

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED]¹

in re Accounts of Leopold David

Claim Number: 786530/MW²

Award Amount: 518,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the "Claimant") to the unpublished account of Leopold David (the "Account Owner") at the Zurich branch of the [REDACTED] ("Bank I"), and to the published accounts of Leopold David at the Lucerne branch of the [REDACTED] ("Bank II").³

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

The Claimant submitted an Initial Questionnaire identifying the Account Owner as his maternal grandfather, Leopold David, who was married to [REDACTED] on 10 February 1891 in Tyn, Poland. The Claimant indicated that his grandfather was a merchant who lived in Berlin, Germany until the mid-1930s, and then fled to Switzerland where he lived for seven months in Lucerne, Switzerland, and then later moved to Lugano, Switzerland. The Claimant stated that his grandfather's assets were looted by the Nazis. The Claimant further stated that his grandfather held assets at Bank II. The Claimant explained that his grandfather, who was Jewish, had four children: [REDACTED] (the Claimant's mother), [REDACTED],

¹ The CRT notes that [REDACTED] passed away on 4 February 2003.

² [REDACTED] did not submit a Claim Form to the Claims Resolution Tribunal. However, in 1999 he submitted an Initial Questionnaire ("IQ"), numbered Eng 0643 118, 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 786530.

³ The CRT notes that, on the February 2001 published 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"), Leopold David is indicated as the owner of one account. Upon careful review, the CRT has concluded that the Bank II's records indicate that Leopold David held seven accounts.

[REDACTED], and [REDACTED]. The Claimant indicated that he has cousins, who may be equally entitled to any accounts belonging to his grandfather: [REDACTED], [REDACTED], [REDACTED] and [REDACTED], [REDACTED], and [REDACTED].⁴

In support of his claim, the Claimant submitted his mother's birth certificate indicating that her parents were Leopold David and [REDACTED], née [REDACTED]; and the Claimant's birth certificate indicating that his mother was [REDACTED]. The Claimant's wife submitted her husband's death certificate, which indicated that the Claimant died on 4 February 2003 in Windsor, Victoria, Australia, and that his mother was [REDACTED], née [REDACTED]. The Claimant indicated that he was born on 24 January 1929 in Vienna, Austria.

Information Available in the Banks' Records

Bank I's records consist of several lists of accounts and a printout from Bank I's database. Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of Bank I to obtain additional information about these accounts ("Voluntary Assistance"). On 8 June 2005, Bank I provided the CRT with additional documents. These documents consist of several lists of accounts and a printout from Bank's I database. According to these records, the Account Owner was Leopold David who resided in Berlin, Germany. Bank I's records indicate that the Account Owner died between 1941 and 1947, but the specific date of death is not recorded. Bank I's records further indicate that after the Account Owner's death, the ownership of his assets was assumed by the Account Owner's Estate. According to Bank I's records, the Account Owner held a custody account, numbered 11702, which was opened on 11 September 1931, and closed on 23 December 1947. The amount in the account on the date of its closure is unknown. There is no evidence in Bank I's records that the Account Owner or his heirs closed the account and received the proceeds themselves.

Bank II's record consists of a customer card. According to this record, the Account Owner was Leopold David who resided in Berlin, and in Lucerne, Switzerland. Bank II's record indicates that the Account Owner died and that his assets were then held in the name of the Account Owner's Estate; however, the record does not indicate a specific date of death. Bank II's record further indicates that the Account Owner held four custody accounts, numbered 5203, 5205, 5773, and 7167; two safe deposit boxes, numbered 670 and 1088; and one demand deposit account. Bank II's record indicates that the custody accounts were closed on 28 January 1934, 5 January 1935, 5 October 1935, and in 1949, respectively, the safe deposit boxes were closed on 2 July 1938, and 22 June 1940, respectively, and the demand deposit account was closed on 13 January 1953. The amounts in these accounts on their dates of closures are unknown. There is no evidence in Bank II's record that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

⁴ The CRT notes that [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] did not submit a Claim Form or an Initial Questionnaire to the CRT.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's grandfather's name and country of residence matches the published name and country of residence of the Account Owner. The Claimant identified the Account Owner's city of residence in Germany and city of residence in Switzerland, both of which match unpublished information about the Account Owner contained in the Banks' records. In support of his claim, the Claimant submitted documents, including his mother's birth certificate indicating that her father was Leopold David, which provides independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Banks' records as the name of the Account Owner. The CRT notes that the name Leopold David appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of victims of Nazi persecution. The CRT notes that there are no other claims to these accounts.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Leopold David, 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.

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 Germany in the mid-1930s to Switzerland, and that his grandfather's assets were looted by the Nazis.

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 his mother's birth certificate indicating that her father was Leopold David; and the Claimant's birth certificate indicating that his mother was [REDACTED], née [REDACTED]. The CRT notes that the Claimant identified unpublished information about the Account Owner's cities of residence as contained in the Banks' records; and that the Claimant filed an Initial Questionnaire with the Court in 1999, identifying the relationship the Account Owner and Claimant, prior to the publication in February 2001 of the ICEP List. The CRT further notes that the family tree submitted by the Claimant shows that he

has other relatives who would be possibly entitled to the award; however, as of the date of this award, there have been no other claims to these accounts.

The Issue of Who Received the Proceeds

With respect to the custody accounts numbered 5203, 5205, and 5773 at Bank II, which were closed on 28 January 1934, 5 January 1935, and 5 October 1935, respectively, and the two safe deposit boxes at Bank II, numbered 670 and 1088, which were closed on 2 July 1938, and 22 June 1940, respectively, the CRT notes that at the time of closure of these accounts, according to information provided by the Claimant, the Account Owner was likely outside Nazi-dominated territory. However, given that the Banks' records do not indicate to whom the accounts were closed; that the Account Owner fled his country of origin due to Nazi persecution; that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety; 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, even for the stated purpose of obtaining indemnification from the German authorities, 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.

With respect to the custody account at Bank I, which was closed on 23 December 1947, the custody account numbered 7167 at Bank II, which was closed in 1949, and the demand deposit account at Bank II, which was closed on 13 January 1953, the CRT notes that these accounts were closed after the War, and that the records of Bank I and Bank II both contain indication that the Banks were informed of the Account Owner's death, and that the accounts were transferred to the Estate of the Account Owner, which indicates that the Account Owner's heirs were actively managing the Account Owner's accounts. Given these facts, the CRT concludes that these three accounts were closed pursuant to instructions from the Account Owner's heirs, and that they closed the accounts and received the proceeds themselves.

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.

Amount of the Award

The award in this case is for three custody accounts and two safe deposit boxes. 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, in 1945 the average value of a custody account was 13,000.00 Swiss Francs (“SF”), and the average value of a safe deposit box was SF 1,240.00. Thus, the total 1945 average value of the accounts at issue is SF 41,480.00. 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 a total award amount of SF 518,500.00.

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
21 September 2005

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