

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Joel Ernst Julius Freudenberg
also acting on behalf of Haim Giloh and Ram Abraham Da-Oz¹

in re Account of Helene Mayer

Claim Number: 003861/AH ²

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Joel Ernst Julius Freudenberg (the “Claimant”) to the account of Helene Mayer (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

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 aunt, Helene Mayer, née Freudenberg, who was born on 2 October 1895 in Berlin, Germany, was married to Hermann Mayer on 20 July 1920 in Berlin, and had two children: Bertha Beppi Mayer and Margarete Margit Mayer. The Claimant stated that his aunt, who was Jewish, was a housewife, and that her husband was a textile engineer. The Claimant further stated that Helene Mayer and her family resided in Berlin until 1933, when they fled to 299 Waalsdorperweg, Den Haag, the Netherlands, where they stayed until 1940. They then moved to 39 Zoutmanstraat, Gauda, the Netherlands, and in 1942, to 2 Hofmeyrstraat, Amsterdam, the Netherlands, from where the Account Owner and her husband were deported to Bergen-Belsen. Her husband perished in Bergen-Belsen on 30 March 1945, and the Account Owner died in April 1945, a few days after the liberation of Bergen-Belsen. Her daughters, who tried to flee to Switzerland, were captured and killed. The Claimant submitted various documents including Hermann Mayer’s death certificate, two letters signed by Helene Mayer, a letter dated 1 January 1946, and an

¹ The Claimant provided his name and some of his relatives’ names only in Hebrew characters in the Claim Form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the Claim Form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

² The Claimant submitted an additional claim to the account of Hermann Mayer, which is registered under the Claim Number 003862. The CRT will treat the claim to this account in a separate decision.

extract from the municipality of Amsterdam dated 23 December 1947, both indicating the names, German origins and fate of the Claimant's aunt's family. Helene Mayer had a sister, Maria Daus, née Freudenberg, who was the mother of Ram Abraham Da-Oz, and a brother, Georg Freudenberg, who was the Claimant's and Haim Giloh's father. The Claimant indicated that he was born on 19 December 1927 in Berlin. The Claimant is representing Haim Giloh, his brother, who was born on 20 December 1924 in Berlin, and Ram Abraham Da-Oz, his paternal cousin, who was born on 17 January 1929 in Berlin.

Information Available in the Bank Record

The bank record consists of a printout from the Bank's database. According to this record, the Account Owner was Helene Mayer, née Freudenberg, who resided at Potsdamer Chaussee 48, Berlin-Nikolassee, Germany. The bank record indicates that the Account Owner held an account of unknown type, which was opened on an unknown date. The account was frozen on 16 February 1945 in the Swiss Freeze of German Assets. The amount in the account on the date of its freeze was 292.00 Swiss Francs. The bank record indicates that the account was released from the freeze on an unknown date and still existed on 24 August 1948, but they do not indicate when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. 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 record that the Account Owner or her 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 aunt's name, maiden 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 two letters signed by Helene Mayer, and one letter dated 1 January 1946 and one extract from the municipality of Amsterdam dated 23 December 1947 both providing evidence of the name, German origin, and fate of the Claimant's aunt's family.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Helene Mayer, née Freudenberg, from Berlin, Germany, and indicates that she perished at the age of 50, which substantially matches the information about the Account Owner provided by the Claimant (according to the dates of birth and death provided by the Claimant, the Account Owner died at age 49). The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

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 she was interned in Bergen-Belsen, and that her husband perished in Bergen-Belsen in the Second World War.

Also, as indicated above, the Claimant's name appears in a database containing the names of victims of Nazi persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that the Account Owner was his paternal aunt. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) contained in Appendix A,³ 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 Governing the Claims Resolution Process (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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his paternal aunt, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account.

Amount of the Award

The bank records indicate that the value of the account as of 16 February 1945 was 292.00 Swiss Francs. In accordance with Article 37(1) of the Rules, this amount is increased by an adjustment of 15.00 Swiss Francs, which reflects standardized bank fees charged to the account between 1 January 1945 and 16 February 1945. There was no interest paid to the account at issue. Consequently, the adjusted balance of the account at issue is 307.00 Swiss Francs. According to Article 35 of the Rules, if the amount in an account of an 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 present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Division of the Award

The Claimant is representing his brother Haim Giloh, and his cousin Ram Abraham Da-Oz in these proceedings. According to the principles of distribution set forth in Article 29(1)(d) of the Rules, if neither the spouse nor the descendants of the Account Owner have submitted a claim to the account, the Award will be in favor of any descendants of the Account Owner's parents who have submitted claims to the account, in equal shares by representation. Therefore, Ram Abraham Da-Oz, as a descendant of the Account Owner's sister, Maria Daus, née Freudenberg, is entitled to one-half of the account at issue, and the Claimant and Haim Giloh, as the descendants of the Account Owner's brother, Georg Freudenberg, are each entitled to one-fourth of the account at issue.

Initial Payment

Article 37(3)(a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, however, because Joel Freudenberg, the Claimant, and Haim Giloh, one of the represented parties, are age 75 or older, each of them is entitled to receive payment of 100% of his portion of the total award amount, and Ram Abraham Da-Oz, who is under the age of 75, is entitled to 65% of his portion of the total award amount. Accordingly, the initial payment amount is 39,105.00 Swiss Francs, which is comprised of 100% of the Claimant and Haim Giloh's portions of the award (11,850.00 Swiss Francs each, for a total of 23,700.00 Swiss Francs) and 65% of Ram Abraham Da-Oz's portion of the award (15,405.00 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

December 27, 2002

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:¹

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.³

¹ See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); *see also*

Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

² See Bergier Final Report at 443-44, 446-49; *see also* ICEP Report at 81-83.

³ As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, *see Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, *see* Bergier Final Report at 450 -51, and possibly Romania as well, *see* Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. *See* Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." *Id.* at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. *See In re Holocaust Victim Asset Litig.*, 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).