

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Julius Berger

in re Accounts of Adolf Berger

Claim Number: 400453/SI

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of Dr. Julius Berger (the “Claimant”) to the published account of A. Berger. This Award is to the published accounts of Adolf Berger (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).¹

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 in 2005 identifying the Account Owner as his paternal grandfather, Adolf Berger, who was born on 8 January 1874 in Gau Birkenheim, Germany, and was married to Johanna Berger, nee Rüb, in Gau Odernheim, Germany. The Claimant indicated that his grandfather was a watchmaker and owner of a jewelry store in Sprendlingen, Germany. The Claimant further indicated that his grandparents had two children, Harold Berger (the Claimant’s father) and Irma Mayer, née Berger, both of whom were born in Sprendlingen. The Claimant further indicated that his grandfather, who was Jewish, fled Germany to Switzerland in 1936, and emigrated to the United States in 1937. The Claimant indicated that his grandfather died on 22 April 1948 in New York, New York, the United States.

In support of his claim, the Claimant submitted documents, including his grandfather’s United States Certificate of Naturalization and his death certificate, both indicating that his name was Adolf Berger and that he was from Germany; his father’s death certificate, indicating that Harold Berger’s father was Adolf Berger; and Harold Berger’s will, indicating that the Claimant is

¹ The CRT notes that the Claimant filed a timely claim in 2005 to the account of A. Berger, which was included on the 2005 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution. Upon careful review, the CRT has determined that this account did not belong to the Claimant’s relative. However, in the course of its research, the CRT identified a different account belonging to the Claimant’s relative. This account was included on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution.

Harold Berger's son, and that the Claimant and his sister, Jean Milbauer, were the heirs to his estate. In addition, the Claimant submitted a copy of a temporary United States passport, issued in 1933 to Harold Berger, indicating that he was born in Sprendlingen on 30 October 1905; and a letter, dated 8 November 1935, addressed to *Frau* (Mrs.) Irma Mayer, care of Adolf Berger in Sprendlingen. The Claimant indicated that he was born on 8 November 1937 in New York.

Information Available in the Bank's Records

The Bank's records consist of a customer card and a securities deposit form. According to these records, the Account Owner was Adolf Berger, who resided in Sprendlingen, Rheinland, Germany. The Bank's records also indicate that Bank correspondence was to be sent to Mr. Ludwig Herz, Walchestrasse 25, Zurich, Switzerland, and that Mr. Herz asked the Bank to refrain from sending non-vital communications to him, explaining that forwarding mail to the Account Owner involved some difficulties. The Bank's records indicate that the Account Owner held a demand deposit account and a custody account, numbered 32918, both of which were opened no later than 1931. The Bank's records further indicate that on 6 July 1931, the Account Owner deposited bonds issued by the Bank in the custody account. The total nominal value of these bonds was 5,000.00 Swiss Francs ("SF").

According to the Bank's records, the custody account was closed on 17 July 1933. The Bank's records do not indicate the value of this account at the date of its closure. With regard to the demand deposit account, the Bank's records do not show when it was closed, nor do these records indicate the value of this account. 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 find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. There is no evidence in the Bank's records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's grandfather's name and city and country of residence match the published name and city and country of residence of the Account Owner.

In support of his claim, the Claimant submitted documents, including his grandfather's United States Certificate of Naturalization and his death certificate, indicating that his name was Adolf Berger, and a copy of a temporary United States passport issued in 1933 to Adolf Berger's son, Harold Berger, indicating that he was born in Sprendlingen, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the Bank's records as the name and the city of residence of the Account Owner. The CRT notes that the name Adolf Berger appears only once on the February 2001

published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution. The CRT further notes that the other claims to these accounts were disconfirmed because those claimants provided different countries of residence than the country of residence of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has 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 fled from Nazi Germany to Switzerland in 1936, and that he later emigrated to the United States in 1937.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's grandfather. These documents include Harold Berger's death certificate, identifying his father as Adolf Berger; and Harold Berger's will, indicating that the Claimant is Harold Berger's son.

The Issue of Who Received the Proceeds

Given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax- and other confiscatory measures, including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until 1936, and would not have been able to repatriate his accounts to Germany without losing ultimate control over their proceeds; that there is no record of the payment of either of the Account Owner's accounts to him, nor any record of a date of closure of the custody account; that the Account Owner and his 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; given the application of Presumptions (a), (h) and (j) as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendices A and C),² 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 grandfather, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

² Appendix C appears on the CRT II website -- www.crt-ii.org.

Amount of the Award

In this case, the Account Owner owned one demand deposit account and one custody account.

With respect to the custody account, the Bank's records indicate that on 6 July 1931, the Account Owner deposited bonds issued by the Bank in the account with a nominal value of SF 5,000.00.³ According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00. 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 an amount of SF 162,500.00.

With respect to the 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 ICEP Investigation, in 1945 the average value of a demand deposit account was SF 2,140.00. 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 an amount of SF 26,750.00.

Consequently, the total award amount is SF 189,250.00.

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 payment by the Special Masters.

Claims Resolution Tribunal
28 June 2006

³ These bonds were not listed on the Zurich Stock Exchange, thus likely were not tradable.