

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

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

and Claimant [REDACTED 4]

in re Accounts of Adolf Auerbach

Claim Numbers: 216548/AH, 219995/AH, 219996/AH, 220237/AH, 220431/AH, 220609/AH¹

Award Amount: 53,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”), and [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”), to the published accounts of Adolf Auerbach (the “Account Owner”), over which [REDACTED] (the “Power of Attorney Holder”) held power of attorney, at the [REDACTED] (the “Bank”).²

Information Provided by the Claimants

Claimant [REDACTED 2] and Claimant [REDACTED 1]

Claimant [REDACTED 2] and her son, Claimant [REDACTED 1], each submitted Claim Forms identifying the Account Owner as the maternal uncle of Claimant [REDACTED 2]’s husband and Claimant [REDACTED 1] great-uncle, Adolf Auerbach, who was Jewish, was born in 1872 in Stryj, Poland, and was married to Fanny [REDACTED]. Claimant [REDACTED 2] and Claimant [REDACTED 1] stated that their relative had one son, [REDACTED]. Claimant [REDACTED 1] and Claimant [REDACTED 2] further stated that their relative owned stores and warehouses throughout Eastern Europe and was part-owner of a steel company, *M. I.*

¹ Claimant [REDACTED 1] submitted an additional claim to the accounts of [REDACTED] and [REDACTED], which is registered under the Claim Number 220464. The CRT will treat the claim to these accounts in a separate decision

² The CRT notes that, on the February 2001 published 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”), Adolf Auerbach and [REDACTED] are indicated as having one account each. Upon careful review, the CRT determines that Adolf Auerbach held two accounts, and that [REDACTED] was in fact not the owner of an account, but held power of attorney over the accounts of Adolf Auerbach.

Auerbach and Sons, with his father, [REDACTED]A. Claimant [REDACTED 2] and Claimant [REDACTED 1] indicated that the company was initially located in Lwow at 25 C. ul. Kazimierza Wielkiego and subsequently at ul. Janowska. Claimant [REDACTED 1] and Claimant [REDACTED 2] indicated that their relative resided in Stryj from 1872 until approximately 1914, that he resided in Vienna, Austria from 1914 to 1922, and in Lwow, Poland (now Lvov, the Ukraine) from 1922 until his death in 1936. Claimant [REDACTED 1] and Claimant [REDACTED 2] indicated that [REDACTED] probably died at approximately the same time as Adolf Auerbach. Claimant [REDACTED 1] and Claimant [REDACTED 2] further indicated that [REDACTED] fled the Nazis to Czernowitz, Romania in October 1939, from where he sent a letter to Claimant [REDACTED 1]'s paternal uncle, [REDACTED], appealing for help, but he was never heard from again.

Claimants [REDACTED 1] and [REDACTED 2] submitted the birth certificates of Claimant [REDACTED 1's] father, [REDACTED], and his paternal uncle, [REDACTED], indicating that they were born in Lwow and that their parents were [REDACTED] and [REDACTED]; an entry about the late Adolf Auerbach in the Jewish Almanac of Lwow from 1937; a letter dated 19 October 1939 from [REDACTED] in Cernauti,³ indicating that his parents were [REDACTED] and [REDACTED]; a letter from the Hebrew Sheltering and Immigrant Aid Society of America, dated 28 November 1939, to [REDACTED], referring to [REDACTED]'s request for help; a letter written by [REDACTED], dated 21 January 1977, stating that [REDACTED] was his grandfather; and an excerpt from [REDACTED]'s autobiography *Adventures of a Mathematician*, indicating that he was born in Lwow, and that his parents were [REDACTED] and [REDACTED]. Claimant [REDACTED 2] also submitted a reference to the *Galicja 1891 Business Directory* database, and a link to the private letters on [REDACTED]'s homepage, which indicate that [REDACTED]'s relatives lived in Lwow.

Claimant [REDACTED 2] indicated that she was born on 11 October 1929 in Pittsburgh, Pennsylvania, the United States. [REDACTED 2] represents [REDACTED 3], her son, who was born on 14 January 1967 in Boston, Massachusetts, the United States. In correspondence with the CRT in February 2003, Claimant [REDACTED 2] indicated that Claimant [REDACTED 1] has two cousins, [REDACTED] and [REDACTED]. Claimant [REDACTED 2] indicated that she has approached Claimant [REDACTED 1]'s cousins, who informed her that they did not wish to participate in these proceedings.

Claimant [REDACTED 1] indicated that he was born on 10 August 1964 in Boston.

Claimant [REDACTED 4]

Claimant [REDACTED 4] submitted a Claim Form identifying the Account Owner as the brother of Claimant [REDACTED 4]'s aunt's husband, Adolf Auerbach, who was born in Tysmienica, Poland, and was married to [REDACTED]. Claimant [REDACTED 4] explained that his aunt, [REDACTED], née [REDACTED], was married to [REDACTED], who was Adolf Auerbach's brother. According to Claimant [REDACTED 4], his aunt's brother-in-law resided in Lwow, where he worked as a merchant. Claimant [REDACTED 4] stated that he believes that

³ Cernauti is the Romanian name for the city of Czernowitz.

his aunt's brother-in-law and his wife, who were Jewish, perished in the Lwow ghetto sometime between 1941 and 1943. In a telephone conversation with the CRT on 16 December 2002, Claimant [REDACTED 4] stated that Adolf and [REDACTED] Auerbach might have been born at the end of the 19th century, and that they may have been fur dealers. Claimant [REDACTED 4] submitted a detailed family tree; a list of 35 other family members who were victims of Nazi persecution, including members of the Auerbach family, indicating that they resided in Poland; and a letter from the National Ukrainian Archives stating the names of six family members who were shot to death; and a letter from the Jewish Historical Institute in Poland describing how Claimant [REDACTED 4] and his family were forced into hiding; that his family's dental practice and apartment furnishings were stolen by the Nazis; that he and his family were arrested and deported to the U.S.S.R. in 1950; and that his brother was killed in 1943 by a German sniper. Claimant [REDACTED 4] indicated that he was born on 20 February 1930 in Warsaw, Poland.

Claimant [REDACTED 4] submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to accounts owned by various members of the [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] families, though he did not specifically name Adolf Auerbach.

Information Available in the Bank's Records

The Bank's records consist of two customer cards and internal documents relating to the 1962 survey of assets held in Switzerland by foreigners or stateless persons who were or were presumed to have been victims of racial, religious or political persecution (the "1962 Survey"). According to these records, the Account Owner was Adolf Auerbach and the Power of Attorney Holder was [REDACTED], the Account Owner's wife. The records further indicate that Adolf Auerbach was the owner of a clothing store at Rynek L. 20 (*Ringplatz 20*), in Lwow/Lemberg,⁴ Poland. The Bank's records also show that the Bank's last recorded date of contact with Adolf Auerbach was in 1936.

The Bank's records indicate that the Account Owner held two demand deposit accounts. The Bank's records further show that one of the demand deposit accounts was closed, but neither the date of closure nor the value of that account is available. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder or their heirs closed the accounts and received the proceeds themselves.

The Bank's records indicate that the other demand deposit account was closed by fees on 15 November 1963. The balance of the account on the date of its closure was SF 48.00.

⁴ Lemberg is the German name for Lwow.

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 six claims of the Claimants in one proceeding.

Identification of the Account Owners

Each Claimant's relatives' names, city and country of residence match the published name, city and country of residence of the Account Owner and the published name of the Power of Attorney Holder. In each case, the Claimants identified the relationship between the Account Owner and the Power of Attorney Holder, which matches unpublished information contained in the Bank's records.

In addition, Claimant [REDACTED 2] and Claimant [REDACTED 1] indicated that their relative died in 1936, which is consistent with the unpublished date of the Account Owner's last contact with the Bank. Claimants [REDACTED 2] and [REDACTED 1] also stated that their relative owned stores and warehouses throughout Europe. While they did not specifically indicate that Adolf Auerbach owned a clothing store, as indicated in the Bank's records, it is plausible that he was in the clothing business, since he owned various stores in Europe, which is consistent with unpublished information in the Bank's records. Claimant [REDACTED 4] indicated that his relative may have been a fur dealer, which is consistent with unpublished information about the Account Owner's profession contained in the Bank's records.

In support of their claims, Claimant [REDACTED 2] and Claimant [REDACTED 1] submitted numerous documents, including an entry about the late Adolf Auerbach in the Jewish Almanac of Lwow from 1937 and [REDACTED]'s letter to [REDACTED], dated 19 October 1939, indicating that his parents were Adolf and [REDACTED] Auerbach, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner.

The CRT notes that the name Adolf Auerbach appears only once on the February 2001 published 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").

The CRT notes that Claimant [REDACTED 4] filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by various members of the [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] families, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It

also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

Although the Claimant's relatives were from Poland, were married to someone named [REDACTED] and were store owners or in the clothing business, the CRT notes that Claimant [REDACTED 1]'s and Claimant [REDACTED 2]'s relative and Claimant [REDACTED 4]'s relative is not the same person. However, given that the Claimants have identified all published and unpublished information about the Account Owner that is available in the Bank's records; that the information provided by each Claimant supports and in no way contradicts any information available in the Bank's records; that there is no additional information in the Bank's records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that the other claims to this account were disconfirmed because those claimants provided a different city or country of residence, occupation or spouse's name, than the city or country of residence, occupation and spouse's name of the Account Owner, the CRT finds that Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 4] have each plausibly identified the Account Owner and the Power of Attorney Holder.

Status of the Account Owner as a Victim or Target of Nazi Persecution

The CRT notes that while according to Claimant [REDACTED 1] and Claimant [REDACTED 2], the Account Owner was not a Victim of Nazi Persecution, the Account Owner's son, who would have been entitled to the account, was a Victim of Nazi Persecution. The Claimant stated that the Account Owner's son fled Poland to Romania and was not heard from again after the Second World War.

Claimant [REDACTED 4] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 4] stated that the Account Owner was Jewish, and that he probably perished in the Lwow ghetto between 1941 and 1943.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information, demonstrating that the Account Owner was Claimant [REDACTED 2]'s husband's uncle, Claimant [REDACTED 1]'s great-uncle, and the brother-in-law of Claimant [REDACTED 4]'s aunt.

The CRT notes that the Claimants identified unpublished information about the Account Owner, as contained in the Bank's records. The CRT further notes that Claimant [REDACTED 2] and Claimant [REDACTED 1] submitted the birth certificates of Claimant [REDACTED 1]'s father and uncle, indicating that their mother was [REDACTED] and that they were born in Lwow, and a letter written by [REDACTED] in 1977, in which he stated that his grandfather was [REDACTED], which provides independent verification that Claimant [REDACTED 2]'s and Claimant [REDACTED 1]'s relatives bore the same family name as the Account Owner and that they resided in Lwow. The CRT further notes that Claimants [REDACTED 2] and

[REDACTED 1] submitted a letter from [REDACTED] written in Cernauti in 1939, indicating that his parents were Adolf and [REDACTED] Auerbach. The CRT notes that this is a document which most likely only a family member would possess. The CRT further 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 this information supports the plausibility that the Claimants are related to the Account Owner, as they have asserted in their Claim Forms.

The CRT notes that Claimant [REDACTED 1] has two cousins, [REDACTED] and [REDACTED], who would be equally entitled to the account, but who have indicated to Claimant [REDACTED 2] that they do not wish to participate in these proceedings. As of the date of the award, the CRT has not received any other claims to the accounts of Adolf Auerbach.

The Issue of Who Received the Proceeds

In this case, the Account Owner held two demand deposit accounts. With regard to the demand deposit account closed on 15 November 1963, the Bank's records show that the account was closed by Bank's fees.

With regard to the other demand deposit account, given that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; that the Account Owner and his 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 (f), (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 the Account Owner, the Power of Attorney Holder, 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 the Claimant [REDACTED 1], his brother [REDACTED 3] and Claimant [REDACTED 4]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was Claimant [REDACTED 1]'s and his brother's paternal great-uncle and the brother-in-law of Claimant [REDACTED 4]'s aunt, and those relationships justify an Award. Third, the CRT has determined that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the demand deposit account closed on 15 November 1963, and that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the other demand deposit account.

Further, the CRT notes that Claimant [REDACTED 1] and his brother [REDACTED 3], as the Account Owner's great-nephews, have better entitlement to the account than Claimant [REDACTED 2], who is related to the Account Owner by marriage.

Amount of the Award

In this case, the Account Owner held two demand deposit accounts.

With regard to the demand deposit account closed on 15 November 1963, the Bank's records indicate that the value of the account on 15 November 1963 was SF 48.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 285.00, which reflects standardized bank fees charged to the account between 1945 and 1963. Consequently, the adjusted balance of the account at issue is SF 333.00. 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 current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an amount of SF 26,750.00.

With regard to the other demand deposit account, 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a demand deposit account was SF 2,140.00. 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 an amount of SF 26,750.00. Thus, the total award amount for both demand deposit accounts is SF 53,500.00.

Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the Bank's documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. Further, 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 4], Claimant [REDACTED 1] and Claimant [REDACTED 2] have each established a plausible relationship to a person with the same name as the Account Owner. However, as indicated above, Claimant [REDACTED 1] and his brother have better entitlement to the account than Claimant [REDACTED 2]. Accordingly, Claimant

[REDACTED 4] is entitled to one-half of the Award amount and Claimant [REDACTED 1] and his brother are each entitled to one-quarter of the 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
24 December 2004