

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED 1]

and to Claimant [REDACTED 2]

in re Accounts of Ludwig Werner and Josef Werner

Claim Numbers: 700326/MI;¹ 753852/MI^{2,3}

Award Amount: 98,750.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to accounts of Valerie Wernerová and Magdalena Hamburgová, and the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to accounts of Margita Werner⁴ and Josef Werner. This award is to the published account of Ludwig Werner (“Account Owner Ludwig Werner”), over which Lajosné Werner (“Power of Attorney Holder Lajosné Werner”) and Magda Werner (“Power of Attorney Holder Magda Werner”) held power of attorney, and to the published account of Josef Werner (“Account Owner Josef Werner”), over which Account Owner Ludwig Werner, Power of Attorney Holder Lajosné Werner, and Power of Attorney Holder Magda Werner (together the “Power of Attorney Holders”) held power of attorney, both at the Zurich branch of the [REDACTED] (the “Bank”).

¹ [REDACTED 1] (“Claimant [REDACTED 1]”) did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered CZE-0009-079, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 710326.

² [REDACTED 2] (“Claimant [REDACTED 2]”) did not submit a CRT Claim Form. However, in 1998 he submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-TLV-A-71-119-164-316, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 753852.

³ Claimant [REDACTED 2] submitted three Claim Forms, which were registered under the Claim Numbers 710791, 713740, and 753852. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 753852.

⁴ The CRT will treat the claim to the account of Margita Werner in a separate determination.

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 owners, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1] submitted an Initial Questionnaire (“IQ”) in 1999, and Claimant [REDACTED 2], who is Claimant [REDACTED 1]’s stepson, submitted an ATAG Ernst & Young claim form (“ATAG Form”) in 1998, identifying Account Owner Ludwig Werner as Claimant [REDACTED 1]’s father, Ludwig Werner, who was born on 19 February 1880 in Prievidza, Trencin, Czechoslovakia (today Slovakia), and was married to [REDACTED], née [REDACTED], in Prievidza. The Claimants further identified Account Owner Josef Werner as Claimant [REDACTED 1]’s paternal uncle, Josef (Jozef) Werner, who was married to [REDACTED], née [REDACTED].

The Claimants stated that Ludwig Werner and Josef Werner, who were Jewish, resided in Prievidza, where Ludwig Werner was a lawyer. According to Claimant [REDACTED 2], both Josef Werner and [REDACTED], and Ludwig Werner and [REDACTED], deposited jewelry in a Swiss bank sometime between the years 1938 and 1940. The Claimants indicated that in 1942, Josef Werner and [REDACTED] were deported to Auschwitz, where they perished. The Claimants further indicated that in March 1942, Ludwig Werner and [REDACTED] fled from Trencin to Budapest, Hungary, and that they survived the War.

Claimant [REDACTED 2] stated that after the Second World War, Ludwig Werner and [REDACTED] received the jewelry they deposited in Switzerland. The Claimants further stated that after the War, Ludwig Werner and [REDACTED] resided in Prague, Czechoslovakia (today the Czech Republic). The Claimants indicated that [REDACTED] passed away on 15 October 1952, and that Ludwig Werner passed away on 25 October 1963.

Claimant [REDACTED 2] submitted documents in support of his claim, including: Claimant [REDACTED 1]’s marriage certificate, indicating that [REDACTED 1] was married to [REDACTED] on 21 July 1946 in Trencin; Claimant [REDACTED 1]’s death certificate, indicating that [REDACTED 1] was born on 5 August 1915, that her parents were L’udovit Werner and [REDACTED], and that she died on 13 May 2001; and a power of attorney form, dated 29 September 1997, and signed by a notary in Trencin, indicating that Jozef Werner and [REDACTED] resided in Prievidza, that they were deported to a concentration camp, where they perished, that [REDACTED 1], née [REDACTED], was their only remaining heir, and identifying [REDACTED 2] as [REDACTED 1]’s son.⁵

Claimant [REDACTED 1] indicated that she was born on 5 August 1915 in Trencin. Claimant [REDACTED 2] indicated that he was born on 6 June 1926 in Trencin.

⁵ The CRT notes that the Claimants identified their relatives as Ludwig Werner and [REDACTED], and that the documents submitted by Claimant [REDACTED 2] identify his relatives as L’udovit Werner, and [REDACTED]. The CRT further notes that these names are sufficiently similar to render it plausible that they refer to the same persons.

Information Available in the Bank's Records

The Bank's records consist of two power of attorney forms and printouts from the Bank's database. According to these records, Account Owner Josef Werner was Josef Werner, who resided in Prievidza, Czechoslovakia; Account Owner Ludwig Werner was Dr. Ludwig (Lajos) Werner, an attorney, who resided at Mozsar-Utca 9 in Budapest, Hungary; Power of Attorney Holder Lajosne Werner was *Frau* (Mrs.) Lajosné (Valerie) Werner, who was Account Owner Ludwig Werner's spouse and who resided at Mozsar-Utca 9 in Budapest; and Power of Attorney Holder Magda Werner was *Fräulein* (Miss) Magda Werner, who was Account Owner Ludwig Werner's daughter and who also resided at Mozsar-Utca 9 in Budapest.

The Bank's records indicate that Account Owner Ludwig Werner and Account Owner Josef Werner each held one account, the types of which are not indicated. The Bank's records further indicate that Account Owner Ludwig Werner granted powers of attorney over his account on 12 June 1931 to Power of Attorney Holder Lajosne Werner and Power of Attorney Holder Magda Werner. According to the Bank's records, on 7 August 1931, Account Owner Josef Werner granted powers of attorney over his account to Account Owner Ludwig Werner, Power of Attorney Holder Lajosne Werner, and Power of Attorney Holder Magda Werner. The Bank's records indicate that these accounts were closed, but the dates of closure are not recorded. The Bank's records do not indicate the values 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") indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the Bank's records that the Account Owners, the Power of Attorney Holders, or their heirs closed the accounts and received the proceeds themselves.

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 Owners

The Claimants have plausibly identified the Account Owners. Claimant [REDACTED 1]'s uncle's name and city and country of residence match the published name and city and country of residence of Account Owner Josef Werner, Claimant [REDACTED 1]'s father's name matches the published name of Account Owner Ludwig Werner, Claimant [REDACTED 1]'s mother's name matches the published name of Power of Attorney Holder Lajosné Werner, and Claimant [REDACTED 1]'s name matches the published name of Power of Attorney Holder Magda Werner. The Claimants identified Account Owner Ludwig Werner's profession, the city

and country of residence of Account Owner Ludwig Werner and the Power of Attorney Holders, and the relationship between Account Owner Ludwig Werner and the Power of Attorney Holders, all of which matches unpublished information contained in the Bank's records.

In support of his claim, Claimant [REDACTED 2] submitted documents, including Claimant [REDACTED 1]'s death certificate and a power of attorney form, identifying her uncle as Jozefa Werner and indicating that he resided in Prievidza, identifying her parents as L'udovit Werner and [REDACTED], and identifying her as [REDACTED 1], née [REDACTED], providing independent verification that the person who is claimed to be Account Owner Josef Werner had the same name and resided in the same town recorded in the Bank's records as the name and city of residence of Account Owner Josef Werner, and that the persons who are claimed to be Account Owner Ludwig Werner and the Power of Attorney Holders had the same names recorded in the Bank's records as the names of Account Owner Ludwig Werner and the Power of Attorney Holders.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Josef Werner, and indicates that his date of birth was 18 March 1889 and place of birth was Trencin, Czechoslovakia, which matches the information about Account Owner Josef Stern provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that Claimant [REDACTED 2] submitted an ATAG form in 1998, asserting his entitlement to a Swiss bank account owned by Josef Werner, and that Claimant [REDACTED 1] submitted an IQ in 1999, asserting her entitlement to a Swiss bank account owned by Valerie Wernerová or herself, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimants have based their present claims not simply on the fact that individuals identified on the ICEP List as owning Swiss bank accounts bear the same names as their relatives, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that the Claimants had reason to believe that their relatives owned Swiss bank accounts prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants. The CRT notes that there are no other claims to these accounts.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that Account Owner Ludwig Werner was Jewish, and that he and his wife fled from Trencin to Budapest in March 1942. The Claimants further stated that Account Owner Josef Werner was Jewish, and that in 1942, he and his wife were deported to Auschwitz, where they perished. As noted above, a person named Josef Werner was included in the CRT's database of victims.

The Claimants' Relationships to the Account Owners

Account Owner Ludwig Werner

The Claimants have plausibly demonstrated that they are related to Account Owner Ludwig Werner by submitting specific information and copies of documents, demonstrating that Account Owner Ludwig Werner was Claimant [REDACTED 1]'s father. These documents include Claimant [REDACTED 1]'s death certificate, identifying her father as L'udovit Werner. There is no information to indicate that Account Owner Ludwig Werner has other surviving heirs.

Account Owner Josef Werner

The Claimants have plausibly demonstrated that they are related to Account Owner Josef Werner by submitting specific biographical information, demonstrating that Account Owner Josef Werner was Claimant [REDACTED 1]'s uncle. The CRT notes that Claimant [REDACTED 2] filed an ATAG form in 1998, identifying the relationship between Account Owner Josef Werner and the Claimants, prior to the publication in February 2001 of the ICEP List; and that the Claimants also identified information which matches information contained in the Yad Vashem records. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that Account Owner Josef Werner was well known to the Claimants as a family member, and all of this information supports the plausibility that the Claimants are related to Account Owner Josef Werner, as they have asserted in their Claim Form. There is no information to indicate that Account Owner Josef Werner has other surviving heirs.

The Issue of Who Received the Proceeds

With respect to Account Owner Ludwig Werner's account, given that Account Owner Ludwig Werner fled from Trencin to Budapest in March 1942; that he resided in Prague after the Second World War; that there is no record of the payment of Account Owner Ludwig Werner's account to him nor any record of a date of closure of the account; and given the application of Presumptions (h), (i), 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 Account Owner Ludwig Werner, the Power of Attorney Holders, or their heirs.

With respect to Account Owner Josef Werner's account, given that Account Owner Josef Werner perished in 1942 in Auschwitz; that there is no record of the payment of Account Owner Josef Werner's account to him nor any record of a date of closure of the account; that Account Owner Josef Werner's heirs would not have been able to obtain information about his account after the Second World War from the Bank 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 (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Josef Werner, the Power of Attorney Holders, or their 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 Claimant [REDACTED 1]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that Account Owner Ludwig Werner was Claimant [REDACTED 1]'s father, and that Account Owner Josef Werner was Claimant [REDACTED 1]'s uncle, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts. Further, the CRT notes that Claimant [REDACTED 1], as Account Owner Ludwig Werner's daughter and Account Owner Josef Werner's niece, has a better entitlement to the accounts than Claimant [REDACTED 2], who is Claimant [REDACTED 1]'s stepson.

Amount of the Award

In this case, the Account Owners each held one account of unknown type. 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 an account of unknown type was 3,950.00 Swiss Francs ("SF"). Thus, the total 1945 average value of the two accounts at issue is SF 7,900.00. 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 SF 98,750.00.

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 1] is the daughter of Account Owner Ludwig Werner and the niece of Account Owner Josef Werner, and Claimant [REDACTED 2] is her stepson. Accordingly, Claimant [REDACTED 1] is entitled to the entire award amount.

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
23 June 2006