

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED]¹

in re Accounts of Eliezer Behar

Claim Number: 600023/AX²

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the unpublished account Lazar Behar (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards 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 Claimant submitted a claim to the Holocaust Claims Processing Office (“HCPO”) identifying the Account Owner as her brother, Lazar Behar, who was born in 1866 in Bulgaria. The Claimant indicated that her brother, who was Jewish, moved to Switzerland in 1912 or 1913 and then to Milan, Italy, where he resided at Via Vincenzo M. 36. The Claimant further indicated that her brother supported her family in Bulgaria, and that he was involved in bringing refugees from Germany and Austria to Switzerland during the Second World War. The Claimant indicated that her brother died on 13 November 1959 in Milan, Italy. The Claimant indicated that she was born on 31 May 1902 in Philippopol, Bulgaria.

The Claimant submitted records from the Bank pertaining to the account of Eliezer Behar, which were obtained by the HCPO on the Claimant’s behalf. The records pertaining to this account are described below in detail.

¹ In an email dated 25 July 2005, the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department informed the CRT that the Claimant died on 2 December 2003, and indicated that her son, Dr. [REDACTED], was the new contact person for her claim.

² The Claimant submitted a claim, numbered B-00925, on 12 April 1998, to the HCPO. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600023.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Lazar Behar.

Information Available in the Bank's Records

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 Lazar or Eliezar Behar during their investigation of the Bank. The Bank's documents were obtained from the Bank by the HCPO on the Claimant's behalf and were forwarded to the CRT.

The Bank's records consist of account ledgers, a bank guarantee dated 29 January 1943, and a copy of a cancelled check and receipt of a transfer of currency into an account. According to these records, the Account Owner was Eliezer Behar. The Bank's records indicate that the Account Owner held three accounts, the types of which are not indicated.

The first account, numbered 19501, was opened on 17 March 1936 and was closed on 22 August 1936.

According to the copy of a cancelled check and receipt, a transfer of 1,000.00 United States Dollars ("US \$") was made to an account owned by Eliezer Behar on 13 June 1951 by [REDACTED]. The Bank's records do not show when the account was opened or closed.

The Bank's records indicate the existence of a third account in that, on 29 January 1943, the Bank provided the city of Geneva (*Etat de Genève*) with a guarantee of 10,000.00 Swiss Francs ("SF") on behalf of the Account Owner. The Bank's records further indicate that the guarantee was made by the Bank against an account owned by the Account Owner at the Bank. The Bank's records do not indicate when the account was opened, nor does it indicate the date of closure of the account. There is no evidence in the Bank's records that the Account Owner or his heirs closed the third account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant has submitted documents obtained from the Bank by the HCPO pertaining to her brother's account. The name and city of residence of the Account Owner in the Bank's records matches her brother's name and city of residence. In support of her claim, the Claimant submitted documents, including a cancelled check and receipt from a transfer made by her husband, [REDACTED] to Eliezar Behar in 1951, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank's records as the name of the Account Owner.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, and that he lived in Italy during the Second World War. In addition, the Claimant stated that several of the Account Owner's relatives were killed in concentration camps.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimant's brother. The CRT notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records. The CRT further notes that the Claimant submitted a copy of a cancelled check and receipt regarding a transfer made by her husband, [REDACTED] to Eliezar Behar in 1951. 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 Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Form. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With respect to the first account of unknown type, the CRT notes that the account was opened on 17 March 1936 and was closed on 22 August 1936, at which time the Account Owner resided in Milan. The CRT notes that 22 August 1936 is prior to the Bulgarian alliance with Nazi Germany, formally through the signing of the Tripartite Agreement on 1 March 1941, and prior to the alliance of Italy with Nazi Germany, which was formalized on 25 October 1936. Accordingly, the CRT concludes that the Account Owner had access to this account, closed it, and received the proceeds himself.

With respect to the second account of unknown type, the Claimant submitted a cancelled check and receipt from a transfer made from her husband, [REDACTED] to Eliezar Behar in 1951. These documents indicate that the Claimant's husband had reason to know that her brother had access to this account at this time. Accordingly, the CRT concludes that the Account Owner had access to this account and received its proceeds.

With respect to the third account of unknown type, given that the Account Owner resided in Milan during the Second World War, and that his relatives remained in Bulgaria; 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 (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that

it is plausible that the account proceeds of the third account were not paid to the Account Owner, or his 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. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her brother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Award is for 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 SF 3,950.00. 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 49,375.00.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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
30 November 2005