

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Gerhard Lowenthal

in re Account of Alfred Loewenthal

Claim Number: 222276/AY

Award Amount: 216,000.00 Swiss Francs

This Certified Award is based upon the claim of Gerhard Lowenthal (the "Claimant") to the published account of Alfred Loewenthal (the "Account Owner") at the St. Moritz branch of the [REDACTED] (the "Bank").¹

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 Owner as his paternal uncle, Alfred Loewenthal, who was born to Julius Loewenthal and Elise Loewenthal, née Weissman, on 19 March 1900 in Germany, and who was married to Hildegard Loewenthal, née Frank. The Claimant stated that his uncle, who was Jewish, resided in Berlin, Germany, from where he fled during the Second World War, to Shanghai, China, ultimately arriving in the United States in 1942, where he died on 25 April 1988. The Claimant stated that his uncle had no children and that the Claimant's father, who was his uncle's only sibling, is also deceased. In support of his claim, the Claimant submitted his uncle's death certificate indicating he was born in Germany and his aunt's death certificate and will indicating that her husband predeceased her, that she had no children and that the Claimant and his wife are her sole heirs. The Claimant stated that he was born on 16 January 1932 in Berlin.

¹ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably those of Victims of Nazi Persecution (the "ICEP list"), Alfred Loewenthal is indicated as having one account. Upon careful review, the CRT has concluded that the Bank's records evidence the existence of two accounts.

Information Available in the Bank's Records

The Bank's records consist of a letter from the Account Owner to the Bank, dated 18 June 1937; instructions to the Bank regarding account-related correspondence; lists of accounts; and printouts from the Bank's databases. According to these records, the Account Owner was Alfred Loewenthal who resided at Brandenburgische Strasse 42 in Berlin, Germany. The Bank's records indicate that the Account Owner held one custody account as well as at least two demand deposit accounts, which were opened no later than 18 June 1937. The exact number of demand deposit accounts is not indicated.² In his letter dated 18 June 1937, the Account Owner requested the Bank that the accounts be held under and referred to by the number 830 and the password "Alfred". In addition, in another letter dated 18 June 1937, the Account Owner requested the Bank that all account-related correspondence be sent to Mr. Werner Loewenthal, Scala Hotel, Bozen, Italy, until further notice.

The Bank's records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts. 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 these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. There is no evidence in the Bank's records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's uncle's name, city and country of residence match the published name, city and country of residence of the Account Owner. In support of his claim, the Claimant submitted documents including his uncle's death certificate indicating he was born in Germany, and his aunt's death certificate and will indicating that her husband predeceased her, that she had no children and that the Claimant and his wife are her sole heirs.

² The Bank's records refer to the existence of a custody account and at least two demand deposit accounts in two places. In the letter from the Account Owner to the Bank, dated 18 June 1937, the Account Owner wrote: "I recognize in advance all orders and directions, without any limitations, regarding my custody account and my demand deposit accounts...." [*Ich anerkenne im voraus alle Aufträge und Weisungen ohne jede Einschränkung betreffend mein Depot und meine Konti....*] In the instructions to the Bank regarding account-related correspondence, also dated 18 June 1937, the Account Owner wrote: "I hereby ask you to take notice that all correspondence regarding my custody account and my demand deposit accounts with you should be regularly and until further notice be addressed to Herr Werner Loewenthal, Scala Hotel, Bozen" [*Hierdurch ersuche ich Sie davon Vormerkung zu nehmen, dass alle Korrespondenzen, mein Depot and meine Konti bei Ihnen betreffend regelmässig und bis auf weitere Anzeige an Herrn Werner Loewenthal, Scala Hotel, Bozen, zu adressieren sind.*"]

The CRT notes that the name Alfred Loewenthal appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution. The CRT further notes that the other claims to these accounts were disconfirmed because those claimants provided a different city/country of residence than the city and country of residence of the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

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, and fled from Nazi Germany to China before arriving in the United States.

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 uncle. These documents include his uncle's death certificate indicating he was born in Germany, and his aunt's death certificate and will indicating that her husband predeceased her, that she had no children and that the Claimant and his wife are her sole heirs.

The Issue of Who Received the Proceeds

Given that there is no record of the payment of the Account Owner's accounts to him, nor any record of a date of closure of the accounts; that the Account Owner and his heirs would not have been able to obtain information about the accounts from the Bank 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 (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 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 uncle 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 CRT notes that the Bank's records indicate that that the Account Owner held at least two demand deposit accounts in addition to the custody account. Given that the exact number of demand deposit accounts held by the Account Owner cannot be ascertained based on the available information, the CRT deems it plausible that the Account Owner held two demand deposit accounts.

Consequently, the Award is for one custody account and two demand deposit accounts. 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 ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs and the average value of a demand deposit account was 2,140.00 Swiss Francs. Consequently, the 1945 total average value the custody account and of the two demand deposits account is 17,280.00 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 216,000.00 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
8 June 2004