

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 Emil Berger

Claim Numbers: 224143/AX;¹ 731916/AX²

Award Amount: 15,500.00 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 published account of Emil 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 in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

Information Provided by the Claimant

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as his maternal grandfather, Emil Berger, and Claimant [REDACTED 2] (Claimant [REDACTED 1]’s mother) submitted an Initial Questionnaire (“IQ”) with the Court in 1999, identifying the Account Owner as her father, Emil Berger. According to the Claimants, Emil Berger, who was born in 1887 in Austria-Hungary and was Jewish, had one child, Claimant [REDACTED 2]. Claimant [REDACTED 1] indicated that his grandfather was a partner in a company that produced and sold industrial cleaning brushes throughout Europe. Claimant [REDACTED 1] further indicated that the company’s main customer base was in Hungary, Austria, and

¹ Claimant [REDACTED 1] submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 224473. The CRT will treat the claim to this account in a separate decision.

² [REDACTED 2] did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered HUN 0111 164, 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 731916.

Switzerland, and that his grandfather served the Austrian market. Claimant [REDACTED 1] indicated that his father had lived at separate times in the suburbs of Kahlenberg and Stockerau in Vienna, Austria. According to Claimant [REDACTED 1], his grandfather fled Austria in 1938 and attempted to move the business to Switzerland, but was escorted out of Switzerland by Swiss police. Claimant [REDACTED 1] indicated that his grandfather was captured by the Nazis in Austria and deported to Hungary, where he was killed by the Nazis in 1945 in their attempt to liquidate the Budapest ghetto. In support of his claim, Claimant [REDACTED 1] submitted his grandfather's death certificate, indicating that his grandfather's name was Emil Berger; Claimant [REDACTED 2]'s birth certificate, indicating that her name was [REDACTED], and that her father was Emil Berger; and his own identity card, indicating that his mother was [REDACTED 2]. Claimant [REDACTED 1] indicated that he was born on 27 January 1941 in Budapest Hungary. Claimant [REDACTED 2] indicated that she was born on 23 March 1923.

Claimant [REDACTED 1] previously submitted an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his father, [REDACTED].³

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Emil Berger, who resided in Vienna, Austria. The Bank's record indicates that the Account Owner held a safe deposit box, numbered 2411. The safe deposit box was opened on 24 March 1932 and closed on 7 May 1938. The contents of the safe deposit box on the date of its closure is unknown. There is no evidence in the Bank's record that the Account Owner or his heirs closed the safe deposit box and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimants' relative's name matches the published name of the Account Owner. Claimant [REDACTED 1] stated that his grandfather resided in the suburbs of Vienna, which matches unpublished information about the Account Owner contained in the Bank's records. In support of his claim, Claimant [REDACTED 1] submitted the death certificate of his grandfather and the birth certificate of Claimant [REDACTED 2], indicating that his grandfather's name was Emil Berger, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank's records as the name of the Account Owner.

³ The CRT did not locate an account belonging to Claimant [REDACTED 1]'s relative, [REDACTED], 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"). Claimant [REDACTED 1] should be aware that the CRT will carry out further research on his claim to determine whether an award may be made based upon the information provided by the Claimant [REDACTED 1] or upon information from other sources.

The CRT notes that Claimant [REDACTED 2] filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her father, Emil Berger, prior to the publication in February 2001 of the 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 indicates that the Claimants have based their present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that the Claimants had reason to believe that their relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants.

The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different country of residence than that of the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owner.

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 was killed by the Nazis in 1945 in their attempt to liquidate the Budapest ghetto.

The Claimants’ Relationships to the Account Owner

The Claimants 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 father and Claimant [REDACTED 1]’s grandfather. These documents include Claimant [REDACTED 2]’s birth certificate, indicating that her father was Emil Berger, and Claimant [REDACTED 1]’s identity card, indicating that his mother was [REDACTED 2]. 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 1945 in the Nazi attempt to liquidate the Budapest ghetto, that there is no record of the payment of the Account Owner’s account to him; that 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 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 Governing the Claims Resolution Process, as amended (the “Rules”) (see Appendix A), 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 Claimant [REDACTED 2]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was her 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 claimed account. Further, the CRT notes that Claimant [REDACTED 2], as the Account Owner's daughter, has a better entitlement to the account than does Claimant [REDACTED 1], Claimant [REDACTED 2]'s son.

Amount of the Award

In this case, the Account Owner held one safe deposit box. 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 ICEP (the "ICEP Investigation"), in 1945 the average value of a safe deposit box was 1,240.00 Swiss Francs ("SF"). 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 15,500.00.

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 by representation. As stated above, Claimant [REDACTED 2] has a better entitlement to the award than does her son. Accordingly, Claimant [REDACTED 2] is solely entitled to the Award.

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
18 November 2004