

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED 1]

and Claimant [REDACTED 2]
also acting on behalf of [REDACTED]

**in re Account of Ernst Berger
and
Accounts of Edouard Knecht
(Power of Attorney Holder E. Berger)¹**

Claim Number: 202101/SB; 203861/SB²

This Certified Denial is based on the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) and the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) (together “the Claimants”) to the published account of Ernst Berger. This Denial is to the published account of Ernst Berger (“Account Owner 1”) at the [REDACTED] (“Bank 1”), and to the published account of Edouard Knecht (“Account Owner 2”), over which E. Berger held a power of attorney, at the [REDACTED] (“Bank 2”).

All denials 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 Claimants, who are siblings, each submitted a Claim Form asserting that their father, Ernst Berger, who was born on 8 February 1893 in Koenigshutte, Germany, and was married to [REDACTED] in 1913 in Berlin, Germany, owned a Swiss bank account. The Claimants stated that their father, who was Jewish, was an accountant who resided in Berlin from 1934 to 1941, when he went into hiding, after which the family never heard from him again. Claimant [REDACTED 1] indicated that she was born on 7 September 1915 in Berlin. Claimant

¹ In an effort to locate any and all accounts that might have belonged to the Claimant’s relative, the CRT has reviewed and analyzed all accounts whose owners’ or power of attorney holders’ names are substantially similar to that of the Claimant’s relative, even if the Claimant did not specifically claim that particular account and even if the Claimant could not identify the owner of the account as his relative.

² According to Article 37 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.

[REDACTED 2] indicated that he was born on 29 March 1918, also in Berlin.

Claimant [REDACTED 2] previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Ernst Berger.

Information Available in the Bank's Records

The CRT notes that the Claimants submitted a claim to an account belonging to their relative, Ernst Berger. The auditors who carried out the investigation to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") reported two accounts whose owner's or power of attorney holder's names matches that provided by the Claimant. Upon review of the bank documents, the CRT also located one additional account that was not reported by the auditors. Each account is identified below by its Account Identification Number, which is a number assigned to the account by the ICEP auditors for tracking purposes.

Accounts 1001355 and 1001355.1

Bank 1's records indicate that Account Owner 1 was Ernst Berger, who resided in Germany. Bank 1's records also indicate Account Owner 1's city of residence. Furthermore, Bank 1's records indicate the dates of opening and closing of the accounts at issue.

Account 5030010

Bank 2's records indicate that Account Owner 2 was Edouard Knecht and that the Power of Attorney Holder was E. Berger. Bank 2's records also indicate Account Owner 2's city and country of residence, the full name of Power of Attorney E. Berger and their nationality. Bank 2's records further indicate the name of an individual who jointly owned the account with Account Owner 2.

The CRT's Analysis

Admissibility of the Claim

The CRT has determined that the claim is admissible according to Article 18 of the Rules Governing the Claims Resolution Process, as amended (the "Rules").

Identification of the Account Owners

As for Accounts 1001355 and 1001355.1, the CRT concludes that the Claimants have not identified Account Owner 1 as their relative. Although the name of their father matches the published name of Account Owner 1, the information provided by the Claimants differs materially from the unpublished information about Account Owner 1 available in Bank 1's records. Specifically, the Claimants stated that from 1934 to 1941 their father resided in Berlin,

Germany. In contrast, Bank 1's records show that Account Owner 1 resided in another city over 500 kilometers from Berlin, to which the Claimants established no connection. Consequently, the CRT is unable to conclude that Account Owner 1 and the Claimants' father are the same person.

As for Account 5030010, the CRT concludes that the Claimants have not identified Power of Attorney Holder E. Berger as their relative. Although the name of their father is substantially similar to the published name of Power of Attorney Holder E. Berger, the information provided by the Claimants differs materially from the unpublished information about Power of Attorney Holder E. Berger available in Bank 2's records. Specifically, the Claimants stated that their father's first name was Ernst, and that he was born and lived in Germany. In contrast, Bank 2's records show that Power of Attorney Holder E. Berger had a different first name and was of a different nationality. Consequently, the CRT is unable to conclude that Power of Attorney Holder E. Berger and the Claimants' father are the same person. In addition, the CRT notes that the Claimants did not identify Account Owner 2 as their relative, and that under Swiss law, a power of attorney holder is not considered to be the owner of an account. After a power of attorney holder dies, his or her powers in an account no longer exist, and they do not pass to his or her heirs. Therefore, even if the Claimants had identified Power of Attorney Holder E. Berger, but not Account Owner 2, as their relative, the Claimant would not have been entitled to the account unless there was evidence in Bank 2's records that Power of Attorney Holder E. Berger and Account Owner 2 were related.

Right of Appeal

Pursuant to Article 30 of the Rules, the Claimants may appeal this Denial to the Court through the Special Masters within ninety (90) days of the date of the letter accompanying this decision. Appeals should be delivered to the following address: Office of Special Master Michael Bradfield, 51 Louisiana Ave., NW, Washington, DC 20001 USA.

The Claimants should send appeals in writing to the above address and should include all reasons for the appeal. If more than one account has been denied in this Certified Denial, the Claimants should identify the Account Identification Number that forms the basis of the appeal. Appeals submitted without either a plausible suggestion of error or relevant new evidence may be summarily denied.

Scope of the Denial

The Claimants should be aware that the CRT will carry out further research on their claims to determine whether an award may be made based upon the information provided by the Claimants or upon information from other sources.

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal
23 January 2006