

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1]

and [REDACTED 2]

in re Account of Bernhard Deligdisch

Claim Numbers: 600945/AE,¹ 753494/AE²

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to an account of [REDACTED].³ This Award is to the published account of Bernhard Deligdisch (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 Claimants

Claimant [REDACTED 1] submitted a claim to the Holocaust Claims Processing Office (“HCPO”) and Claimant [REDACTED 2], her brother, submitted an ATAG Ernst & Young

¹ Claimant [REDACTED 1] submitted a claim, numbered B-00109, on 26 September 1997, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600945.

² Claimant [REDACTED 2] did not submit a Claim Form to the CRT. However, in 1997 he submitted an ICEP claim, numbered C_NYC_N_71_105_044_012, to ATAG Ernst & Young. The Court, in an Order signed on 30 December 2004, ordered that such claim forms be treated as timely claims. Order Concerning Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (December 30, 2004). The ICEP claim was forwarded to the CRT and has been assigned claim number 753494.

³ The CRT did not locate an account belonging to the Claimants’ father, [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 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.

claim form in 1997, asserting their entitlement to a Swiss bank account owned by their father, [REDACTED], who was born on 24 February 1885 in Cernauti, Romania, and was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 1] indicated that their father, who was Jewish, was a pharmacist and an industrialist who owned the largest textile and silk hosiery factory in Romania, named *Hercules S. A.* Claimant [REDACTED 1] further indicated that their father owned approximately 40 branch stores throughout Europe, including four stores in Bucharest Romania, where their father frequently traveled on business.

In a telephone conversation with the CRT on 19 January 2005, Claimant [REDACTED 1] identified the Account Owner as her paternal uncle, Bernhard Deligdisch. In a telephone conversation with the CRT on 26 January 2005, Claimant [REDACTED 2] likewise identified the Account Owner as his paternal uncle, Bernhard Deligdisch. In a telephone conversation with the CRT on 24 January 2005, Claimant [REDACTED 1] indicated that her uncle resided in Cernauti before the Second World War and that he worked for her father at *Hercules S. A.* Claimant [REDACTED 1] indicated that her uncle, who was Jewish, frequently traveled to Bucharest on business. Claimant [REDACTED 1] further indicated that her uncle and his family resided in Brasov, Romania, but kept an apartment in Bucharest during the War. Claimant [REDACTED 1] indicated that when she was a teenager she helped her uncle transport and conceal two or three bags of gold Napoleon coins from one place in Bucharest to another. Claimant [REDACTED 1] indicated that she and her family, including her uncle, resided in Bucharest after the War ended in 1945.

In support of their claims, the Claimants each submitted a copy of the same notarized document, indicating that [REDACTED 1], who was born on 25 June 1921 in Cernauti, and [REDACTED 2], who was born on 11 July 1925 in Krakow, Poland, were the children of [REDACTED] and [REDACTED], née [REDACTED]. The notarized document further shows that [REDACTED] was born in Gura Putila, Bucovina, Romania, and that he was a chemist domiciled in Brasov. Claimant [REDACTED 1] also submitted a copy of her passport, stating that her name is [REDACTED], from Romania, and Claimant [REDACTED 2] submitted a copy of his birth certificate, showing his name as [REDACTED 2] and his parents as [REDACTED] and [REDACTED].

Claimant [REDACTED 1] also previously submitted an Initial Questionnaire (“IQ”) with the Court in 1999, and an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by [REDACTED].

Additional Information Obtained by the CRT

According to information obtained by the CRT, the Claimants’ father, [REDACTED], was a wealthy textile manufacturer and retailer and, after the Nazis rose to power, the Claimants’ father reassured the Claimants and their mother that should anything happen to him, they would be provided for as he had deposited money in a secret bank account in Switzerland. The Claimants’ father contracted a kidney infection in 1940 and died in September that year, without having been able to communicate the name of the bank at which his account in Switzerland was held. After his death, the Claimants’ family fled to Brasov in the Carpathian Mountains, where they

remained until the end of the Second World War. Claimant [REDACTED 2] was conscripted for forced labor, but the family survived the War. After the War, Claimant [REDACTED 1] went to Vienna, Austria: Claimant [REDACTED 1] had to jump off a train and was smuggled through Hungary in a truck. Claimant [REDACTED 1] then moved to Italy, where she stayed for three years before emigrating to the United States in 1951 with her husband. Claimant [REDACTED 1]'s brother and mother joined her in the United States several months later. In the 1960s, the Claimants' mother returned to Europe and settled in Switzerland, and together, with Claimant [REDACTED 1], began the search for [REDACTED]'s account, going from bank to bank but without success.⁴

Claimant [REDACTED 1]'s Services to the Settlement Class

The CRT notes that Claimant [REDACTED 1] has been recognized for her significant contributions to members of the classes covered by the Settlement Agreement in the Holocaust Victim Assets class action litigation in the U.S. District Court for the Eastern District of New York, Chief Judge Edward R. Korman presiding (the "Court"). In an Order dated 18 September 2002, the Court approved a recommendation submitted by Morris A. Ratner of the law firm of Lief, Cabraser, Heimann and Bernstein LLP ("Lief, Cabraser") on 11 September 2002 proposing that 100,000.00 United States Dollars ("US \$") in fees that would have been awarded to Lief, Cabraser in excess of the US \$1.5 million it requested to endow a human rights chair at Columbia University be awarded instead to Claimant [REDACTED 1] in recognition of her services to Settlement Class members.⁵ Mr. Ratner is one of the Court-appointed Settlement Class Counsel.

Mr. Ratner's 11 September 2002 letter outlined how Claimant [REDACTED 1]'s extraordinary efforts were instrumental to bring the issues surrounding Holocaust-era Swiss bank accounts to light:

Prior to the filing of this litigation, [REDACTED 1] publicized the plight of persons seeking information from Swiss banks in an important 1995 Wall Street Journal article that first placed the Swiss bank account issue under widespread public scrutiny. When then-Senator Alfonse D'Amato conducted hearings before the Senate Committee on Banking, Housing and Urban Affairs on the question of unreturned Nazi-era Swiss banks accounts, [REDACTED 1] was the only survivor invited to testify.⁶ In her Senate testimony, [REDACTED 1] described her post-war experiences in Switzerland, including her travels with her mother "from bank to bank – in

⁴ Stuart Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor and the Unfinished Business of World War II*, (New York: PublicAffairs, 2003), pp. 46-47.

⁵ See Order Approving Application for Fees and Reimbursement of Costs by Lief, Cabraser, Heimann and Bernstein, LLP (September 18, 2002), and Letter of Morris A. Ratner of Lief, Cabraser, Heimann and Bernstein, LLP (September 11, 2002) (hereinafter, the "Ratner Letter").

⁶ *Banking Deposits of WWII Jews in Swiss Banks: Hearings Before the Senate Committee on Banking, Housing, and Urban Affairs*, 104th Cong., 2d Sess. (April 23, 1996).

Montreux, in Geneva, in Zurich, and in Lausanne. They told [[REDACTED 1]'s mother] that they were investigating and that they would get back to her either in New York or in Montraux. Later they said that there was no money in the bank under [her father's name]. We tried a bit more later, but we found nothing, nothing. I was asked about what I should say about the Swiss bankers. My father had the greatest trust in the Swiss banks. And they broke that trust.”⁷

Mr. Ratner's letter explained that, following her testimony, Claimant [REDACTED 1] traveled to Switzerland at the invitation of Swiss bank representatives to further investigate her father's account, but remained unsuccessful. Apparently, the letter noted, the records concerning the [REDACTED 1] account were among the two million that were completely destroyed after the War.

Mr. Ratner's letter continued to recognize Claimant [REDACTED 1]'s investment – both financial and emotional – in bringing this Settlement to fruition.

[REDACTED 1]'s determination to cast light upon the darkest period in recent history – and her own history – continued long after the parties reached a settlement in principle. From her home in Boston, [REDACTED 1], who is in her late seventies, traveled to New York to testify or otherwise appear in this action on no fewer than four occasions: the August 1, 1997 hearing on the motions to dismiss filed against the complaints by the defendant banks; the November 29, 1999 hearing at which the Court considered the fairness of the proposed settlement; the November 20, 2000 hearing at which the Court heard comments on the Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds; and the January 5, 2001 hearing at which CRT Special Masters Paul A. Volcker and Michael Bradfield invited public statement on the proposed rules for the Deposited Assets Class claims resolution process. [REDACTED 1]'s testimony at the November 29, 1999 and November 20, 2000 hearings provided a moving public account of the experiences of many class members.

[REDACTED 1] received no compensation for any of her visits to New York, nor did she receive reimbursement for her travel expenses. Perhaps more significant than these donations of time and money, [REDACTED 1] has drawn upon increasingly limited emotional reserves in order to recount for the Court and a worldwide audience, through numerous interviews with newspapers, television reporters and other media outlets, her harrowing personal experiences during and after the Nazi era. [REDACTED 1] remains vitally interested in the rapid and equitable distribution of the Settlement Fund that her

⁷ Ratner Letter, pp. 1 – 2.

efforts helped to create, particularly in connection with the Swiss bank accounts that were the foundation of the litigation. She frequently communicates with the Court-appointed Special Masters, as well as with the Court and the CRT in Zurich. It is partly in recognition of [REDACTED 1]'s gracious yet persistent efforts – on her own behalf as well as on behalf of other survivors and heirs – that the Special Masters and the Court have implemented a number of new administrative and substantive procedures intended to speed and simplify the Deposited Assets Class claims resolution process.⁸

Mr. Ratner's letter argued that Claimant [REDACTED 1]'s participation in the proceedings leading to the Settlement Agreement clearly satisfied the standards that have been articulated in the Second Circuit to warrant an equitable award on behalf of a person who contributes to the creation of a common fund, and suggested that the Court award [REDACTED 1] \$100,000.00 as an equitable award for assisting in this historic settlement, and for having conferred a material benefit on her fellow Class members. His letter noted that this amount is within the range of other similar awards recently awarded within the Second Circuit, particularly when contrasted with the total amount of the Settlement Fund, and that the amount sought in lieu of payment to Loeff, Cabraser approximated the average award made by the CRT for bank accounts whose records had survived.⁹

In its 18 September 2000 Order, the Court granted Loeff, Cabraser's application for fees and reimbursement of costs, agreed with its assessment of Claimant [REDACTED 1]'s services to the Settlement Class as outlined in its 11 September 2002 letter, and approved a payment of US \$100,000.00 to her in recognition of her contribution to the Settlement Class.¹⁰

Information Available in the Bank's Records

The Bank's records consist of a customer card and a printout from the Bank's database. According to these records, the Account Owner was Bernhard Deligdisch, who resided in Bucharest, Romania. The Bank's records indicate that the Account Owner held a numbered account, the type of which is not indicated, under the designation 10336. The Bank's records further indicate that the account was closed no later than 1949. The Bank's records do not

⁸ Ratner Letter, p. 2.

⁹ Ratner Letter, p. 3, citing *Roberts v. Texaco, Inc.*, 979 F. Supp. 185,188, 190 (S.D.N.Y. 1997) (settlement fund of \$115 million; Court awarded incentive payments of, respectively, \$ 85,000, \$50,000, \$25,000 and \$2,500); *Diamond v. Fogelman*, 1992 WL 203779, *1, 3 (E.D.N.Y. August 3, 1992) (settlement fund of \$3,900,000; incentive payment of \$5,000); *Snapp v. The Topps Company, Inc.*, 1997 WL 1068687, *1 (E.D.N.Y. February 12, 1997) (settlement fund of \$2,575,000; incentive awards of \$1,500 to each of four plaintiffs); *In re Presidential Life*, 857 F. Supp. 331, 337 (S.D.N.Y. 1994) (settlement fund of \$1.675 million; incentive awards of \$2,000 to each of five plaintiffs); *Kazanas v. Millicom Inc.*, 1992 WL 237358, *1 (S.D.N.Y. Sept. 17, 1992) (settlement fund of \$1,065,000; incentive award of \$2,000). See also *In re SmithKline Beckman Corp. Sec. Litig.*, 751 F. Supp. 525, 527, 535 (E.D. Pa 1990) (settlement fund of \$22 million; incentive awards of \$5,000).

¹⁰ Order Approving Application for Fees and Reimbursement of Costs by Loeff, Cabraser, Heimann and Bernstein, LLP (September 18, 2002), p. 2.

indicate the value of this account. There is no evidence in the Bank's records that the Account Owner or his heirs closed the account and received the proceeds themselves.

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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants' uncle's name and country of residence match the published name and country of residence of the Account Owner. Claimant [REDACTED 1] indicated that her uncle frequently travelled to Bucharest on business and that he kept an apartment in Bucharest during the Second World War, which is consistent with the Account Owner's published place of residence.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Bernard Deligdisch, and indicates that his place of birth was Cernauti, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the name Bernhard Deligdisch 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 ("ICEP List").

The CRT further notes Claimant [REDACTED 1] filed an IQ with the Court in 1999, an HCPO claim form and an ATAG Ernst & Young claim form in 1997, and that Claimant [REDACTED 2] filed an ATAG Ernst & Young claim form in 1997, asserting their entitlement to a Swiss bank account owned by their father, [REDACTED]. This indicates that the Claimants have based their present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same last name as their uncle, Bernhard Deligdisch, but rather indicates that the Claimants had reason to believe that their relatives owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants. The CRT notes that there are no other claims to this account. Taking all these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owner.

The CRT further notes that Claimant [REDACTED 1] was instrumental in bringing the issues surrounding Holocaust-era Swiss bank accounts to the public's attention. As noted above, Claimant [REDACTED 1] was invited to speak at the hearings before the Senate Committee on Banking, Housing and Urban Affairs on the question of unreturned Nazi-era Swiss banks

accounts, and that, following her testimony, Claimant [REDACTED 1] traveled to Switzerland at the invitation of Swiss bank representatives to further investigate her father's account, but remained unsuccessful. Apparently, and despite the exceptional public attention that Claimant [REDACTED 1] was able to draw to her case, at the time of her visit, the Bank either failed to identify the account belonging to Account Owner Bernhard Deligdisch, or failed to inform Claimant [REDACTED 1] that records existed for another person with the rather uncommon name of "Deligdisch" who also happened to have resided in Romania prior to the Second World War and to ask her whether she might be able to identify other family members in whose name an account could have been held. The CRT notes that this account was identified by the matching program included in its Claims Processing System ("CPS"), which the CRT developed and launched last year in an attempt to identify additional matches between names contained in bank records and names identified by claimants. The CRT notes with regret that it has not located an account belonging to the Claimants' father, [REDACTED], in the records of the approximately 36,000 accounts contained in the Account History Database prepared pursuant to the ICEP Investigation. However, the CRT notes that the fact that the Bank's records clearly demonstrate that the Claimants' father's brother held an account makes it more likely that his brother, the Claimants' father, held one as well and that the records regarding their father's account simply no longer exist. In identifying and awarding this account, the CRT thus hopes to provide documentary evidence to support Claimant [REDACTED 1]'s already more-than-convincing story of her father's Swiss bank account and to allow both her and her brother to feel some small sense of vindication of having finally located evidence of her father's family's assets that were so long ago entrusted to the Bank.

Status 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 the Account Owner was Jewish, and that he lived in Nazi-allied Romania during the Second World War. As noted above, a person named Bernard Deligdisch was included in the CRT's database of victims.

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 their uncle. Claimant [REDACTED 2] submitted a copy of his birth certificate, showing his name as [REDACTED 2] and his parents as [REDACTED] and [REDACTED]. The CRT further notes that the Claimants each submitted the same copy of a notarized document indicating that [REDACTED 1], who was born on 25 June 1921 in Cernauti, and [REDACTED 2], who was born on 11 July 1925 in Krakow, were the children of [REDACTED] and [REDACTED], née [REDACTED]. The notarized document further indicates that [REDACTED] was born in Gura Putila, Bucovina, Romania, and that he was a chemist domiciled in Brasov. These documents provide independent verification that the Claimants' relatives bore the same family name and that they resided in the same country as the Account Owner, and supports the plausibility that the Claimants are related to the Account Owner, as they have asserted in their Claim Forms. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner resided in Nazi-allied Romania; that there is no record of the payment of the Account Owner's account to him; that the Account Owner and his heirs would not have been able, and in this case were not able, to obtain information about the 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), (i) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account was 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 Claimants. 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 their uncle, 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 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 investigation carried out pursuant to the instructions of ICEP (the "ICEP Investigation"), in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs ("SF"). 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.

Division of the Award

According to Article 23(1)(d) 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's parents who have submitted a claim, in equal shares by representation. In this case, the Claimants are the niece and nephew of the Account Owner. Accordingly, the Claimants are each entitled to one-half of the total 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
31 March 2005