

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]
also acting on behalf of [REDACTED 3] and [REDACTED 4]

in re Account of Anny Rosenberger

Claim Numbers: 214254/GO; 218980/GO

Award Amount: 25,448.38 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to the account of Anna Rosenberger, and upon the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Anna (Anny) Rosenberger, Max Rosenberger, Gusti (Gitla) Lemberg Rosenberger, née Gutter Kühnreich, Josef Kalter, Else Kalter and Alexander Lemberg.^{1,2} This Award is to the unpublished account of Anny Rosenberger (the “Account Owner”) at the Davos branch of the [REDACTED] (the “Bank”).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

The Claimants submitted Claim Forms identifying the Account Owner as Anna (Anny) Rosenberger, née [REDACTED], who was born in approximately 1895, and was married to [REDACTED]. Claimant [REDACTED 1] indicated that Anna Rosenberger was her maternal

¹ In a decision dated 24 September 2007, Claimant [REDACTED 1] was informed that the CRT had been unable to identify any accounts belonging to Anna Rosenberger in the Account History Database, which was prepared pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP”). That decision pertained solely to the accounts in the Account History Database, and therefore did not consider the Bank record that was submitted by Claimant [REDACTED 2] indicating that Anny Rosenberger held an account at the Bank. This decision addresses the account identified in that record.

² The CRT did not locate accounts belonging to Max Rosenberger, Gusti (Gitla) Lemberg Rosenberger, née Gutter Kühnreich, Josef Kalter, Else Kalter and Alexander Lemberg in the Account History Database prepared pursuant to the ICEP Investigation, which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

aunt, and Claimant [REDACTED 2] indicated that Anna Rosenberger was the first wife of his mother's second husband.

Claimant [REDACTED 1] indicated that Anna Rosenberger, who was Jewish, had two sons, namely [REDACTED] and [REDACTED]. Claimant [REDACTED 1] further indicated that her aunt resided in Mies bei Pilzen, Czechoslovakia, (today Střbro, the Czech Republic), and Claimant [REDACTED 2] stated that Anna and [REDACTED] resided at Egergasse 149 in Mies bei Pilzen. The Claimants explained that Anna and [REDACTED] owned a business in that city that was "aryanized" in 1938. Claimant [REDACTED 1] stated that Anna Rosenberger subsequently moved with her children to Prague, Czechoslovakia, and that [REDACTED] fled to Palestine. Finally, Claimant [REDACTED 1] indicated that Anna Rosenberger and her two children perished in Auschwitz in 1942.

In a telephone conversation with the CRT, Claimant [REDACTED 2] stated that Anna Rosenberger's husband, [REDACTED], later married Claimant [REDACTED 2]'s mother, [REDACTED]. Claimant [REDACTED 1] stated that [REDACTED] committed suicide in 1949 in Tel Aviv, Israel. According to Claimant [REDACTED 2], [REDACTED] inherited the estate of Anna Rosenberg; [REDACTED] inherited the estate of [REDACTED] when he died in 1949; and Claimant [REDACTED 2] and his siblings inherited [REDACTED]'s estate when she died in 1954.

Finally, Claimant [REDACTED 2] indicated that on 10 December 1989, he received compensation from the Bank in the amount of 1,041.25 Swiss Francs ("SF") for an account held by Anna Rosenberger at the Bank.

Claimant [REDACTED 1] indicated that she was born on 25 April 1921 in Aussergefeld, Austria (today Kvilda, the Czech Republic).

Claimant [REDACTED 1] previously submitted an Initial Questionnaire ("IQ") to the Court in 1999, asserting her entitlement to a Swiss bank account owned by Anna Rosenberger.

Claimant [REDACTED 2] submitted copies of: (1) the translation of an inheritance document which was issued on 21 May 1957 by a District Court of Tel Aviv, indicating that [REDACTED] (formerly [REDACTED]), née [REDACTED], died on 15 April 1954 in Tel Aviv and that her children [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were her heirs; and (2) a letter from the Bank, dated 12 July 1946, which is further described below.

Claimant [REDACTED 2] indicated that he was born on 22 October 1919 in Czarnow, Poland. Claimant [REDACTED 2] is representing his sisters, [REDACTED 3], née [REDACTED], who was born on 28 April 1924 in Leipzig, Germany, and [REDACTED 4] (formerly [REDACTED]).

Claimant [REDACTED 2] previously submitted an IQ to the Court in 1999, asserting his entitlement to a Swiss bank account owned by Anny Rosenberger.

Information Available in the Bank's Record

The CRT notes that 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 report an account belonging to Anny Rosenberger during their investigation of the Bank. The Bank’s document was submitted to the CRT by Claimant [REDACTED 2].

This document consists of a letter, dated 12 July 1946, issued by the Chur branch of the Bank and addressed to [REDACTED] of Tel Aviv, Palestine; the letter indicates that [REDACTED] had written to the Bank to inquire about an account. According to this document, the Account Owner was *Frau* Anny Rosenberger, who resided at Ebergasse 149 in Mies bei Pilsen, Czechoslovakia. This record indicates that the Account Owner held a demand deposit account, numbered 32443, which was opened on 6 January 1933. This record further indicates that the last activity on this account was on 4 March 1933 and that the account had a balance of SF 1,049.50 as of 31 December 1937. This record also indicates that the account was frozen under the 1945 freeze of assets held in Switzerland by the citizens of Germany and the territories incorporated into the Third Reich (the “1945 Freeze”). This document contains no further information regarding the account’s subsequent disposition.

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

The Claimants have plausibly identified the Account Owner. The name, street address, and city and country of residence of Claimant [REDACTED 1]’s aunt and Claimant [REDACTED 2]’s mother’s second husband’s match the unpublished name, street address, and city and country of residence of the Account Owner.

In support of his claim, Claimant [REDACTED 2] submitted the letter from the Bank, indicating that Anny Rosenberger, who resided at Ebergasse 149 in Mies bei Pilzen, held an account at the Bank, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the Bank’s record as the name and city of residence of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Anna Rosenbergerova,³ and indicates that her date of birth was 16

³ The CRT notes that Rosenbergerova is a Czech female version of the surname Rosenberg.

February 1897, and that she was deported from Prague to Teresienstadt concentration camp on 16 July 1942, and from Teresienstadt to Auschwitz on 23 October 1944, and that she perished in Auschwitz, which matches information about the Account Owner provided by the Claimants. The database also includes a person named Otto Rosenberg, and indicates that he was born in 1927, and that he was deported from Prague to Teresienstadt, and from Teresienstadt to Auschwitz on the same dates that Anna Rosenbergerova was deported, which matches information about the Account Owner's son provided by the Claimants.

The CRT notes that the other claim to this account was disconfirmed because that claimant provided a different city and country of residence than the city and country of residence 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 family business in Czechoslovakia was aryanized, and that she and her two children perished in Auschwitz in 1942.

As noted above, a person named Anna Rosenbergerova was included in the CRT's database of victims.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was Claimant [REDACTED 1]'s aunt and Claimant [REDACTED 2]'s relative by marriage. There is no information to indicate that the Account Owner has other surviving heirs other than the parties whom Claimant [REDACTED 2] is representing.

The CRT further notes that the Claimants identified unpublished information about the Account Owner as contained in the Bank's record; and that they identified information which matches information contained in the Yad Vashem records. The CRT further notes that Claimant [REDACTED 2] submitted a copy of a letter from the Bank, indicating that Anny Rosenberger resided at Ebergasse 149 in Mies bei Pilsen. The CRT notes that it is plausible that this document is a document 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 the Claimants are related to the Account Owner, as they have asserted in their Claim Forms.

The Issue of Who Received the Proceeds

The Bank's record indicates that as of 12 July 1946, the account was frozen under the 1945 freeze. However, the CRT accepts the information provided by Claimant [REDACTED 2] that

in December 1989, he received from the Bank a payment of SF 1,041.25, representing the value of Anny Rosenberger's account.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are 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 relative, and those relationships, combined with the principles of fairness and equity outlined below, justify an Award. Third, the CRT has determined that on 10 December 1989, Claimant [REDACTED 2] received a payment from the Bank of SF 1,041.25, representing the December 1937 value of the account, minus bank fees, and with no interest added, and that payment is considerably less than that provided for by the Rules.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The Bank's record indicates that the value of the demand deposit account as of 31 December 1937 was SF 1,049.50. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00 and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The CRT notes that the Bank's record dated 12 July 1946 showing the value of the account as SF 1,049.50 was the basis for the award made to Claimant [REDACTED 2] in 1989. However, that record is not substantiated by any other record showing the balance of the account. Accordingly, the CRT does not consider this single record to be evidence sufficient to rebut the Article 29 presumption, and therefore considers the balance of the account to have been SF 2,140.00.

The CRT notes that Claimant [REDACTED 2] indicated that he received payment in the amount of SF 1,041.25 in 1989 from the Bank for this account. This payment was made prior to the claims resolution process and prior to the ICEP Investigation. However, in its report published in 1999, ICEP recommended adjusting 1945 values initially by multiplying them by a factor of 10 to account for the increases in the cost of living over the period of time from 1945 to 1999.⁴ In order to determine the 1945 value that corresponds to the 1989 payment of SF 1,041.25, the CRT divides this amount by 10, for a result of SF 104.13 as the 1945 amount reflected in the 1989 payment.

As noted above, the CRT considers the balance of the account as determined by Article 29 to have been SF 2,140.00. To determine the amount that has yet to be restituted, the CRT subtracts the amount represented by the 1989 payment (SF 104.13) from the total balance of the account (SF 2,140.00), to obtain the result of SF 2,035.87 (SF 2,140.00 minus SF 104.13 equals SF 2,035.87). This amount represents the 1945 value of the account that is yet to be restituted. The current value of this amount is determined by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 25,448.38.

⁴ Independent Committee of Eminent Persons (ICEP), *Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks*, Berne: Staempfli Publishers Ltd., 1999, p. 22, ¶ 82.

Division of the Award

Claimant [REDACTED 2] indicated that the Account Owner's estate was inherited by [REDACTED], who died in 1949; that [REDACTED]'s estate was inherited by [REDACTED], who died in 1954; and that [REDACTED]'s estate was inherited by Claimant [REDACTED 2] and his siblings. The CRT notes, however, that Claimant [REDACTED 2] submitted to the CRT only the inheritance certificate of [REDACTED], and no inheritance documents related to the estates of [REDACTED] or [REDACTED].

According to Article 23(2)(c), if a claimant bases a claim of entitlement on a chain of inheritance but has not submitted an unbroken chain of wills or other inheritance documents, the CRT may use the general principles of distribution established in Article 23(1) to make allowance for any missing links in the chain, consistent with principles of fairness and equity.

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 1] is the Account Owner's niece.

The CRT further notes that the ICEP Investigation did not report an account belonging to Anny Rosenberger during their investigation of the Bank, and that this account would not have been awarded if Claimant [REDACTED 2] had not submitted the Bank record. Accordingly, the CRT finds that based upon the principles of fairness and equity, Claimant [REDACTED 2] and his siblings, the two represented parties, should be jointly entitled to one-half of the award amount, and Claimant [REDACTED 1] should be entitled to one-half of the award amount.

As noted above, the CRT has determined that the 1945 value of the account was SF 2,140.00. Claimant [REDACTED 1] is entitled to half this amount, or SF 1,070.00. The current value of this amount is determined by multiplying it by 12.5 to achieve an award amount for Claimant Gruber of SF 13,375.00.

Claimant [REDACTED 2] is also entitled to one-half of the 1945 value of the account, or SF 1,070.00. As detailed above, in 1989 Claimant [REDACTED 2] received a payment of SF 1,041.25, which the CRT has determined represents a 1945 value of SF 104.13. Therefore, Claimant [REDACTED 2] is entitled to receive a 1945 value of SF 965.87 (SF 1,070.00 minus SF 104.13 equals SF 965.87). The current value of this amount is determined by multiplying it by 12.5 to achieve an award amount for Claimant [REDACTED 2] of SF 12,073.38. Given that the two represented parties are Claimant [REDACTED 2]'s siblings, the CRT determines that Claimant [REDACTED 2], represented party [REDACTED 3], and represented party [REDACTED 4] are each entitled to one-third of SF 12,073.38, or SF 4,024.46 each.

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
18 December 2008