REDACTED]) directly, claiming life and property insurance. She then submitted a Holocaust era insurance questionnaire to the Florida Department of Insurance on 11th June 1998, which stated:

"I was a child at that time [in] 1939. My father was a prominent businessman. I remember hearing talk about insurance."

The claim was subsequently transferred to the ICHEIC and became the subject of ICHEIC fast-track claim number [REDACTED]. [REDACTED] declined payment for this claim on

13th September 2005 as it could find no evidence of a contractual relationship with the Appellant's father. This claim is not the subject of this appeal.

11. The Appellant also submitted a claim form to the ICHEIC dated 18th January 2000 claiming an insurance policy issued to her father. As no company was named, the claim (number [REDACTED]) was submitted to a number of companies, including the Respondent, for investigation.

No match was found so the claim was forwarded to the Austrian General Settlement Fund (GSF) for processing.

The ICHEIC awarded the Appellant US \$1,000 for this claim on 31st March 2004 through the Section 8A1 humanitarian process.

Claim number [REDACTED], similarly, is not part of the present appeal.

12. 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 ISSUE FOR DETERMINATION

13. Pursuant to section 17.2 of the Appeal Guidelines (Annex E to the Agreement) a claim is only eligible for compensation where an Appellant can show, 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 January 1920 and 8 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.

14. 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.

15. In this case, there is no doubt that the Appellant's father was a Holocaust victim, or that the Appellant, as his daughter, would be entitled to the proceeds of any insurance as his heir. Therefore, the sole issue for determination relates to whether the Appellant has met her burden in establishing, based on the Relaxed Standards of Proof, that the Respondent issued a policy or policies to her father prior to the war.
16. The Appellant has stated that she remembers her father talking about insurance with [REDACTED] in 1939. Not surprisingly given her young age at the time, she had been unable to provide any documentary evidence in support of her claim, or to recall any specific policy details.
17. However, [REDACTED] is aware that the Respondent's central index register of applications for insurance is complete for the period 1923 until 1976. Therefore, the absence of an entry for the Appellant's father in this register is strong evidence against the existence of a contractual relationship. Without any documentary evidence or more compelling or persuasive anecdotal evidence to support her claim, [REDACTED] determines that the Appellant has not met her burden of proof, even applying the Relaxed Standards of Proof. As the elements of section 17.2 have not been met, the appeal must be dismissed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed

Dated this 15th day of February 2006

[REDACTED]