

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 [REDACTED], was born on [REDACTED] 1914 in Munkacs, Czechoslovakia and presently resides in New York, USA. The Appellant’s brother, [REDACTED], was born on [REDACTED] 1904 in Munkacs, Czechoslovakia, paid life insurance policy premiums to [REDACTED] insurance company until February 1942 when he was deported to a forced labour camp and died there during 1943.
2. The Appellant submitted an ICHEIC Claim form dated 3rd October 2003 in which he claims his brother’s life insurance that was issued by “[REDACTED]” in Czechoslovakia.

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 15th September 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 brother.
5. The Appellant submitted an appeal form dated 14th October 2005 in which he clarifies that he remembers at home his brother paying policy premiums to a local insurance broker from [REDACTED].
6. [REDACTED] responded in its letter dated 31st October 2005 and repeated its reasons for denial.
7. On 8th December 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. This appeal was stayed pending investigation between ICHEIC and [REDACTED] as well as between the Contracting Parties of the Agreement mentioned in paragraph 9 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.
9. 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 ISSUES FOR DETERMINATION

10. 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.
11. 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.
 12. In this matter the Appellant submitted anecdotal evidence that his brother purchased a life policy from [REDACTED] in Czechoslovakia and that he can recall the premium payments being made to the local [REDACTED] broker. The Appellant’s statements concerning the policy are not implausible.
 13. The issue of whether the Appellant and his family were Holocaust victims has not been questioned, and the Appellant would be entitled to the proceeds of any insurance policy as either named beneficiary or as heir.
 14. However, the issue for determination is whether [REDACTED] is responsible for the policy the Appellant claims had been purchased in Czechoslovakia. The deciding Arbiter accepts, as is also the result of the discussion between the Contracting Parties (see paragraph 8), 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, and his brother. [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 10) that a German company is responsible for the policies claimed.
 15. 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.
 16. 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: 16th February 2006

[REDACTED]