

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by [REDACTED]

in re Accounts of Ignaz Berger and Fanny Berger

Claim Number: 650018/MBC¹

Award Amount: 64,875.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Ignaz Berger, Fanny Berger, [REDACTED],² [REDACTED], and [REDACTED].³ This Award is to the published account of Ignaz Berger (“Account Owner Ignaz Berger”) at the Lugano branch of the [REDACTED] (“Bank I”), and to the unpublished account of Fanny Berger (“Account Owner Fanny Berger”) (together the “Account Owners”) at the Basel branch of the [REDACTED] (“Bank II).

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 banks have been redacted.

Information Provided by the Claimant

The Claimant submitted a claim to the Holocaust Claims Processing Office (“HCPO”) identifying the Account Owners as his maternal grandfather, Isaack (also known as Isaak, Ignatz or Chaim) Berger, who was born on 6 July 1869 in Przemysl, Austria-Hungary (today Poland), and as his maternal grandmother, Fanny Jetta Berger, née Engel, who was born on 30 December 1872 in Katowice, Prussia (today Poland). The Claimant indicated that his grandparents, who

¹ The Claimant submitted a claim, numbered B-02204, on 22 May 2000, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 650018.

² The CRT will treat the claim to the account of [REDACTED] in a separate decision.

³ The CRT did not locate an account belonging to [REDACTED] or [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”). The Claimant 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 or upon information from other sources.

were Jewish, had four children: [REDACTED], née [REDACTED], who was born in 1892 in Vienna, Austria; [REDACTED], née [REDACTED], (the Claimant's mother) who was born on 29 June 1895 in Vienna, Austria; [REDACTED], who was born in 1905 in Vienna; and [REDACTED], who was born in 1906 in Vienna.

The Claimant stated that his uncles, [REDACTED] and [REDACTED] moved to Milan, Italy, in approximately 1925. The Claimant stated that his grandfather owned a chemical factory named *I. Berger* located at Hackengasse 10 in Vienna. The Claimant further stated that his grandparents were Jewish, and that his grandfather died of a heart attack on 26 March 1938 in Vienna, when his house was being searched for weapons by Austrian Nazis, and that his wife fled from Austria to Milan shortly thereafter. The Claimant stated that his grandmother died in Milan on 15 September 1943, that his uncle [REDACTED] died in 1949, that his mother died on 22 January 1988 in Rockville, Maryland, the United States, and that his uncle [REDACTED] died in 1992.

The Claimant submitted his birth certificate, his parents' marriage certificate, and his mother's birth certificate, showing that Chaim Isaac Berger and Fanny Jette Berger, née Engel, were his maternal grandparents, and that they resided in Vienna. These documents also show that the Claimant's parents resided at Hackengasse 10 in Vienna. The Claimant indicated that he was born on 2 February 1925 in Vienna.

Information Available in the Bank's Records

Bank I

Bank I's records consist of documents identified by the auditors who carried out the investigation to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") from the Swiss Federal Archive pertaining to the 1945 freeze of assets deposited in Switzerland by nationals of Germany and of the territories incorporated into the Reich (the "Freeze of German Assets"). Those documents consist of a list of accounts reported in the Freeze of German Assets and a safe deposit box opening protocol. According to these records, the Account Owner was Ignaz Berger, who resided in Milan, Italy. These records indicate that Account Owner Ignaz Berger rented a safe deposit box, numbered 200, at the Bank on 2 January 1932. The safe deposit box was forcibly open on 21 March 1946 in presence of Bank employees and representatives of the Swiss Clearing Office. According to the opening protocol, the safe deposit box contained three business contracts, dated 31 December 1931, regarding representation of a company named *I. Berger*, which was located in Vienna, Austria, and of [REDACTED] and [REDACTED] of Padova, Italy. The protocol indicates that the contracts were deemed valueless by the Bank and were deposited with the Bank for safekeeping. The fate of these contracts is not known. There is no evidence in the Bank's records that Account Owner Ignaz Berger or his heirs received the contents of the safe deposit box.

Bank II

The auditors who carried out the ICEP Investigation did not report any account belonging to Fanny Berger at Bank II.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Fanny Berger, née Engel, numbered 18950. These documents indicate that she was born on 30 December 1872 in Katowice, was a widow since 26 March 1938, and that she lived at Bernbrunnngasse 19 in Vienna XIII. The Austrian census records indicate that Fanny Berger owned a building at Bernbrunnngasse 19 in Vienna XIII, which was valued at 80,000.00 Reichmarks, and a building at Hackengasse 10 in Vienna XV, which was valued at 90,000.00 Reichmarks (1938 values). According to these records, the assets owned by Fanny Berger were valued at 190,000.00 Reichsmarks as of 1 January 1938 and was assessed a “flight tax” (*Reichsfluchtsteuer*) of 47,500.00 Reichmarks.

The records state further that Fanny Berger’s late husband owned the factory *Ignaz Berger Chemische Produkte* located at Hackengasse 10, which had its office at Stadlergasse 11 in Vienna XIII.

In addition, the Austrian census records indicate that Fanny Berger owned an account of unknown type at Bank II, and that the amount in this account as of 28 March 1938 was 8.20 Swiss Francs. These records also show that Fanny Berger’s last address before her emigration to Milan, Italy, was Stuttgarterstrasse 19 in Vienna XIII.

The CRT’s Analysis

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Ignaz Berger. The Claimant’s grandfather’s alternate name matches the published name of Account Owner Ignaz Berger. The CRT notes that the Claimant’s grandfather resided in Vienna, Austria, and owned a company named *I. Berger*. This information matches unpublished information in the Bank’s records regarding the contents of the safe deposit box held by Account Owner Ignaz Berger which included contracts relating to a company named *I. Berger* located in Vienna, Austria. The CRT notes that Ignaz Berger’s sons resided in Milan, Italy, and this information is consistent with the fact that Account Owner Ignaz Berger used an address in Milan.

The Claimant submitted his own and his mother’s birth certificate. The CRT notes that while the documents submitted by the Claimant show that his grandfather’s official name was Chaim Isaac Berger and not Ignaz Berger, the Claimant indicated that his grandfather’s alternate name was

Ignaz as early as May 2000, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimant has based his 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 him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

The Claimant has plausibly identified Account Owner Fanny Berger. The Claimant’s grandmother’s name, date of birth, marital status, business and business address matches information about Account Owner Fanny Berger contained in the Austrian State Archives records. The Claimant also submitted his own and his mother’s birth certificates, showing that Fanny Berger, née Engel, from Vienna was his maternal grandmother.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Fanny Berger, and indicates that her date of birth was 30 December 1872 and her place of birth was Katowice, her date of death was 23 December 1943, and that she resided in Vienna, which substantially matches the information about Account Owner Fanny Berger provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. The CRT further notes that the other claims to the accounts of Account Owner Ignaz Berger were disconfirmed because those claimants provided different countries of residence than the country of residence of Account Owner Ignaz Berger. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owners.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they resided in Vienna, Austria, at the time of the Nazi annexation of Austria in 1938 (the *Anschluss*); that Account Owner Ignaz Berger died of a heart attack following a search that Nazis performed in his house; that Account Owner Fanny Berger had to flee Austria to escape the Nazis; and that she was forced to declare all her assets to the Austrian authorities because she was Jewish.

As noted above, a person named Fanny Berger was included in the CRT’s database of victims.

The Claimant’s Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents demonstrating that they were his maternal grandparents, including [REDACTED] née [REDACTED]’s birth certificate which indicates that Chaim Isaac Berger and Fanni Berger, née Engel, were her parents; and the Claimant’s birth certificate indicating that his parents were [REDACTED] née [REDACTED] and [REDACTED].

The CRT notes that the Claimant indicates that he has three maternal cousins, who did not file Claim Forms or Initial Questionnaires. Pursuant to Article 24 of the Rules, the rights of

individuals to an Account who have not submitted claims to the CRT will not be considered under the Claims Resolution Process authorized by these Rules. Accordingly, the Claimant's cousins are not entitled to share in the award amount.

The Issue of Who Received the Proceeds

With regard to the safe deposit box held by Ignaz Berger, Bank I's records indicate that this safe deposit box was forcibly opened on 21 March 1946 and found to contain three business contracts related to Account Owner Ignaz Berger's company, *I. Berger*, which were deemed valueless by the Bank. Given that Account Owner Ignaz Berger died on 26 March 1938; that Account Owner Ignaz Berger was a Victim of Nazi Persecution and as such did not have an opportunity to adjust his assets in light of wartime conditions; that these contracts were deposited with the bank for safekeeping but their whereabouts today are unknown; that the value of these contracts before and during the Second World War cannot be determined; and given the application of Presumptions (f), (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.

With regard to the account of unknown type held by Fanny Berger, the facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who were Jewish report their assets in the 1938 census, and, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the Austrian State Archives indicate that Fanny Berger's Swiss bank account was identified in the 1938 census; that during the *Anschluss*, the Nazis immediately began a major effort to confiscate the assets of the Jewish residents of Austria, and the CRT has found that numerous such confiscations of Swiss bank accounts occurred at this time; that Account Owner Fanny Berger fled Austria after the *Anschluss* and died in 1943; that there is no record of the payment of her account to her or her heirs; that Account Owner Fanny Berger's heirs would not have been able to obtain information about her 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 (d), (h) and (j) contained in Appendix A,⁴ the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Fanny Berger or her 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 Owners were his grandparents, and that

⁴ An expanded version of Appendix A appears on the CRT-II website -- www.crt-ii.org.

relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case Account Owner Ignaz Berger held one safe deposit box and Account Owner Fanny Berger held one account of unknown type.

In the case of the safe deposit box, the value of the contracts deposited therein cannot be assessed. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here with regard to the safe deposit box held by Account Owner Ignaz Berger, 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 safe deposit box was 1,240.00 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 an amount of 15,500.00 Swiss Francs.

The Austrian State Archives records indicate that the value of the account of unknown type owned by Account Owner Fanny Berger as of 28 March 1938 was 8.20 Swiss Francs. Pursuant to Article 29 of the Rules, if the amount in an account of unknown type was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 Swiss Francs. The CRT notes that Account Owner Fanny Berger herself declared the value of the account in her census forms. However, there is no evidence regarding the circumstances of her declaration given to the Nazi authorities. Account Owner Fanny Berger may have believed she could prevent the Nazis from confiscating her assets if she understated the value of her account at Bank II. Accordingly, the CRT does not find that the value indicated in these records constitute plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the amount in this account shall be determined to be 3,950.00 Swiss Francs. The current value of this amount is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an amount in this case is 49,375.00 Swiss Francs.

Consequently, the total award amount is 64,875.00 Swiss Francs.

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 May 2004