

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]
also acting on behalf of [REDACTED], née [REDACTED]

in re Accounts of Berta Jacobson Guttman and *Frau* Bertha Guttman

Claim Numbers: 215074/SJ, 216141/SJ¹

Award Amount: 59,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the account of [REDACTED] and the claim of [REDACTED 2], formerly [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Berta Jacobson Guttman and *Frau* Bertha Guttman. This Award is to the accounts of Berta Jacobsohn Guttman and *Frau* Bertha Guttman, both of which were held at the Zurich branch of the [REDACTED] (the “Bank”).² The person identified as both Berta Jacobson Guttman and *Frau* Bertha Guttman in the Bank’s records is referred to in this Award as the “Account Owner.”

All awards are published, but where a claimant has requested confidentiality, as Claimant [REDACTED 2] has 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 Claimants

The Claimants each submitted a Claim Form identifying the Account Owner as their mother, Bertha (Berta) Guttman, née Jacobsohn, who was born on 2 January 1893 in Zurich, Switzerland, and was married twice, first to [REDACTED], from whom she was divorced on 22 March 1922, and then to [REDACTED] on 26 August 1924 in Zurich. Claimant [REDACTED 2] stated that his mother, who was Jewish, remained in Switzerland throughout her first

¹ Claimant [REDACTED 1] submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 215074. The CRT will treat the claim to this account in a separate decision.

² The CRT notes that the names Berta Jacobson Guttman and *Frau* Bertha Guttman were published separately in February 2001 on the list of accounts determined by 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”) to be probably or possibly those of Victims of Nazi Persecution. Although these two names are spelled differently, further review of the identifying information regarding the Account Owners contained in the Bank’s records, and described in detail in this Award, clearly indicate that the accounts were owned by the same person.

marriage. Claimant [REDACTED 2] stated that after his mother married [REDACTED], who was a German citizen born in Breslau, Germany, on 31 October 1887, in 1924 she moved to Germany and acquired German citizenship. Claimant [REDACTED 2] noted, however, that his mother's siblings remained in Switzerland and that she remained very close to them. Claimant [REDACTED 2] added that his father worked as the *Obermagistrat* (member of the city high council) in Breslau until 1933 when, because he was Jewish, he was forced to retire from his job, and then worked as a director of the Jewish Hospital in Breslau, until he fled to England in 1939. Claimant [REDACTED 2] further noted that his mother likely had her siblings deposit the monies received by her husband as a pension from his time as the *Obermagistrat*, as well as monies he received as an honorarium from the Jewish Hospital.

Claimant [REDACTED 2] indicated that he was sent to England on the *Kindertransport* and arrived there on 3 December 1938. Claimant [REDACTED 2] added that he changed his name from [REDACTED] to [REDACTED 2] upon his arrival in England, and submitted a copy of a letter documenting his name change. Furthermore, Claimant [REDACTED 2] indicated that his parents arrived in England in 1939, where his father died on 27 April 1953 and his mother passed away on 9 October 1986.

In support of his claim, Claimant [REDACTED 2] submitted documents, including his mother's birth and death certificates; a copy of her will, identifying the Claimants and their sister, [REDACTED], née [REDACTED], as her children; and a copy of a letter indicating Claimant [REDACTED 2]'s name change. In addition, Claimant [REDACTED 1] submitted his birth certificate, indicating his mother's maiden name was Bertha Jacobsohn; a copy of a letter dated 11 July 1945 sent to him by his mother and providing details about monies deposited in Swiss bank accounts; and his own marriage certificate.

Claimant [REDACTED 2] indicated that he was born on 9 December 1926 in Breslau. Additionally, Claimant [REDACTED 2] is representing [REDACTED], née [REDACTED], his sister, who was born on 20 July 1929, also in Breslau. Claimant [REDACTED 1] indicated that he was born on 21 May 1920 in Zurich.

Claimant [REDACTED 2] previously submitted an Initial Questionnaire with the Court in 1999 asserting his entitlement to a Swiss bank account owned by [REDACTED] or Bertha Guttmann.

Information Available in the Bank's Records

The Bank's records consist of printouts from the Bank's database. According to these records, the Account Owner held a savings/passbook account as well as another account, the type of which is not indicated in the Bank's records.

According to the records relating to the account of unknown type, the Account Owner was *Frau* Dr. Bertha Guttmann, née Jacobsohn, who was a German citizen, and who lived at Kurassierstrasse 28 in Breslau, Germany. The Bank's records further indicate that the balance of the account as of 14 October 1955 was 170.00 Swiss Francs. 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. There is no indication in the Bank’s records that the Account Owner or her heirs closed this account and received the proceeds themselves.

According to the Bank’s records relating to the savings/passbook account, the Account Owner was *Frau* Dr. Berta Guttmann-Jacobson. The auditors, who carried out the ICEP Investigation indicated that the Account Owner was a German national. The Bank’s records indicate that the Account Owner held a savings/passbook account, which was opened in 1936. The Bank’s records contain a printout dated 3 June 1999, indicating the balance of this account as 384.20 Swiss Francs. However, this record does not indicate the balance date. The auditors who carried out the ICEP Investigation indicated that the account had a balance on 384.20 Swiss Francs on 31 August 1998. The account remains open and dormant.

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 claims of Claimant [REDACTED 1] and Claimant [REDACTED 2] in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their mother’s name matches the published names of the Account Owner. The Claimants identified their mother’s nationality as German, which matches unpublished information about the Account Owner contained in the Bank’s records. In addition, the Claimants stated that Bertha Guttmann lived in Breslau, which was part of Germany until the end of the Second World War and part of Poland thereafter, which also matches unpublished information about the Account Owner contained in the Bank’s records.³ The Claimants have further stated that their mother was married to [REDACTED], making it plausible that the Bank’s records would have her listed as *Frau Dr.* Bertha Guttmann, which also corresponds to unpublished information. In support of their claims, the Claimants submitted documents, including Bertha Guttmann’s birth and death certificates; a copy of her will, identifying the Claimants and their sister as Bertha Guttmann’s children; Bertha Guttmann’s marriage certificate and Claimant [REDACTED 1]’s birth certificate, identifying Bertha Jacobsohn Guttmann as his mother; and a copy of a letter dated 11 July 1945 sent to Claimant [REDACTED 2] by Bertha Guttmann providing details about monies deposited in Swiss bank accounts.

The CRT notes that Claimant [REDACTED 2] filed an Initial Questionnaire with the Court in 1999 asserting his entitlement to a Swiss bank account owned by [REDACTED] or Bertha

³ The CRT notes that the place of residence published for both Berta Jacobson Guttmann and *Frau* Bertha Guttmann was incorrectly published as Poland on the ICEP list.

Guttmann, prior to the publication 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 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 further notes that the other claim to these accounts was disconfirmed because that claimant provided a different country of residence and a different maiden name than those of 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, that her husband was forced to retire from his employment in 1933, and that they both fled Germany to England in 1939.

The Claimants’ Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents, including her will and Claimant [REDACTED 1]’s birth certificate, demonstrating that the Account Owner was their mother. But for the Claimants’ sister, who is being represented in this proceeding, there is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With regard to the account of unknown type, given that the Account Owner was Jewish and became a German citizen in 1924; that in 1933 the Nazis embarked on a campaign to seize the domestic and foreign assets of Jewish nationals in Germany through the enforcement of flight taxes and other confiscatory measures including confiscation of assets held in Swiss banks; that the Account Owner’s husband was forced out of his job in 1933 and had to flee Germany; that the Account Owner and her husband remained in Germany until they fled in 1939, and therefore would have had to disclose their assets and pay a flight tax to leave the country; that there is no record of the payment of the Account Owner’s account to her; that the Account Owner and her heirs would not have been able to obtain information about her account after the Second World War from the Banks due to the Swiss banks’ practice of withholding or misstating account information in their responses to inquiries by account owners because of the Bank’s concern regarding double liability; and given the application of Presumptions (b), (f), (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner 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.

With regard to the saving/passbook account, the Bank's records indicate that the account remains open and dormant.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their mother and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one account of unknown type and one savings/passbook account. The Bank's records indicate that the value of the account of unknown type as of 14 October 1955 was 170.00 Swiss Francs. According 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 auditors who carried out the ICEP Investigation reported that the value of the savings/passbook account as of 31 August 1998 was 384.20 Swiss Francs. According to Article 29 of the Rules, if the amount in a savings/passbook account was less than 830.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 830.00 Swiss Francs. Thus, the total 1945 average value of the accounts at issue was 4,780.00 Swiss Francs.

The current value of the amount of the award is determined by multiplying the balances as determined by Article 29 of the Rules by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount is 59,750.00 Swiss Francs.

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. In this case, Claimant [REDACTED 2], Claimant [REDACTED 1] and their sister, whom the Claimants represent, as children and direct descendants of the Account Owner, are each entitled to receive one third of any payment made.

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 claim 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
31 December 2003