

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of Dr. Imre Berger

Claim Numbers: 206880/HM,¹ 221817/HM

Award Amount: 162,500.00 Swiss Francs

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

All awards are published, but where a claimant has requested confidentiality, as Claimant [REDACTED 2] has 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

The Claimants submitted Claim Forms indicating that the Account Owner was Dr. Imre Berger, a lawyer, who was born on 27 June 1903 in Zalaegerszeg, Hungary, and was married to Lilly Berger, née Livia Freiburger, on 28 June 1931 in Zalaegerszeg. Claimant [REDACTED 1] indicated that the Account Owner was his paternal uncle (the brother of his father, Dr. [REDACTED]). Claimant [REDACTED 2] indicated that the Account Owner was his brother-in-law, and that Lilly Berger, Dr. Imre Berger’s wife, was his sister. The Claimants stated that their relatives, who were Jewish, resided at Kossuth Lajos U. 11 in Zalaegerszeg until 1944.

Claimant [REDACTED 1] identified Imre Berger as a lawyer, director, and largest shareholder of the *Credit Union Bank Zalaegerszegi Takarekpenztar* in Zalaegerszeg. Claimant [REDACTED 1] stated that his uncle perished sometime between 1943 and 1945, while performing slave labor for a company known as 103/6. Claimant [REDACTED 2] stated that his brother-in-law died on 31 December 1944, and that Lilly Berger, Claimant [REDACTED 2]’s sister, was sent to the Zalaegerszeg Ghetto in 1944 and later to Auschwitz. The Claimants stated

¹ Claimant [REDACTED 1] submitted two Claim Forms, which were registered under the Claim Numbers 206880 and 219223. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 206880.

that both of Lilly Berger's children were killed in Auschwitz in 1944, but that she survived the Holocaust.

Claimant [REDACTED 2] further stated that Lilly Berger remarried in 1946 and moved to Israel in 1950, where she remained in close contact with Claimant [REDACTED 2]. Claimant [REDACTED 2] stated that because of the trauma associated with her persecution during the Second World War, she was psychologically unable to pursue claims to assets belonging to her, including both personal and real property, which she left to Claimant [REDACTED 2], as her sole heir. Claimant [REDACTED 2] also stated that his sister waived all her rights, including those to a family mansion, and expressed that these rights should pass to him. Claimant [REDACTED 2] added that his sister told him when they last met, as she was dying, that he should exercise her rights to any compensation of the Jewish property that she was entitled to. Claimant [REDACTED 2] stated that Lilly Berger died on 26 August 1979 in Haifa, Israel

In support of his claim, Claimant [REDACTED 1] submitted his own birth certificate which indicates that Dr. [REDACTED] was his father; Dr. Imre Berger's and Dr. [REDACTED]'s (the Account Owner's brother) birth certificates, demonstrating they were both born in Zalaegerszeg to the same parents; Dr. Imre Berger's handwritten postcards from 1944, stating he was performing slave labor and reporting the confiscation conducted by the local police (*Csendorok Zalaegerszegrol*); and samples of Dr. Imre Berger's handwriting.

In support of his claim, Claimant [REDACTED 2] submitted his own birth certificate and Lilly Berger's birth certificate, demonstrating they were both born in Szombathely, Hungary, to the same parents; his name change certificate, demonstrating his former family name was [REDACTED]; the birth certificate of Dr. Imre Berger; and the marriage and death certificates of Dr. Imre Berger and Lilly Berger, née Freiberger.

Claimant [REDACTED 1] indicated that he was born on 12 July 1931 in Szombathely, and Claimant [REDACTED 2] indicated that he was born on 27 December 1914 in Szombathely.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form, dated 3 July 1931, and printouts from the Bank's database. According to these records, the Account Owner was Dr. Imre Berger, who was a lawyer (*Rechtsanwalt*), and the Power of Attorney Holder was the Account Owner's wife, Dr. Imréné Berger,² née Lilly Freiberger, who both resided in Zalaegerszeg, Hungary. The Bank's records indicate that the Account Owner held a custody account³ that was opened in 1931.

The Bank's records do not show when the account at issue was closed, to whom it was paid, or 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

² In Hungarian, the suffix "née" is typically used to indicate a woman's married status and name.

³ The Bank's records contain a power of attorney form that references a "*Titeldepot*," a type of custody account.

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 records that the Account Owner, the Power of Attorney Holder, or their heirs closed the 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 Claimant in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner and the Power of Attorney Holder. Their relatives' names and country and city of residence match the published names and country and city of residence of the Account Owner and the Power of Attorney Holder. The Claimants identified Imre Berger's title and profession, and the spousal relationship between the Account Owner and Power of Attorney Holder, which match unpublished information about the Account Owner and Power of Attorney Holder contained in the Bank's records. In support of their claims, Claimant [REDACTED 1] submitted his own birth certificate which indicates that Dr. [REDACTED] was his father; Dr. Imre Berger's and Dr. [REDACTED]'s (the Account Owner's brother) birth certificates, demonstrating they were both born in Zalaegerszeg to the same parents. This document provides independent verification that the person who is claimed to be the Account Owner resided at some point in the same town recorded in the Bank's records as the residence of the Account Owner. Claimant [REDACTED 2] also submitted his own birth certificate and Lilly Berger's birth certificate, demonstrating they were both born to the same parents, and the marriage and death certificates of Dr. Imre Berger and Lilly Berger, née Freiburger. This marriage certificate provides independent verification of the spousal relationship between the Account Owner and Power of Attorney Holder as contained in the Bank's records. Furthermore, Claimant [REDACTED 1] submitted samples of the Account Owner's handwriting, which matches the handwriting samples contained in the Bank's records.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Imre Berger, and indicates that his date of birth was 1 January 1904 and place of birth was Zalaegerszeg, Hungary, which is similar to the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Finally, the CRT notes that the other claims to this account were disconfirmed because these claimants provided a different city of residence or a different country of residence than the city of residence and country of residence of the Account Owner, or these Claimants submitted a different family relation between the Account Owner and the Power of Attorney Holder than the

relationship in the Bank's documents. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owner and 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. The Claimants stated that the Account Owner was Jewish, and that he perished while performing slave labor, approximately in 1944. As noted above, a person named Imre Berger was included in the CRT's database of victims.

The Claimants' Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was his paternal uncle by submitting his own birth certificate, which indicates that Dr. [REDACTED] was his father; and Dr. Imre Berger's and [REDACTED]'s (the Account Owner's brother) birth certificates, demonstrating they were both born in Zalaegerszeg to the same parents.

Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was his brother-in-law by submitting his own birth certificate and Lilly Berger's birth certificate, demonstrating that they were born to the same parents; his name change certificate, demonstrating his former family name was [REDACTED]; and the marriage certificate of Dr. Imre Berger and Lilly Berger, née Freiburger, which indicates that the Claimant's sister was married to the Account Owner.

There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner perished in approximately 1944 while performing slave labor; that the Power of Attorney Holder was sent to the Zalaegerszeg Ghetto in 1944 and later to Auschwitz; that there is no record of the payment of the Account Owner's account to him, the Power of Attorney Holder or their heirs nor any record of a date of account closure; that the Account Owner's and Power of Attorney Holder's 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; and given the application of Presumptions (h), (i) 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, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was his uncle and Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was his brother-in-law, and these relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody 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 custody account was 13,000.00 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 162,500.00 Swiss Francs.

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. In this case, Claimant [REDACTED 1], as the nephew of the Account Owner, is a descendant of the Account Owner's parents and Claimant [REDACTED 2], as the brother-in-law of the Account Owner, is related to the Account Owner by marriage. Accordingly, Claimant [REDACTED 1], as the descendant of the Account Owner, is entitled to 100% 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
22 December 2003