

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED 1],
also acting on behalf of [REDACTED 2],
the Estate of [REDACTED 3], [REDACTED 4], and [REDACTED 5]

to Claimant [REDACTED 6],
represented by Stephen M. Harnik

to Claimant [REDACTED 2],

and to Claimant [REDACTED 5]
also acting on behalf of [REDACTED 4]

in re Account of *Lucian Brunner*

Claim Numbers: 401193/RS; 401185/RS; 218040/RS;¹ 218042/RS;
218044/RS;² 218045/RS;³ 218317/RS;⁴ 218340/RS⁵

This Certified Denial is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) and the claim of [REDACTED 6] (“Claimant [REDACTED 6]”) to the account of *Lucian Brunner*, the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) to his own account, and the claim of [REDACTED 5] (“Claimant [REDACTED 5]”) (together the “Claimants”) to the account of Gertrude Malvina Clark. This Denial is to the published account of *Lucian Brunner* (the “Account Owner”) at the [REDACTED] (the “Bank”).

¹ [REDACTED 1] (“Claimant [REDACTED 1]”) submitted two claims to the account of Berta Trier, which were registered under the Claim Numbers 218040 and 218041. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 218040. In a separate decision, the CRT awarded the accounts of the Estate of Berta Trier to Claimant [REDACTED 1], [REDACTED 2] (“Claimant [REDACTED 2]”), represented party [REDACTED 3], represented party [REDACTED 4], and [REDACTED 5] (“Claimant [REDACTED 5]”). See *In re Accounts of the Estate of Berta Trier* (approved on 23 June 2006).

² In a separate decision, the CRT awarded the account of Maria Brunner to Claimant [REDACTED 1]. See *In re Account of Maria Brunner* (approved on 25 October 2002).

³ In a separate decision, the CRT treated Claimant [REDACTED 1]’s claim to the account of Felix Brunner. See *In re Account of Felix Brunner* (approved on 29 September 2008).

⁴ In a separate decision released 11 June 2007, the CRT treated the claim of Claimant [REDACTED 2] to the account of Walter Munk.

⁵ In a separate decision, the CRT treated the claim of Claimant [REDACTED 5] to the account of Gertrude Clark. See *In re Account of Gertrude Clark* (approved on 23 June 2008).

All denials 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, who are all related, submitted Claim Forms providing substantially similar information regarding the Account Owner. Claimant [REDACTED 6] submitted a Claim Form and Claimant [REDACTED 1] submitted six Claim Forms, in which they identified the Account Owner as a bank, *Lucian Brunner*, founded by their paternal grandfather, Lucian Brunner, who was born on 30 September 1850 in Hohenems, Vorarlberg, Austria. According to the Claimants, Lucian Brunner married [REDACTED] on 20 April 1884 in Vienna, and they had five children: [REDACTED]; [REDACTED]; [REDACTED] (Claimant [REDACTED 1]'s father); [REDACTED] (Claimant [REDACTED 6]'s father); and [REDACTED] (Claimant [REDACTED 2]'s mother). The Claimants indicated that Claimant [REDACTED 2]'s mother [REDACTED] had two other children, [REDACTED 3] and [REDACTED] (the mother of Claimant [REDACTED 5] and of [REDACTED 4]).

Claimant [REDACTED 1] and Claimant [REDACTED 2] stated that until approximately 1886, Lucian Brunner, who was Jewish, and his family lived in St. Gallen, Switzerland, where he managed his father's bank, *Bankhaus Jakob Brunner*, which was founded in the 1850s. According to Claimant [REDACTED 1], Lucian Brunner and his family subsequently moved to Vienna, where he founded *Bankhaus Lucian Brunner*, which was located at Liechtensteinstrasse 11. Claimant [REDACTED 1] stated that Lucian Brunner became a widower in 1899 and that he married Hedwig Wendringer in 1904.

Claimant [REDACTED 1] stated that Lucian Brunner died on 4 May 1914 in Vienna. According to Claimant [REDACTED 6], Lucian Brunner's son, *Ing.* (Engineer) [REDACTED], became an owner of *Bankhaus Lucian Brunner* following his father's death. Claimant [REDACTED 6] indicated that [REDACTED] fled Austria for France in approximately 1938.

In support of his claim, Claimant [REDACTED 1] submitted copies of: (1) his own birth certificate, indicating that [REDACTED 1] was born on 13 March 1926 in Vienna, that he was Jewish, and that his parents were [REDACTED] and [REDACTED], who lived in Mödling; (2) the birth certificate of [REDACTED], indicating that he was born on 28 April 1885 in St. Gallen, Switzerland, that his parents were Lucian Brunner and [REDACTED], and that they were Austrian citizens; (3) the death certificate of [REDACTED], indicating that he died on 3 August 1963 in Mödling, that he was born on 28 April 1885 in St. Gallen, and that his parents were Lucian Brunner and [REDACTED], whose last residence was in Vienna; and (4) a detailed family tree.

Claimant [REDACTED 1] indicated that he was born on 13 March 1926 in Vienna. Claimant [REDACTED 1] is representing his cousins: [REDACTED 2] (the son of [REDACTED]), who was born on 19 October 1917 in Vienna; [REDACTED 3] (the son of [REDACTED]), who was born on 14 April 1925 in Vienna; [REDACTED 4], née [REDACTED] (the daughter of

[REDACTED]'s daughter [REDACTED]), who was born on 8 December 1944 in Pasadena, California; and [REDACTED 5] (the son of [REDACTED]'s daughter [REDACTED]), who was born on 6 April 1947 in Pasadena, California. In correspondence with the CRT, Claimant [REDACTED 1] indicated that represented party [REDACTED 3] passed away on 18 January 2002.

In support of his claim, Claimant [REDACTED 6] submitted copies of: (1) the birth certificate of [REDACTED], indicating that he was born on 18 May 1886 in St. Gallen, that his father was the banker Lucian Brunner from Austria, and that his mother was [REDACTED]; (2) the certificate of residence (*Heimatschein*) of [REDACTED], indicating that he was born on 18 May 1886, and that he resided in Vienna; (3) the marriage certificate of [REDACTED] and [REDACTED], indicating that the couple was Jewish, that [REDACTED] resided in Vienna, and that [REDACTED]'s father was Lucian Brunner; (4) the 1940 United States Alien Registration Form of [REDACTED], indicating that he was formerly known as [REDACTED], that he was stateless, that he was formerly a citizen of Austria, and that he resided in Queens, New York; (5) the death certificate of [REDACTED], indicating that he died on 30 March 1943 in Pasadena, California, that he was a banker, and that his father was Lucian Brunner, who was born in Hohenems, Austria; and (6) the 1938 asset declaration of [REDACTED] and [REDACTED] (which is more fully described below).

Claimant [REDACTED 6] indicated that he was born on 22 April 1914 in Vienna.

Claimant [REDACTED 2] indicated that he was born on 19 October 1917 in Vienna.

In support of his claim, Claimant [REDACTED 5] submitted copies of: (1) the death certificate of [REDACTED], indicating that she died on 21 January 1989, that she was born in Vienna, that her mother was [REDACTED], and her father was [REDACTED], and that her daughter's name was [REDACTED 4]; and (2) the last will of [REDACTED], bequeathing the residue of her estate to her children, [REDACTED 4] and [REDACTED 5].

Claimant [REDACTED 5] indicated that he was born on 6 April 1947 in Pasadena, California.

Claimant [REDACTED 1] previously submitted four Initial Questionnaires ("IQs") to the Court in 1999, asserting his entitlement to Swiss bank accounts owned by [REDACTED], [REDACTED], [REDACTED], and [REDACTED].⁶

Additional Information regarding *Lucian Brunner*

The CRT conducted additional outside research regarding *Lucian Brunner*. According to a work by Peter Melichar for the Austrian Historian Commission, *Lucian Brunner* was founded in 1886

⁶ The CRT did not locate accounts belonging to [REDACTED], [REDACTED] or [REDACTED] in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons ("ICEP" or "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"). The CRT will treat the claim to the account of [REDACTED] in a separate determination.

by Lucian Brunner, and that the bank operated chiefly in the field of asset management.⁷ Following the death of Lucian Brunner, his son, Engineer [REDACTED], assumed ownership of the company as a general partnership together with [REDACTED]'s brother-in-law, Dr. [REDACTED]. In 1936, Dr. [REDACTED] renounced his ownership stake in the company, and the company continued to operate as a retail bank. According to Melichar, [REDACTED] emigrated to France in 1937. That same year, Dr. Karl Kolisch entered the company as a silent partner; he too left Austria in 1938.⁸

The Jewish-owned bank was liquidated by the Austrian authorities, its banking license was withdrawn, and the company was struck from the corporate register on 15 April 1940.⁹

Melichar notes that documents located in Austrian historical archives indicate that an unnamed London bank refused to transfer a relatively small amount of British pound-denominated assets belonging to Lucian Brunner to the Nazi financial authorities. The Austrian archives, according to Melichar, indicate that British banks refused to recognize the provisional, Nazi-backed management of formerly Jewish-owned companies such as *Lucian Brunner*, and refused to transfer requested assets belonging to such companies to the Nazi authorities.¹⁰ Melichar notes that [REDACTED] died in the United States in 1943. His widow, [REDACTED], ultimately succeeded in obtaining restitution of the bank's license in 1969.¹¹

Information Available in the Bank's Records

The records for the Account Owner's account at the Bank were obtained from the Brandenburg Main Regional Archive (*Brandenburgisches Landeshauptarchiv*).

Information Available from the German Archives

In the records of the Brandenburg Main Regional Archive, there are documents concerning the assets of *Lucian Brunner*, numbered 2524, Nr. 7803.

The file pertaining to *Lucian Brunner* consists of a list of foreign currency denominated securities (*Anbietung ausländischer Wertpapiere*), filed by *Lucian Brunner* in response to the decree under which holders of such securities were obligated to offer them for sale to the Reich's Central Bank (*Reichsbank*). The form was to be forwarded to the *Reichsbank*'s Vienna office.

⁷ See Peter Melichar, *Neuordnung im Bankwesen: Die NS-Massnahmen und die Problematik der Restitution. Veröffentlichungen der Österreichischen Historikerkommission, Vermögensentzug während der NS-Zeit sowie Rückstellungen und Entschädigungen seit 1945 in Österreich*, Band 11 ("New Order in the Banking Industry: The National Socialist Measures and the Problem of Restitution: Publication of the Austrian Historian Commission, Confiscation of Assets during the Nazi Period and Restitution and Compensation in Austria since 1945"). Vienna: Oldenbourg Verlag, 1957 (hereinafter "Melichar").

⁸ *Id.*, at p. 238.

⁹ *Id.*

¹⁰ *Id.*, at p. 118, note 223.

¹¹ *Id.*, at pp. 238-240.

According to this form, dated 11 April 1939, *Lucian Brunner* declared that it owned, *inter alia*, one custody account at the London branch of the Bank. The record indicates that the account at the London branch of the Bank contained 100 *Courtaulds* shares.

This record also indicates that *Lucian Brunner* held custody accounts containing securities at a different bank in New York and at a third bank in Vienna. The record contains a handwritten notation from a representative of the *Reichsbank* relating solely to the securities held by *Lucian Brunner* at the London branch of the Bank and at the New York bank. The notation reads: “The *Lucian Brunner* company is under provisional administration. The banks at which these securities are held have refused to honor sell-orders relating to the accounts belonging to these types of companies. Request dropped.” (*Die Fa. Lucian Brunner steht unter kommissarischen Verwaltung. Die Depotstellen haben es abgelehnt, Verkaufsaufträge aus den Depots solchen Firmen auszuführen. Abforderung entfällt.*) A second notation relating to the securities held by *Lucian Brunner* at the London branch of the Bank and at the New York bank indicates that those banks had thus far refused the *Reichsbank*’s request. (*Die Depotstellen haben bisher die Ausfolgung verweigert.*) There are two stamps on the form, one dated 23 February 1940, and the other, which states “*Deutsche Golddiskontbank*”, dated 9 May 1940.

The records do not contain information about the ultimate disposition of the account held at the London branch of the Bank.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of [REDACTED] and [REDACTED].¹²

According to the asset declaration contained in the file, which was signed on 25 July 1938 in Neuilly sur Seine, France, [REDACTED] was an engineer, he was born on 18 May 1886, he was married to [REDACTED], née [REDACTED], and he resided at Rue St. James 1 in Neuilly sur Seine.

The records indicate that [REDACTED] was an owner of *Bankgeschäft Lucian Brunner* (banking business), which was located at Liechtensteinstrasse 11, Vienna IX. In his asset declaration, [REDACTED] reported that as of 25 July 1938 (the date that he signed the declaration), the business was worthless, given that the bank had no capital and virtually no clients. He also indicated that the bank’s license was non-transferable. (*Wertlos, da kein Firmenkaptal und fast keine Kunden. Konzession nicht übertragbar.*) He also indicated that he personally held assets worth 4,139.83 Reichsmark (“RM”) at *Lucian Brunner*.

¹² These documents were submitted to the CRT by Claimant Thomas Brunner. The actual file numbers are not legible.

In a January 1943 report to the Austrian financial authorities regarding the assets of [REDACTED] and [REDACTED], lawyer Dr. Stephan Lehner reported that both [REDACTED] and [REDACTED] had held assets at *Lucian Brunner*, which the lawyer had then deposited in an account owned by the Gestapo at the Austrian bank *Creditanstalt-Bankverein*. The records also indicate that Dr. Lehner transferred numerous securities belonging to both [REDACTED] and [REDACTED] to a Gestapo-owned account at *Creditanstalt-Bankverein*.

The 1938 Census file pertaining to [REDACTED] contains the same January 1943 report prepared by Dr. Lehner.

These records make no mention of assets held in a Swiss bank account.

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 nine claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant [REDACTED 1], Claimant [REDACTED 6], and Claimant [REDACTED 2] have plausibly identified either the Account Owner or its founder, Lucian Brunner. The name of the bank founded by the grandfather of Claimant [REDACTED 1], Claimant [REDACTED 6], and Claimant [REDACTED 2] matches the published name of the Account Owner. Claimant [REDACTED 1] and Claimant [REDACTED 6] also identified the fact that the Account Owner was a business, the nature of the Account Owner's business, the Account Owner's street address, and the Account Owner's city of operation, all of which match unpublished information about the Account Owner contained in the records from the German Archive.

In support of his claim, Claimant [REDACTED 1] submitted documents, including the birth certificate and death certificate of [REDACTED]; and Claimant [REDACTED 6] submitted documents, including the birth certificate and marriage certificate of [REDACTED], and the death certificate of [REDACTED], all providing independent verification that the person who is claimed to be the founder of the Account Owner had the same name and resided in the same town recorded in the records from the German Archive as the name and city of operation of the Account Owner.

The CRT notes that the name Lucian Brunner appears only once on the List of Account Owners Published in 2005 (the "2005 List").

The CRT notes that Claimant [REDACTED 1] filed IQs with the Court in 1999, asserting his entitlement to Swiss bank accounts owned by [REDACTED], [REDACTED], [REDACTED],

and [REDACTED], prior to the publication of the 2005 List. This indicates that Claimant [REDACTED 1] has based his present claims not simply on the fact that a company identified on the 2005 List as owning a Swiss bank account bears the same name as a company founded by his relative, but rather on a direct family relationship to that company that was known to him before the publication of the 2005 List. It also indicates that Claimant [REDACTED 1] had reason to believe that a company founded by his relative owned a Swiss bank account prior to the publication of the 2005 List. This supports the credibility of the information provided by Claimant [REDACTED 1].

The CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owner and the founder of the Account Owner.

Status of the Owner 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 [REDACTED], the owner of the Account Owner, was Jewish and resided in Austria prior to its incorporation into the German Reich in March 1938 (the “*Anschluss*”). The CRT notes that [REDACTED] was required to register his assets pursuant to the 1938 Census. According to the 1938 Census records and the CRT’s own research, *Lucian Brunner* was placed under provisional administration following the *Anschluss*, was liquidated in 1940, and its banking license was revoked. These records also show that [REDACTED]’s and his wife’s assets were confiscated by the Gestapo.

The Claimants’ Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the owner of the Account Owner by submitting specific information, demonstrating that Lucian Brunner was the grandfather of Claimant [REDACTED 1], Claimant [REDACTED 6], and Claimant [REDACTED 2], and the great-grandfather of Claimant [REDACTED 5]. Claimant [REDACTED 1] also submitted documents demonstrating that Lucian Brunner was his grandfather. These documents include Claimant [REDACTED 1]’s birth certificate, indicating that his father was Lucian Brunner; the birth certificate of [REDACTED], indicating that Felix Brunner’s father was Lucian Brunner; and the death certificate of [REDACTED], indicating that Felix Brunner’s father was Lucian Brunner. The CRT notes that the Claimants indicated that they have other surviving relatives, but that because they are not represented in the Claimants’ claims, the CRT will not treat their potential entitlement to the Account Owner’s account in this decision.

The CRT further notes that the Claimants identified unpublished information about the Account Owner as contained in the records from German archival sources; and that Claimant [REDACTED 1] filed IQs with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 1], prior to the publication of the 2005 List. The CRT further notes that Claimant [REDACTED 1] submitted a copy of his own birth certificate, that Claimant [REDACTED 6] submitted a copy of the certificate of residence of [REDACTED] and the 1940 United States Alien Registration Form of [REDACTED], and that Claimant

[REDACTED 5] submitted the death certificate of [REDACTED], which provide independent verification that the Claimants' relatives bore the same family name as the Account Owner and that they resided in Austria. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the founder and subsequent owner of 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 founder and subsequent owner of the Account Owner, as they have asserted in their Claim Forms.

The Issue of Who Received the Proceeds

The German archival records and the Austrian Commission material indicate that some time around early 1940, the London branch of the Bank refused the *Reichsbank's* request that the Bank forward the securities held by the Account Owner at the Bank's London branch to the *Reichsbank*. The German archival records further indicate that following the Bank's refusal to transfer the securities to the *Reichsbank*, and its refusal to recognize the Nazi-supported "provisional administration" of *Lucian Brunner*, the *Reichsbank* decided to drop the request that the Bank transfer to it the securities. Therefore, the CRT concludes that the owner of the Account Owner retained dominion over the claimed account and received the proceeds himself.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, the Claimants may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimants should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimants should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

Certification of the Denial

The CRT certifies this Denial for approval by the Court and by the Special Masters.

Claims Resolution Tribunal
13 February 2009