

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
represented by Rafi Zangot-Naiberg

to Claimant [REDACTED 2]
also acting on behalf of [REDACTED 3]

and to Claimant [REDACTED 4]

in re Account of Leyzor Berenbaum

Claim Numbers: 002913/GO, 002914/GO, 002915/GO, 002916/GO, 003534/GO, 710954/GO¹

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”), and [REDACTED 4], née [REDACTED], (“Claimant [REDACTED 4]”) (together the “Claimants”) to the published account of Leyzor Berenbaum (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

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

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted four Claim Forms identifying the Account Owner as his paternal grandfather’s brother, Leyzor Birenbaum (Berenbaum). Claimant [REDACTED 1] indicated that his great-uncle, who was Jewish, resided in Radom, Poland, until 1941, when he

¹ [REDACTED 4] (“Claimant [REDACTED 4]”) did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered HEB-0005061, 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 Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 710954.

perished. Claimant [REDACTED 1] further indicated that Leyzor Birenbaum was the brother of [REDACTED], who was the father of [REDACTED], Claimant [REDACTED 1]’s father. Claimant [REDACTED 1] further indicated that he has no other living relatives. Claimant [REDACTED 1] further indicated that he was formerly known as [REDACTED 1], and that he changed his name to [REDACTED 1] in 1962.

The Claimant submitted copies of: (1) his father’s birth certificate, indicating that [REDACTED] was born on 18 May 1900 in Bialobrzegi, Poland, and that his father was [REDACTED]; (2) his own birth certificate indicating that [REDACTED 1] was born on 10 June 1928 in Bialobrzegi; and (3) an excerpt from a book entitled, “The studies about a history of Bialobrzegi” (*Bialobrzegi Studia i szkice z dziejow miasta*), indicating that [REDACTED] and [REDACTED] were butchers, and that they resided in Bialobrzegi.

Claimant [REDACTED 1] indicated that he was born on 10 June 1928 in Bialobrzegi. Claimant [REDACTED 1] previously submitted four ATAG Ernst & Young claim forms in 1998 and nine Initial Questionnaires (“IQ”) to the Court in 1999, asserting his entitlement to Swiss bank accounts owned by Leyzor Birenbaum, Szlama Majer Birenbaum, Josek Birenbaum, and Mendel Birenbaum.²

Claimant [REDACTED 2] and Claimant [REDACTED 4]

Claimant [REDACTED 2] and Claimant [REDACTED 4], who are sisters, submitted a Claim Form and an IQ, respectively, identifying the Account Owner as their father, Elizer (Leyzor) Birnbaum, who was born in approximately 1900 and was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 2] and Claimant [REDACTED 4] indicated that their parents had five daughters: [REDACTED 2], [REDACTED 4], [REDACTED 3], [REDACTED], and [REDACTED]. In addition, Claimant [REDACTED 2] and Claimant [REDACTED 4] indicated that their father, who was Jewish, was a cattle and real estate dealer, and that he resided in Ulnov, Poland (today the Ukraine). Claimant [REDACTED 2] and Claimant [REDACTED 4] further indicated that their house was burned down by Nazis in 1943, and that their father and their sisters [REDACTED] and [REDACTED] were killed.

In support of her claim, Claimant [REDACTED 2] submitted a copy of her own marriage certificate, indicating that [REDACTED 2] and [REDACTED] were married on 16 December 1958, and that Eliezer Birnbaum was [REDACTED 2]’s father. Claimant [REDACTED 2] previously submitted ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Elizer (Leyzor) Birnbaum.

Claimant [REDACTED 4] indicated that she was born on 5 January 1931 in Poland. Claimant [REDACTED 2] indicated that she was born on 25 December 1936 in Ulnov. Claimant

² The CRT did not locate an account belonging to Szlama Majer Birenbaum, Josek Birenbaum and Mendel Birenbaum in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

[REDACTED 2] is also representing her sister, [REDACTED 3], who was born in 1927 in Poland.

Information Available in the Bank's Records

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 an account belonging to Leyzor Berenbaum during their investigation of the Bank. The documents evidencing account belonging to Leyzor Berenbaum were obtained from the Swiss Federal Archive in Bern, Switzerland, and from the Press Office of the Polish Ministry of Finance, and are further described below.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962 (the "Federal Decree"), the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution ("the 1962 Survey"). In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the assets of Leyzor Berenbaum, numbered 19.

According to these records, the Account Owner was Leyzor Berenbaum, who was Polish, and resided in Poland. The Swiss Federal Archive records indicate that the Account Owner held a demand deposit account, which was opened in 1937 and which held a balance of 174.50 Swiss Francs ("SF") as of 24 February 1964. These records further indicate that the last activity on the account occurred in 1938, and that the Account Owner instructed the Bank to hold all correspondence relating to that account.

These records further indicate that the Bank applied to the relevant custodial authority (*Vormundschaftsbehörde*) to appoint a custodian for that account, and that such custodian was appointed in 1967. The records do not contain information about the ultimate disposition of this account.

Information Published by the Press Office of the Polish Ministry of Finance

In the publication entitled *Nasze finanse*, published by the Press Office of the Polish Ministry of Finance, number 25, dated February 1998, there is information concerning the assets of Leyzor Berenbaum, who was Polish and resided in Poland.

According to these records, Leyzor Berenbaum held a demand deposit account, which was opened in 1937 and which held a balance of SF 174.50 as of 24 February 1964. These records further indicate that the last activity on the account occurred in 1938 and that the Account Owner instructed the Bank to hold all correspondence relating to that account. These records further

indicate that the account had a balance of SF 74.50 on 15 August 1975, when it was transferred to the Polish National Bank.

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 six claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants' relatives' names each match the published name and country of residence of the Account Owner. The CRT notes that Claimant [REDACTED 2] and Claimant [REDACTED 4] identified their father as Elizer (Leyzor) Birnbaum and the Swiss Federal Archives records and Polish Ministry of Finance records identify the Account Owner as Leyzor Berenbaum. The CRT further notes that the name of the Account Owner is provided only in the records of the Swiss Federal Archives and Polish Ministry of Finance, and not in any original records from the Bank. The CRT concludes that the two names are sufficiently similar and that this discrepancy does not materially affect Claimant [REDACTED 2]'s and Claimant [REDACTED 4]'s identification of the Account Owner. The CRT notes that the name Leyzor Berenbaum appears only once on the List of Account Owners Published in 2005 (the "2005 List").

In support of her claim, Claimant [REDACTED 2] submitted copies of documents, including a copy of her own marriage certificate, providing independent verification that the person who is claimed by Claimant [REDACTED 2] to be the Account Owner had the same name recorded in the Swiss Federal Archive records as the name of the Account Owner.

The CRT further notes that the Claimant [REDACTED 1] and Claimant [REDACTED 2] each filed ATAG Ernst & Young claim forms in 1998, and that Claimant [REDACTED 1] and Claimant [REDACTED 4] filed IQs with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Leyzor (Elizer) Berenbaum, prior to the publication of the 2005 List. This indicates that the Claimants have based their present claims not simply on the fact that an individual identified on the 2005 List as owning a Swiss bank account bears the same name as their relatives, but rather on a direct family relationship that was known to them before the publication of the 2005 List. It also indicates that the Claimants had reason to believe that their relatives owned a Swiss bank account prior to the publication of the 2005 List. This supports the credibility of the information provided by the Claimants.

The CRT notes that Claimant [REDACTED 1]'s relative and Claimant [REDACTED 2]'s and Claimant [REDACTED 4]'s relative are not the same person. However, given that the Claimants have identified all published information about the Account Owner that is available in the Swiss Federal Archive's records; that the information provided by each claimant supports and in no way contradicts any information available in the Swiss Federal Archive's records; that there is no additional information in the Swiss Federal Archive's records which would provide a basis for

the CRT to make any further determinations as to the identity of the Account Owner; and that the other claim to this account was disconfirmed because that Claimant provided a different country of residence, the CRT finds that Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 4] have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have each made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants each stated that the Account Owner was Jewish. Claimant [REDACTED 1] indicated that his great-uncle perished in Poland in 1941. Claimant [REDACTED 2] and Claimant [REDACTED 4] indicated that their father was killed by the Nazis in 1943.

The Claimant's Relationship to the Account Owner

Claimant [REDACTED 1]

Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was Claimant [REDACTED 1]'s great-uncle. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT notes that Claimant [REDACTED 1] filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 1], prior to the publication in January 2005 of the 2005 List. The CRT further notes that Claimant [REDACTED 1] submitted copies of his father's birth certificate, his own birth certificate, and an excerpt from a book entitled "The studies about a history of Bialobrzegi," which provide independent verification that Claimant [REDACTED 1]'s relatives bore the same family name as the Account Owner and that they resided in Poland. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to Claimant [REDACTED 1] as a family member, and all of this information supports the plausibility that the Claimant [REDACTED 1] is related to the Account Owner, as he has asserted in his Claim Forms.

Claimant [REDACTED 2] and Claimant [REDACTED 4]

Claimant [REDACTED 2] and Claimant [REDACTED 4] have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant [REDACTED 2]'s and Claimant [REDACTED 4]'s father. These documents include a copy of Claimant [REDACTED 2]'s own marriage certificate, indicating that Eliezer Birnbaum was the father of [REDACTED 2]. There is no information to indicate that the Account Owner has other surviving heirs other than the party whom Claimant [REDACTED 2] is representing.

The Issue of Who Received the Proceeds

The records of the Press Office of the Polish Ministry of Finance indicate that the account was paid to the Polish National Bank on 15 August 1975.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants and the represented party, [REDACTED 3]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was his great uncle, and Claimant [REDACTED 2] and Claimant [REDACTED 4] have plausibly demonstrated that the Account Owner was their father and the father of represented party [REDACTED 3], and those relationships justify an Award. Third, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The records of the Press Office of the Polish Ministry of Finance indicate that the value of the demand deposit account as of 24 February 1964 was SF 174.50. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 300.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1964. Consequently, the adjusted balance of the account at issue is SF 474.50. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00 and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 26,750.00.

Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the archives records, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 4] have each established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1] is entitled to one-half of the Award amount, and Claimant [REDACTED 2], Claimant [REDACTED 4] and represented party [REDACTED 3], are together also entitled to one-half of the Award amount.

With regard to the share belonging to Claimant [REDACTED 2], Claimant [REDACTED 4] and represented party [REDACTED 3], 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 by representation. In this case, Claimant [REDACTED 2], Claimant [REDACTED 4] and represented party [REDACTED 3] are daughters of the Account Owner. Accordingly, Claimant [REDACTED 2], Claimant [REDACTED 4] and represented party [REDACTED 3], are each entitled to one-sixth of the 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
31 August 2007