

CLAIMS RESOLUTION TRIBUNAL

In re Holocaust Victim Assets Litigation
Case No. CV96-4849

Certified Award

to Claimant [REDACTED 1],
represented by [REDACTED] and [REDACTED],

and to the Estate of Claimant [REDACTED 2]¹

in re Accounts of Josef Bamberger

Claim Numbers: 205563/HS,² ENG-0056037/HS³

Award Amount: 172,875.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”), and the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together, the “Claimants”) to the published accounts of Josef Bamberger (the “Account Owner”), over which Emma Bamberger (the “Power of Attorney Holder”) held power of attorney, at the Basel branch of the [REDACTED] (the “Bank”).⁴

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

¹ The CRT notes that [REDACTED], the daughter and representative of Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) indicated that Claimant [REDACTED 2] (“Claimant [REDACTED]”) passed away in 2003. Therefore, this Certified Award is to the Estate of Claimant [REDACTED 2].

² Claimant [REDACTED 1] submitted additional claims to the accounts of [REDACTED] and [REDACTED], which are registered under the Claim Numbers 205564 and 205565, respectively. The CRT will treat the claims to these accounts in separate decisions.

³ Claimant [REDACTED 2] did not submit a Claim Form to the Claims Resolution Tribunal. However, he submitted an Initial Questionnaire (“IQ”), numbered ENG-0056037, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those IQs that can be processed as claim forms be treated as timely claims. See Order Concerning the Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). Claimant [REDACTED 2]’s IQ was forwarded to the CRT. In a letter to the CRT, dated 23 April 2001, and submitted as a supplement to his IQ, Claimant [REDACTED 2] additionally claimed the accounts of [REDACTED] and [REDACTED]. The CRT will treat the claims to these accounts in separate decisions.

⁴ The CRT notes that, in the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), this Account Owner is indicated as having only one account. Upon careful review, the CRT has determined that the Bank’s record evidences the existence of two accounts.

Information Provided by the Claimants

Claimant [REDACTED 1] submitted a Claim Form and Claimant [REDACTED 2] submitted a letter, dated 23 April 2001, as a supplement to his previously filed IQ, identifying the Account Owner as their paternal uncle by marriage, Josef (or Joseph) Bamberger, and the Power of Attorney Holder as their aunt, Emma Bamberger, née Stern, who was the sister of their father, [REDACTED]. Claimant [REDACTED 1] stated that her aunt was born on 4 October 1883 in Mainstockheim, Germany. Claimant [REDACTED 2] further stated that his aunt and uncle lived at Westenriederstrasse 20 in Munich, Germany. Claimant [REDACTED 1] indicated that her uncle was a butcher, and that he and his wife had two children: [REDACTED], née [REDACTED], and [REDACTED]. According to Claimant [REDACTED 1], after the Nazi rise to power in Germany, Josef and Emma Bamberger, who were Jewish, received sponsorship papers from the Claimants' father to emigrate to the United States. Claimant [REDACTED 1] indicated that her aunt and uncle died in 1939 or 1940, while on a ship bound for the United States that was sunk by the Nazis off the coast of either Germany or Holland. Claimant [REDACTED 1] submitted her own birth certificate, indicating that she is the daughter of [REDACTED] and [REDACTED], née [REDACTED], who resided in Mainstockheim, Germany, at the time of Claimant [REDACTED 1]'s birth; her United States naturalization certificate, indicating that her maiden name is [REDACTED]; and a detailed family tree, indicating that the Claimants are the children of [REDACTED], who was the brother of Emma Bamberger, née Stern, and that Emma Bamberger was married to Josef Bamberger. Claimant [REDACTED 1] indicated that she was born on 4 November 1919 in Mainstockheim. Claimant [REDACTED 2] indicated that he was born in 1908. According to Claimant [REDACTED 1]'s daughter and representative, [REDACTED], Claimant [REDACTED 2] passed away in 2003.

Information Available in the Bank's Record

The Bank's record consists of a power of attorney form, dated 26 October 1930. According to this record, the Account Owner was *Herr* (Mr.) Josef Bamberger, who resided in Munich, Germany, and the Power of Attorney Holder was *Frau* (Mrs.) Emma Bamberger, née Stern. The Bank's record contains signature samples for the Account Owner and the Power of Attorney Holder. According to this record, the Account Owner held one custody account, numbered 36184, and one savings/passbook account, numbered 7383.

The Bank's record shows neither the value of the savings/passbook account, nor when it was closed. In addition, the CRT notes that the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not report the savings/passbook account. Thus, there is no information before the CRT as to the disposition of this account.

With regard to the custody account, the Bank's record does not show when this account was closed, to whom it was paid, nor does this record indicate the value of this account. The auditors who carried out the ICEP Investigation did not find the custody account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that

there was no evidence of activity on this account after 1945.

There is no evidence in the Bank's record that the Account Owner, the Power of Attorney Holder, or their heirs closed either the savings/passbook account or the custody account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner and the Power of Attorney Holder. The Claimants' uncle's name matches the published name of the Account Owner and the Claimants' aunt's married and maiden names match the published names of the Power of Attorney Holder. Claimant [REDACTED 2] also identified his uncle's residence as Munich, Germany, which matches published information about the Account Owner contained in the Bank's record. The CRT notes that the Bank's record does not contain any specific information about the Account Owner and the Power of Attorney Holder other than their names and the Account Owner's city of residence. In support of their claims, the Claimants provided detailed biographical information about their relatives, including their street address in Munich, the names of their children, and their uncle's profession. The CRT notes that the other claims to these accounts were disconfirmed because those claimants were unable to identify their relationship to the Account Owner or the Power of Attorney Holder, or provided different married and/or maiden names than that of the Power of Attorney Holder, and/or dates of birth that are inconsistent with the information contained in the Bank's record regarding the Account Owner and the Power of Attorney Holder.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish, and that he and the Power of Attorney Holder fled Germany for the United States and died while aboard a ship that was sunk by the Nazis in 1939 or 1940.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and a family tree indicating that the Account Owner was the Claimants' uncle, that the Power of Attorney Holder was the Claimants' aunt, and that the

Claimants are brother and sister. Additionally, Claimant [REDACTED 1] provided her own birth certificate, providing independent verification that the Claimants' relatives bore the family name Stern and that they resided in Germany. There is no information that the Account Owner or Power of Attorney Holder had other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner and the Power of Attorney Holder were killed by the Nazis while fleeing Germany in 1939 or 1940; that there is no record of a closure date for these accounts, nor any record of payment of the Account Owner's accounts to him, the Power of Attorney Holder, or their heirs; that the Account Owner's heirs would not have been able to obtain information about his accounts after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (h) and (j) as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not account owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one custody account and one passbook/savings account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here for both accounts, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs (SF) and the average value of a savings/passbook account was 830.00 Swiss Francs. Consequently, the total 1945 average value of the accounts at issue was SF 13,830.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 172,875.00.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by

representation. Accordingly, as the niece and nephew of the Account Owner, the Claimants are each entitled to one-half of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
13 July 2004