

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Richard Mannaberg

Claim Number: 600017/AA

Award Amount: 728,100.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED](the “Claimant”) to the accounts of Richard Mannaberg (the “Account Owner”) at the Zurich branch (“Branch I”) and Basel branch (“Branch II”) of the [REDACTED](the “Bank”).

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 and a claim to the Holocaust Claims Processing Office of the New York State Banking Department (“HCPO”) identifying the Account Owner as his father, Richard Mannaberg, who was born on 30 July 1877 in Suchdol, Moravia and was married to Henriette Mannaberg (née [REDACTED]), who was born on 14 May 1887 in Planany-Zalesany Okres Kolin, Czechoslovakia. The Claimant stated that he was born on 21 September 1913, and his late sister, [REDACTED], was born on 4 October 1910 in Prague, Czechoslovakia and died in the United Kingdom in 2001. According to the Claimant, his parents, who were Jewish, lived at Nad Kralovkou Oborou 3, Prague, Czechoslovakia. The Claimant stated that his father was an engineer and managing director of *Fanto Aktiengesellschaft*, a petrol refinery in Pardubic, Czechoslovakia, and was commissioned by the company to establish a factory in Berre, France. The Claimant stated that he specifically remembered that, while he was a student at the University of Grenoble, he accompanied his father to the Bank in approximately 1933, and he recalled the interior of the Bank’s building and that his father spoke with a bank employee about investments the bank was making on his behalf. The Claimant stated further that his father transferred approximately 3,500.00 Pounds Sterling from his account at *Credit Lyonnais* in Marseilles, France to an account at the Bank and that the money was used to invest in certain United States securities, one of which was R.J. Reynolds Tobacco Company.

The Claimant stated that he was in the Czechoslovakian army until 1938. In conversations with the HCPO, the Claimant stated that, prior to the Second World War, his father insisted that he leave for London, and assured him that the rest of his family would follow shortly. The Claimant told the HCPO that his last telephone conversation with his father about these plans occurred in 1938 and that his father was arrested shortly thereafter. In his Claim Form, the Claimant explained that he immigrated to London, England in 1938 and remained there until 1945. The Claimant further explained that his parents and sister were unable to escape and were forced to live in the Prague Ghetto from 1940 until 1941, when the Nazis deported them to Terezin concentration camp, where they were imprisoned until 1942. That same year, the family was deported to Auschwitz, where the Claimant's father was killed. The Claimant's mother and sister survived the concentration camps and were on the Death March from Stutthof to Gdansk when the Russian army liberated them. The Claimant's mother and sister returned to Prague, where the Claimant's mother lived until her death on 25 March 1958.

After the Second World War, the Claimant attempted on numerous occasions to obtain information from the Bank about accounts belonging to his parents, but the Bank declined to provide him with information regarding the existence of any such accounts. In fact, the Claimant submitted correspondence from the Bank and its legal department in which the Bank at first informed the Claimant that it could not locate an account belonging to his parents. In a letter dated 23 April 1997, the Bank informed the Claimant if he could produce his parents' birth and death certificates, then it could assist him with his search. However, when the Claimant submitted the documents to the Bank, the Bank once again refused to help him, informing him that it was under no obligation to give him any information about the possible existence of accounts owned by his parents. The Bank told the Claimant that if he could produce bank documents, then the Bank would conduct further searches. Finally, in 1999, in response to inquiries by the HCPO, the Bank acknowledged that it had discovered two accounts belonging to the Claimant's father. In support of his claim, the Claimant submitted his birth and marriage certificates, his parents' death certificates, and correspondence from the Bank addressed to him and to the HCPO.

Information Available in the Bank Records

The bank records consist of an account ledger, mailing instructions, a receipt for custody account regulations, and a power of attorney form. According to these records, the Account Owner was Richard Mannaberg. The bank records indicate that the Account Owner at different points in time held two custody accounts. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

Branch I

The records indicate that Richard Mannaberg owned a custody account, numbered 3150, that was opened on 19 October 1921. This account is listed in a ledger entitled "*Abgelegte Freie Depots*" which the bank claims contains all accounts closed on or before 31 December 1924. In 1943, a remark was added on this ledger stating that the documentation on these custody

accounts had been destroyed in 1940. The bank records do not show to whom the proceeds of this account were paid, nor do these records indicate the value of this account.

Branch II

The records indicate that Richard Mannaberg held a custody account numbered 40147-II at Branch II. The bank records include mailing instructions that the Account Owner signed on 8 February 1935 and a receipt for the custody account regulations signed the same day. On 11 February 1935, the Account Owner granted power of attorney to his wife, Henriette Mannaberg. The bank records do not show if or when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. As noted above, the Claimant stated that he recalls that his father deposited £3,500.00 into a custody account in approximately 1933.

The documents for account 40147-II were found in a binder entitled *P.K. II Dossier Documents ausgegangen No. 40000 bis 40199*. The Bank asserted that this binder contains documents of closed accounts. The Claimant requested documentary proof that all the accounts in the binder, including his father's, were in fact closed. In its letter of 5 January 2000, the Bank conceded that they located documents for only a few that had closure dates, none of which related to Richard Mannaberg's accounts. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father's name matches the unpublished name of the Account Owner. The Claimant identified his father's city of residence, and he stated that his father held a custody account in Zurich, which matches unpublished information about the Account Owner contained in the bank records.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999 and an HCPO claim form in 1998 asserting his entitlement to a Swiss bank account owned by Richard Mannaberg, 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").

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 was persecuted by the Nazis during the Second World War. Specifically, the Nazis deported the Account Owner to Auschwitz and killed him there on 12 December 1943.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Richard Mannaberg, and indicates that his date of birth was 30 July 1877 and his place of birth was Suchdol, Moravia, which matches the information about the

Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting his birth certificate, which names the Account Owner as his father. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With respect to the custody account numbered 3150 held at Branch I, the Bank record notes that this account is listed in a ledger containing accounts that were closed on or before 31 December 1924. Thus, the account was plausibly closed before 1933 and is not within the jurisdiction of the CRT.

With regard to account 40147-II at Branch II, the Bank has informed the HCPO that it found records of the existence of the account among account documents that had been filed as no longer needed for the Bank's daily business, and that it has no indication that the account was closed other than in the ordinary course of business. It has also informed the HCPO that it is not aware of the survival of any bank document or documents noting the closure of the account or the payment of the proceeds to the Account Owner, or his wife who held a power of attorney over the Account, or any other disposition of the account. The records that have survived indicate that the account was opened at the beginning of February 1935 but, as noted above, no information is available on whether or when it was closed. According to information provided by the Claimant, the Account Owner was arrested by the Nazis in 1938, forced to live in the Prague Ghetto from 1940-1941, deported first to the Terezin concentration camp in 1941, and then to Auschwitz in 1942, where he was murdered. His wife, who was with him through this ordeal, survived, but returned to Prague after she was liberated by the Russian Army, where she died in 1958.

These events strongly indicate that the circumstances of the years immediately preceding and during the Second World War were anything but the "ordinary course of business" during which, in the absence of evidence to the contrary, the common sense presumption that account owners who had pre-War or Wartime accounts in Swiss banks and who suffered Nazi persecution received the proceeds of their accounts would apply. Having set up an account in a supposed safehaven Swiss bank in 1935 when the Nazi storm had already gathered, it does not appear plausible that the Account Owner or his wife would have closed his account before his arrest and persecution and thereby expose his assets to Nazi search and seizure. After his arrest, the Account Owner would have been unable to do so voluntarily. Nor is it plausible that his wife, living in Communist Czechoslovakia after the War, would have been able to access his account before her death in 1958. Consistent with these circumstances, the CRT uses the presumptions listed in Appendix A, based on its precedent, its Rules, and the history of the period, to determine when the presumption of payment to the Account Owner in the ordinary course of business should not apply, unless there is persuasive evidence available to the CRT to the contrary. In this case, Presumptions (h), (i) and (j) dealing with the banks' concerted practice of

withholding account information from Nazi victims and their heirs, Nazi efforts to confiscate Jewish-owned accounts in Swiss banks and the latter's cooperation with these efforts, and the inability of residents of the communist-dominated countries of Eastern Europe to access Swiss accounts, individually and collectively apply. There is, in this case, no persuasive evidence to the contrary before the CRT.

Basis for the Award

With regard to the account 40147-II held at Branch II, 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the Branch II accounts.

Amount of the Award

The bank records in this case provide no information on the value of the Account Owner's "open" custody account No. 40147-II ("*offenen Wertschriften-Depots*") that he apparently established in February 1935. Ordinarily, as provided in Article 35 of the Rules, in this situation, the CRT uses the average value in 1945 of custody accounts -- 13,000 Swiss Francs -- to determine the amount of an award for an account of this type unless there is evidence to the contrary.

However, in this case, for the custody account, there is credible information about its value provided by the Claimant. The Claimant asserts that his father, the Account Owner, placed £3,500 into this account in around 1933, transferring the funds from his account at *Credit Lyonnais* in Marseilles, France. He states that when he was a 20 year old student at the University of Grenoble, he accompanied his father to the Bank, listened to the discussion between his father and the Bank's officer concerning the account and the securities into which the deposited funds would be placed. He described the interior of the Bank building, the amount of the investment, and the name of certain of the securities to be purchased for the account.

The Account Owner's ability to place this relatively large sum of money is fully consistent with the Account Owner's position as an engineer and managing director of a petroleum refinery in Czechoslovakia charged with the additional responsibilities of building another refinery in Berre, France. The transfer of the funds from the Account Owner's account at *Credit Lyonnais* is consistent with the Account Owner's presence in Southern France in connection with the construction of the refinery in Berre, France, which is located close to Marseilles. The Claimant's recollection of his father's discussion with the Bank officer about the securities into which the deposited fund would be invested is also consistent with the type of custody account established by the Account Owner -- an account specifically established to hold physical securities that was sometimes accompanied by the bank's assumption of certain management responsibilities. Moreover, Claimant's valuation of the account is supported by his correspondence with the Bank since 1997 in which he repeatedly referred to a deposit of £3,500.

Thus, the Claimant's assertion that his oilman father placed £3,500 into his Swiss Bank custody account is entirely credible.

The credibility of the Claimant's account of his father's deposit provides a sufficient basis for the CRT to use the value asserted by the Claimant in place of the average value provided for in Article 35. Average values have the obvious defect of over-compensating those account owners with accounts of less than the average and under-compensating those with more than the average. In the absence of bank records on valuation of accounts, averages are a necessary tool, but when there is credible evidence of payment or valuation, the CRT should use this evidence to inform its awards. In this case, the record credibly indicates that the £3,500 was deposited in Account Owner's custody account opened in Basel in 1935, and this credible valuation should be used to value this custody account. Using the value of £3,500, which was equal to 60,675.00 Swiss Francs in 1935, the present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 728,100.00 Swiss Francs.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 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