

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]

in re Accounts of Theodor Brodek

Claim Number: 205849/SJ/CH

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published accounts of Theodor Brodek (the “Account Owner”) at the Zurich branch of 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 Form identifying the Account Owner as his paternal grandfather, Theodor Brodek, who was born on 5 September 1876 in Berlin, Germany, and was married to [REDACTED] on 21 November 1903 in Berlin. The Claimant stated that Theodor Brodek, who was Jewish, resided in Berlin-Schöneberg and was the publisher of a trade magazine called *Humoristische Echo*, which was located at Blücherstrasse 22 in Berlin SW61. In his Claim Form and in a telephone conversation with the CRT on 8 August 2002, the Claimant added that at the end of March 1933, his father, who was a political activist in Germany, fled to Zurich, Switzerland, upon realizing that there was no future for Jews in Germany. The Claimant added that his grandfather stayed in Berlin just long enough to sell his magazine and then he joined his son in Switzerland.

According to a letter submitted by the Claimant, his grandfather was in Zurich by 22 June 1933, at which time he was receiving mail at an address there. The Claimant added that his grandfather continued to Palestine with his wife in 1934 to again be with his son (the Claimant’s father), who had since moved to Tel Aviv. The Claimant stated that his grandfather died in Palestine on 5 July 1940 and his grandmother died on 5 March 1955 in Israel. Furthermore, in a conversation with the CRT on 10 December 2003, the Claimant’s sister, [REDACTED 2], stated that she had no further information regarding the circumstances surrounding the closure of her grandfather’s Swiss accounts. In support of his claim, in addition to the aforementioned letter, the Claimant

provided copies of his grandfather's passport (issued in Palestine), including his signature; his grandfather's First World War military identification papers, indicating his residence in Berlin-Schöneberg; his grandparents' marriage certificate, indicating that they lived in Berlin; his grandparents' death certificates; his father's birth certificate, listing him as the son of Theodor and [REDACTED]; his father's United States Declaration of Intent, indicating that his children were the Claimant and his sister; and his parents' marriage and death certificates.

The Claimant stated that he was born on 21 May 1942 in Tel Aviv, Palestine. The Claimant is representing his sister [REDACTED 2], née [REDACTED], who was born on 12 May 1944 in Tel Aviv.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Theodor Brodek of Berlin-Schöneberg, Germany. The Bank's record indicates that the Account Owner held a demand deposit account and a custody account, numbered L40689. The demand deposit account was opened on 20 October 1930 and was closed on 31 May 1933. The custody account was opened on 15 October 1930 and was closed on 27 May 1933.

The Bank's record does not indicate the value of these accounts. There is no evidence in the Bank's record that the Account Owner or his heirs closed the accounts and received the proceeds.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's grandfather's name matches the published name of the Account Owner. The Claimant stated that his grandfather lived in Berlin-Schöneberg, which matches unpublished information about the Account Owner contained in the Bank's record. Furthermore, the CRT notes that the name Theodor Brodek 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. In support of his claim, the Claimant submitted his grandfather's First World War military identification papers, indicating his residence in Berlin-Schöneberg; his grandfather's passport; and his grandfather's marriage certificate. These documents provide 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 record as the name and city of residence as 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 was forced to flee Germany in 1933.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's grandfather. These documents include his father's birth certificate, listing him as the son of Theodor and [REDACTED] Brodek, and his father's United States Declaration of Intent, indicating that his children were the Claimant and his sister. But for the Claimant's sister, whom he represents in these proceedings, there is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The CRT notes that the Bank's record indicates that the account was closed on 27 May 1933 and that his father indicated that his grandfather fled Germany sometime after the end of March 1933. According to a letter submitted by the Claimant, the Account Owner was receiving mail at an address in Switzerland by June 1933. Given that it is not clear whether the Account Owner was still in Germany at the time the account was closed, and given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax and other confiscatory measures, including confiscation of assets held in Swiss banks, that the Bank's record does not indicate to whom the account was closed, that the Account Owner fled his country of origin due to Nazi persecution, that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 there is a sufficient probability that the account proceeds 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 his paternal grandfather, 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 accounts.

Amount of the Award

In this case, the Account Owner held one demand deposit account and one custody 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 2,140.00 Swiss Francs (“SF”), and the average value of a custody account was SF 13,000.00. Thus, the total average 1945 value of the demand deposit account and custody account is SF 15,140.00. 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 a total award amount of SF 189,250.00.

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, the Claimant is representing his sister, [REDACTED 2]. Accordingly, the Claimant is entitled to one-half of the total award amount and his sister, [REDACTED 2], is entitled to one-half of the total award amount.

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
10 September 2004