

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant Alexander Guttman¹

and to the Estate of Claimant [REDACTED 1],²
also representing [REDACTED 3]

in re Account of Alexander Guttman

Claim Numbers: 215074/RS; 216141/RS³

Award Amount: 10,375.00 Swiss Francs

This Certified Award is based upon the claim of Dr. Alexander Guttman (“Claimant Guttman”) to the account of Alexander Guttman and the claim of [REDACTED 1] (“Claimant Goodman”) to the account of Bertha (Berta) Guttman, née Jacobsohn. This Award is to the published account of Alexander Guttman (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 claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant Guttman submitted a Claim Form identifying himself, Dr. Alexander Guttman, as the Account Owner; and Claimant [REDACTED 2] submitted a Claim Form and two Initial Questionnaires (“IQs”) identifying the Account Owner as his half-brother, Alexander Guttman (Claimant Guttman). The Claimants indicated that Alexander Guttman, who was Jewish, was born on 21 May 1920 in Rümlang, Switzerland, and that his parents were [REDACTED] and [REDACTED], née [REDACTED]. Claimant Guttman indicated that his mother divorced his father in 1922, and that she subsequently married [REDACTED] on 26 August 1924 in Zurich,

¹ In correspondence with the CRT, the wife of Alexander Guttman (“Claimant Guttman”) informed the CRT that Claimant Guttman passed away on 2 August 2002.

² In correspondence with the CRT, the daughter of [REDACTED 2] (“Claimant [REDACTED 2]”) indicated that Claimant [REDACTED 2] passed away on 8 March 2002.

³ In a separate decision, the CRT awarded the accounts of Berta Jacobson Guttman and *Frau Bertha Guttman* to Claimant Guttman, Claimant [REDACTED 2], and represented party [REDACTED 3]. See *In re Accounts of Berta Jacobson Guttman and Frau Bertha Guttman* (approved on 31 December 2003).

Switzerland. Claimant Guttman also indicated that his surname was changed from Rosengart to Guttman on 3 September 1925.

Claimant Guttman stated that following his mother's marriage to [REDACTED], the family moved to Breslau, Germany (today Wrocław, Poland), where they also lived with Claimant Guttman's half-brother Claimant [REDACTED 2], who was born in 1926, and half-sister represented party [REDACTED 3], née [REDACTED], who was born in 1929. Claimant Guttman indicated that in 1936, his mother, in an effort to protect him from Nazi persecution, sent him to Zurich to live with family members; Claimant Guttman was able to enter Switzerland freely because he held Swiss citizenship. According to Claimant Guttman, because he held Swiss citizenship, he served in the Swiss Army from 1940 to 1945. The Claimants indicated that in 1939, [REDACTED] fled Germany via Switzerland to England, where she remained throughout the Second World War. Claimant Guttman stated that in December 1945, he rejoined his family in Bradford, England.

Claimant Guttman indicated that he married [REDACTED], née [REDACTED] on 22 March 1961 in Hendon, England; the couple had three daughters.

On 4 February 2004, Claimant Guttman's wife informed the CRT that Claimant Guttman passed away on 2 August 2002.

In support of his claim, Claimant Guttman submitted copies of: (1) his own birth certificate, indicating that Alexander Guttman was born on 21 May 1920 in Rümlang, Switzerland, and that his mother was [REDACTED], née [REDACTED]; (2) an extract from the Zurich civil registry indicating that Alexander Rosengart was born on 21 May 1920, and that his surname was changed to Guttman on 3 September 1925; (3) the certificate of his mother's second marriage, indicating that [REDACTED], née [REDACTED], married [REDACTED] on 26 August 1924 in Zurich; (4) his own marriage certificate, indicating that Alexander Guttman married [REDACTED] on 22 March 1961 in Hendon, England; and (5) his Israeli and Swiss passports, indicating that the bearer was Alexander Guttman, who was born on 21 May 1920.

Claimant Guttman also submitted a copy of a letter dated 11 July 1945 and written by his mother, [REDACTED]. In the letter, Bertha Guttman indicated that she deposited for Claimant Guttman 1,000.00 Swiss Francs ("SF") at a bank in Zurich in the year of his birth (1920). She further indicated that because of German foreign exchange control laws, she was later forced to transfer the money to Germany, where the foreign currency was sold. Bertha Guttman also stated in the letter that the Swiss guardianship authorities gave their approval for the transfer of these funds to Germany.

In support of his claim, Claimant [REDACTED 2] submitted copies of: (1) his own birth certificate, indicating that [REDACTED 2] was born on 9 December 1926, and that his mother was [REDACTED], née [REDACTED]; and (2) the certificate of his mother's second marriage, indicating that [REDACTED], née [REDACTED], married [REDACTED] on 26 August 1924 in Zurich.

Claimant Guttman indicated that he was born on 21 May 1920 in Rümlang, Switzerland. Claimant [REDACTED 2] indicated that he was born on 9 December 1926 in Breslau, Germany (today Wrocław, Poland). Claimant [REDACTED 2] is representing his sister, [REDACTED 3], née [REDACTED], who was born on 20 July 1929 in Breslau, Germany.

Claimant [REDACTED 2] previously submitted two IQs to the Court in 1999, asserting his entitlement to a Swiss bank account owned by Dr. Fritz Guttman or Bertha Guttman.⁴

Information Available in the Bank's Records

The Bank's records consist of two extracts from the Bank's suspense account ledger. According to these records, the Account Owner was Alexander Guttman. The Bank's records do not indicate the Account Owner's domicile. The Bank's records indicate that the Account Owner held a savings/passbook account numbered 40757.

The first suspense account ledger is dated 15 June 1949, and indicates that the amount in the account as of that date was SF 60.00.

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 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 or his 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 Claimants in one proceeding.

Identification of the Account Owner

Claimant Guttman's name and Claimant [REDACTED 2]'s half-brother's name matches the published name of the Account Owner.

⁴ The CRT will treat the claim to the account of Dr. Fritz Guttman in a separate determination.

The CRT notes that the Bank's records do not contain any specific information about the Account Owner other than his name.

In support of his claim, Claimant Guttman submitted documents, including his own birth certificate, an extract from the Zurich civil registry, his own marriage certificate, and his Israeli and Swiss passports, 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. Claimant Guttman also submitted a 1945 letter written by his mother Bertha Guttman indicating that she had opened an account at a Swiss bank for her son in 1920.

The CRT notes that the name Alexander Guttman appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of victims of Nazi persecution ("ICEP" or the "ICEP List").

The CRT notes that Claimant [REDACTED 2] filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Alexander Guttman's mother Bertha Guttman, 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 Claimant [REDACTED 2] 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 Claimant [REDACTED 2] 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 Claimant [REDACTED 2].

The CRT notes that the other claim to this account was disconfirmed because that claimant provided documents indicating a different name spelling than the name spelling 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. The Claimants stated that the Account Owner was Jewish, and that he was forced in 1936, at the age of sixteen, to flee Germany for Switzerland, without members of his immediate family.

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 Guttman, and Claimant [REDACTED 2]'s half-brother. These documents include Claimant Guttman's birth certificate, and Israeli and Swiss passports in the name of Alexander Guttman.

The CRT further notes that Claimant [REDACTED 2] filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 2], prior to the publication in February 2001 of the ICEP List. The CRT further notes that Claimant Guttmann submitted a copy of the Account Owner's Israeli and Swiss passports. The CRT notes that it is plausible that these documents are documents which most likely only a family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimants as a family member, and all of this information supports the plausibility that Claimant Guttmann is the Account Owner, and that Claimant [REDACTED 2] is related to the Account Owner, as they have asserted in their Claim Forms.

The Issue of Who Received the Proceeds

The CRT notes that the Claimant submitted a letter dated 11 July 1945 and written by his mother, Bertha Guttmann, in which she stated that she deposited for Claimant Guttmann 1,000.00 Swiss Francs ("SF") at a bank in Zurich in the year of his birth (1920). According to her letter, because of German foreign exchange control laws, she was later forced to transfer the money to Germany, where the foreign currency was sold. In the letter, Bertha Guttmann also stated that the Swiss guardianship authorities gave their approval for the transfer of these funds to Germany. The CRT notes further that the account identified by the ICEP auditors was a savings/passbook account, the type which was often opened by parents for children. The CRT also notes that the balance of the account in 1949 was reported to be SF 60.00. The CRT further notes that, according to the ICEP Investigation, the average value of a savings/passbook account was SF 830.00, which is approximately the same amount as the Claimant's mother stated she deposited in his behalf. Based on these facts, the CRT concludes that the account referred to in the Claimant's mother's 1945 letter is the same account reported by the ICEP auditors. The CRT considers it likely that, after the mother transferred money in the account to Germany, pursuant to foreign currency regulations, a small amount remained in the savings/passbook, which then was suspended by the Bank and subsequently closed.

Given that the Account Owner's family members remained in Nazi Germany until 1939, when they were forced to flee; that the Account Owner resided in Nazi Germany from 1933 to 1936; that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; 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 Guttman. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant Guttman has plausibly demonstrated that he is the Account Owner, and that fact 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 account.

Further, the CRT notes that Claimant Guttman, as the Account Owner, has a better entitlement to the account than Claimant [REDACTED 2], the Account Owner's half-brother, and represented party [REDACTED 3], the Account Owner's half-sister.

Amount of the Award

In this case, the Account Owner held one savings/passbook account. The Bank's records indicate that the value of the savings/passbook account as of 15 June 1949 was SF 60.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 75.00, which reflects standardized bank fees charged to the savings/passbook account between 1945 and 1949. Consequently, the adjusted balance of the account at issue is SF 135.00. According to Article 29 of the Rules, if the amount in a savings/passbook account was less than SF 830.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 830.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 10,375.00.

Division of the Award

As noted above, Claimant Guttman, as the Account Owner, is entitled to the entire award amount, whereas his half-brother Claimant [REDACTED 2], and his half-sister, represented party [REDACTED 3], are not entitled to share in 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
21 December 2007