

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Joseph Pesah Breger
also acting on behalf of Aviva Rachel Gartenberg and Violeta Zelzer

in re Accounts of Samuel and Adela (Adele) Breger

Claim Number: 209580/LK

Award Amount: 156,375.00 Swiss Francs

This Certified Award is based upon the claim of Joseph Pesah Breger (the “Claimant”) to the account of Samuel Breger. This Award is for the unpublished accounts of Adela (Adele) Breger (“Account Owner Adela Breger”) at [REDACTED I] (“Bank I”), and for the published accounts of Samuel Breger (“Account Owner Samuel Breger”) and the unpublished accounts of Account Owner Adela Breger (together the “Account Owners”) at the [REDACTED II] (“Bank II”) (together the “Banks”).

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 identifying the Account Owners as his father, Dr. Samuel Nathan Breger, who was born on 3 March 1898 in Rodna, Romania, and his father’s first wife, Adela Breger, née Brauner, whom he married on 23 June 1925 in Romania. According to the Claimant, in 1923, his father received a Ph.D. in law from the *Universita Litterarum Pegia Hungarica Francisco Josephona* in Szegedin, Hungary. The Claimant stated that his father, who was Jewish, had a very successful law practice in Bucharest, Romania, but moved with his family to France on an unknown date in 1938 because of the fascist regime in Romania. The Claimant further stated that the *Gestapo* captured Adela Breger, who was also Jewish, and the couple’s two sons, Gidon Breger and Maximillian Breger, in France in 1944 and deported them to Auschwitz, where they perished. According to the Claimant, his father evaded the *Gestapo* and after the Second World War, he returned to Romania and established an organization called *ASERD*, an association dedicated to saving the lives and protecting the interests of Romanian Jews and others in Europe who were deported by the Germans. The Claimant further stated that his father married Gusti Sternberg on 15 January 1953 in Paris, France, and that the two divorced on 18 October 1956. The Claimant stated that his father then married the Claimant’s mother, Violeta Castiel, on 28 May 1958. The Claimant explained that his father died in Paris on 14

April 1961. In support of his claim, the Claimant submitted a family tree, his father's and Adela Breger's marriage certificate, his father's travel documents and death certificate, a letter identifying his father as a lawyer, his father's handwriting sample, and his father's will.

The Claimant indicated that he was born on 28 February 1960 in Montreuil Sous Bois, France. The Claimant is representing Aviva Gartenberg, née Breger, his sister, who was born on 9 August 1957 in Valence, France, and Violeta Zelzer, née Castiel, the Claimant's mother, who was born on 18 January 1931 in Larache, Morocco.

Information Available in the Banks' Records

Bank I

Bank I's record consists of a customer card. According to this record, the Account Owner was *Frau* (Mrs.) Dr. Adela Breger from Bucharest, Romania, and Vienna, Austria. Bank I's record indicates that Account Owner Adela Breger held seven demand deposit accounts. Bank I's record also indicates that of these seven demand deposit accounts, one demand deposit account denominated in Swiss Francs was closed on 10 June 1935; a "special" demand deposit account was closed and transferred to a demand deposit account in Pounds Sterling on 31 August 1935; three demand deposit accounts in Pounds Sterling were closed on 10 April 1936, 31 August 1938, and 31 December 1938, respectively; and one demand deposit account in Swiss Francs and one demand deposit account in United States Dollars were closed on 31 December 1938. Bank I's record does not indicate the value of these accounts on the dates of their closure. There is no evidence in Bank I's record that Account Owner Adela Breger or her heirs closed the accounts and received the proceeds themselves.

Bank II

Bank II's records consist of a registry card, an internal memorandum, a letter from Bank II to Account Owner Samuel Breger, a power of attorney form, a registry of closed numbered accounts, and a printout from Bank II's database.

According to these records, one of the Account Owners was Samuel (Samuil) Breger,¹ a lawyer who held the title "Dr.," and who used two addresses in Bucharest, Romania, at Str. Lips cani 7, and c/o Dr. Albert Sejovitz at Bul. Elisabeta 49. Bank II's records indicate that the Power of Attorney Holder was Adele Breger-Brauner. Furthermore, Bank II's records indicate that Account Owner Samuel Breger held a demand deposit account, numbered 1033, which was opened in 1933 and had a balance of 40,000.00 Swiss Francs as of July 1933. According to these records, Account Owner Samuel Breger gave Bank II special instructions to only carry out orders from him if there was sealing wax on the signature paper. Account Owner Samuel Breger tested Bank II on its compliance with these instructions by sending a transfer order without sealing wax. Bank II's records further indicate that Bank II complied with Account Owner

¹ The CRT notes that the account opening card and the power of attorney form identify the Account Owner as "Samuel Breger," while two typed letters from the Bank to the Account Owner are addressed to "Samuil Breger." The CRT concludes that the latter spelling of the name contained a typographical error.

Samuel Breger's instructions and did not carry out the unsealed transfer order. However, Bank II considered that such special instructions constituted too great a risk. As a consequence, Bank II requested Account Owner Samuel Breger to dispose of his assets held at Bank II in a letter dated 11 July 1933. Bank II's records indicate that Account Owner Samuel Breger granted a power of attorney to Adele Breger-Brauner on 2 January 1934. Bank II's records further indicate that the demand deposit account was closed on 24 August 1934. The amount in the demand deposit account on the date of its closure is unknown. There is no evidence in Bank II's records that Account Owner Samuel Breger, the Power of Attorney Holder, or their heirs closed the demand deposit account and received the proceeds themselves.

Bank II's records further indicate that the other Account Owner was *Frau* Dr. Adele Breger, who resided in Bucharest and held an account of unknown type, numbered 60443. Bank II's records also contain a power of attorney form signed by Adele Breger-Brauner as power of attorney holder to an account held by Dr. Samuel Breger. Bank II's records indicate that the account was closed as a numbered account on 20 March 1938 and reopened as a named account. Bank II's records do not show when this account was closed, or to whom it was paid, 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 report this account to the CRT. Thus, there is no information before the CRT as to who closed the account and received its proceeds. There is no evidence in Bank II's records that Account Owner Adela Breger or her heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His father's name and city and country of residence match the published name and city and country of residence of Account Owner Samuel Breger. The claimant identified the unpublished name of his father's first wife, Adela Breger, née Brauner, as contained in the Banks' records. The CRT notes that while Bank II's records indicate "Adele" rather than "Adela", it is plausible that the Claimant has identified the correct name of the unpublished Account Owner Adela Breger because the Claimant has identified the spousal relationship between the Account Owners and his father's title and profession, which all match unpublished information about the Account Owners contained in Bank II's records.

In support of his claim, the Claimant submitted documents, including his father's and Adela Breger's marriage certificate, his father's travel and death certificates, his father's will, and a letter identifying his father as a lawyer. The CRT notes that there are no other claims to the accounts of Adela Breger. The CRT also notes that one other claim to the account of Samuel Breger was disconfirmed because that claimant provided a different spouse's name and a different profession than those of Account Owner Samuel Breger. 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, that Account Owner Samuel Breger managed to survive the Holocaust by evading the Gestapo, and that Account Owner Adela Breger perished in Auschwitz.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that the Account Owners were his father and his father's first wife by submitting documents, including his father's and Adela Breger's marriage certificate, his father's travel documents and death certificate, and his father's will.

The Issue of Who Received the Proceeds

With regard to the three demand deposit accounts at Bank I, which were closed on 10 June 1935, 31 August 1935, and 10 April 1936, respectively, and the demand deposit account at Bank II closed on 24 August 1934, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owners or their heirs received the proceeds of these accounts.

With regard to the four demand deposit accounts held at Bank I, which were closed in August and December 1938, and the numbered account of unknown type held at Bank II and closed on 20 March 1938 and reopened as a named account, all of which were held by Account Owner Adela Breger, the CRT notes that Bank I's records indicate that Account Owner Adela Breger used an address in Vienna, Austria. Given that the accounts at Bank I were closed after the annexation of Austria by Nazi Germany (the "*Anschluss*") and the account at Bank II was closed unknown to whom after the *Anschluss*; that Account Owner Adela Breger perished in Auschwitz in 1944 along with her two sons; that there is no record of the payment of Account Owner Adela Breger's accounts to her; that Account Owner Adela Breger's heirs would not have been able to obtain information from the Bank about her accounts after the Second World War 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 (a), (h), (i) 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 Account Owner Adela Breger 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.

Amount of the Award

In this case, the Award is for four demand deposit accounts and one account of unknown type held by Account Owner Adela Breger.

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 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 2,140.00 Swiss Francs, and the average value of an account of unknown type was 3,950.00 Swiss Francs. Therefore, the 1945 total average value of the accounts at issue is 12,510.00 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 156,375.00 Swiss Francs.

Division of the Award

According to Article 23(2)(c), if a claimant bases a claim of entitlement on a chain of inheritance but has not submitted an unbroken chain of wills or other inheritance documents, the CRT may use the general principles of distribution established in Article 23(1) to make allowance for any missing links in the chain, consistent with principles of fairness and equity. In this case, the Claimant has submitted the will of Account Owner Samuel Breger, which provides for his two children, the Claimant and Aviva Gartenberg, to each receive $\frac{3}{8}$ of his estate, and his second wife, Violeta Zelzer, to receive $\frac{1}{4}$ of his estate. The accounts awarded in this Award, however, are those held by Account Owner Adela Breger, Samuel Breger's first wife.

According to Article 23(1)(g), if neither the Account Owner's spouse nor any descendants of the Account Owner, the Account Owner's parents or the Account Owner's grandparents have submitted a claim, the CRT may make an award to any relatives of the Account Owner who have submitted a claim, consistent with principles of fairness and equity. In this case, the Claimant's father, Account Owner Samuel Breger was the spouse and widower of Account Owner Adela Breger. Had Account Owner Samuel Breger filed this claim, according to Article 23(1)(a), he would have been entitled to the entire Award.² Because Account Owner Samuel Breger's heirs have filed this claim and have submitted a copy of his will, the CRT finds that principles of fairness and equity dictate that this Award for the accounts that were held by Account Owner Adela Breger shall be distributed in accordance with Account Owner Samuel Breger's will.³

In this case, the Claimant is representing his sister, Aviva Gartenberg, and the Claimant's mother, Violeta Zelzer. Therefore, in accordance with Samuel Breger's will, the Claimant and his sister, Aviva Gartenberg, are each entitled to three-eighths ($\frac{3}{8}$) of the total award amount, and the Claimant's mother, Violeta Zelzer, is entitled to one-fourth ($\frac{1}{4}$) of the total award amount.

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

² Article 23(1)(a) states that if the Account Owner's spouse and no descendants of the Account Owner have submitted a claim, the spouse shall receive the entire account.

³ The CRT notes that there are no known heirs or other claims to the accounts of Account Owner Adela Breger.

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
19 November 2003