

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Henry Bardach
also acting on behalf of Lotte Ella Moise

in re Account of Kurt Bardach

Claim Number: 211116/MBC

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of Henry Bardach (the “Claimant”) to the accounts of Kurt Bardach (the “Account Owner”) at the [REDACTED] (the “Bank”). On 3 September 2002, the Court approved the Award of one of the Account Owner’s two accounts at the Bank.¹ The CRT did not reach a decision regarding the second account, pending further consideration as to whether or not the Account Owner or his heirs received the proceeds of that account. This Award is the result of the further consideration on whether the Account Owner received the proceeds of the second account.

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his father, Kurt Bardach, who was born on 3 September 1881 in Bad Kreuznach, Germany, and was married to Wilhelmine (or Minnie) Bardach, née Freundlich. The Claimant indicated that the couple had two children, Lotte Ella Moise, née Bardach, and Henry Bardach (the Claimant). The Claimant stated that his father was a physician in Düsseldorf, Germany, and that until December 1936 he lived at Duisburgerstrasse 134. The Claimant also stated that his father, who was Jewish, found it increasingly difficult to continue practicing medicine under the Nazi regime. The Claimant further stated that his father’s practice was officially boycotted and his father was threatened with deportation to a concentration camp. The Claimant explained that he and his sister were ridiculed at school, and therefore their parents sent them to school in the United Kingdom. The Claimant further explained that, because of the increasing persecution, the Claimant’s father fled with his family to the United States in December 1936 and settled in New York, New York. The Claimant stated that his father passed away in New York on 30 November 1965 and his mother died on 11 April 1973 in Fort Bragg, California. The Claimant submitted various documents in

¹ See In re Accounts of Kurt Bardach (approved on 3 September 2002), hereinafter the “September 2002 Award.”

support of his claim, including his birth certificate, which shows that he was born on 22 August 1921 in Düsseldorf to Kurt Arthur Bardach, a medical doctor (*Doktor der Medizin*), and Wilhelmine Bardach, née Freundlich. The Claimant is representing his sister, Lotte Ella Moise, née Bardach, who was born on 17 December 1917 in Düsseldorf.

Information Available in the Bank's Record

The Bank's record consists of a registry card. According to this record, the Account Owner was *Dr. med.* (Doctor of Medicine) Kurt Bardach. The Bank's record indicates that the Account Owner was from Düsseldorf, Germany, and that the Account Owner held one demand deposit account. The account was opened on 20 February 1930 and closed on 20 June 1935. The amount in the account on the date of its closure is unknown. The Bank's record does not indicate to whom the account was paid. There is no evidence in the Bank's record that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

In the September 2002 Award, it was determined that the Claimant had plausibly identified the Account Owner. His father's name and country of residence match the published name and country of residence of the Account Owner. In addition, the Claimant indicated that his father lived in Düsseldorf, which matches the unpublished city of residence of the Account Owner contained in the Bank's record. Furthermore, the Claimant submitted his birth certificate, which indicates that his father was a medical doctor (*Doktor der Medizin*), which matches the unpublished title of the Account Owner contained in the Bank's record. In support of his claim, the Claimant submitted various documents, including his birth certificate, which demonstrates that he was born on 22 August 1921 in Düsseldorf to Kurt Arthur Bardach, a medical doctor, and Wilhelmine Bardach, née Freundlich. As noted in the September 2002 Award, there are no other claims to the account of this Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

In the September 2002 Award, it was determined that the Claimant had made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, that he was persecuted by the Nazis, and that he was forced to flee Germany in order to avoid further persecution.

The Claimant's Relationship to the Account Owner

In the September 2002 Award, it was determined that the Claimant had plausibly demonstrated that he is related to the Account Owner by submitting documents, including his birth certificate, which states that his father is Kurt Arthur Bardach, demonstrating that he is the son of the Account Owner, and based on the Claimant's identification of unpublished information about his

father as contained in the Bank's records. There is no information to indicate that the Account Owner has surviving heirs other than the Claimant and his sister, whom the Claimant is representing.

The Issue of Who Received the Proceeds

In evaluating whether the Account Owner or his heirs received the proceeds of the demand deposit account, the CRT took into account the facts of the closing of the Account Owner's demand deposit account in 1935, and considered that: the Nazis embarked on a campaign in 1933 to seize the domestic and foreign assets of Jewish nationals in Germany through the enforcement of flight taxes and other confiscatory measures including confiscation of assets held in Swiss banks; the Account Owner remained in Germany until December 1936 and would not have been able to repatriate his account to Germany without its confiscation; there is no record of the payment of the Account Owner's account to him; and the Account Owner and his heirs would not have been able to obtain information about his account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquires by account owners because of the Banks' concern regarding double liability. Based on these factors, indicating a practical inability to receive the proceeds of his demand deposit account at the time it was closed in 1935, at which time the Account Owner lived in Germany, and given the application of relevant Presumptions (a), (h) and (j),² which establish a presumption of such a result in this context, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the account.

Amount of the Award

In this case, the Account Owner held one demand deposit account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs. 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 26,750.00 Swiss Francs.

² These presumptions are provided for in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), as set forth in the attached Appendix A and in Appendix C to the Rules. Appendix C appears on the CRT II website -- www.crt-ii.org.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares of representation. In this case, the Claimant is representing his sister. Accordingly, the Claimant and his sister are each entitled to one-half of the total award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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 for payment by the Special Masters.

Claims Resolution Tribunal
September 15, 2003