

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1],
also acting on behalf of the Estate of [REDACTED 2]
represented by [REDACTED]

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

to Claimant [REDACTED 6],
also acting on behalf of [REDACTED 7]

and to Claimant [REDACTED 8]
represented by Erez Bernstein

in re Accounts of Emil Deri and Friedrich Deri

Claim Numbers: 204618/MC; 210855/MC; 501873/MC; 601458/MC;² 750051/MC;³
735844/MC; 783423/MC⁴

Award Amount: 211,875.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to the accounts of August Löw-Ber;⁵ the claims of [REDACTED

¹ The CRT was informed that [REDACTED 3] (“Claimant [REDACTED 3]”) passed away on 22 November 2001.

² Claimant [REDACTED 3] submitted a claim, numbered B-00378, on 17 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 601458.

³ In 1999, [REDACTED 1] (“Claimant [REDACTED 1]”) submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-71-021-102-548, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). Claimant [REDACTED 1]’s ATAG form was forwarded to the CRT and has been assigned Claim Number 750051.

⁴ In 1999, Claimant [REDACTED 1] also submitted in 1999 an Initial Questionnaire (“IQ”), numbered ENG-0529-081, to the Court in the United States. [REDACTED 6] (“Claimant [REDACTED 6]”) did not submit a Claim Form to the CRT. However, in 1999, he submitted an IQ, numbered POR-0004-187, to the Court in the United States. Although these IQs were not Claim Forms, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQs were forwarded to the CRT and have been assigned claim numbers 783423 and 735844, respectively.

⁵ The CRT will treat Claimant [REDACTED 1]’s claims to the accounts of August Löw-Ber in a separate decision.

3] (“Claimant [REDACTED 3]”) to the accounts of Walter Löw-Beer, Alice Löw-Beer, Alice Bettina Löw-Beer, August Löw-Beer, Gusta Löw-Beerova, Herbert Löw-Beer, George Löw-Beer, and Eliska Löw-Beer;⁶ the claim of [REDACTED 6] (“Claimant [REDACTED 6]”) to the accounts of George (Jiri) Low Beer;⁷ and the claim of [REDACTED 8] (“Claimant [REDACTED 8]”) (together the “Claimants”) to the accounts of Alice Bettina Löw Beer, August Löw Beer, Emil Deri, and Friedrich Deri.⁸

This Award is to the published account of Emil Deri (“Account Owner Emil Deri”), over which Friedrich Deri held power of attorney, and the published account of Friedrich Deri (“Account Owner Friedrich Deri”) (together the “Account Owners”) over which Emil Deri held power of attorney, both held 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 claimants, any relatives of the claimants other than the account owners, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 8] submitted a Claim Form identifying the Account Owners as her paternal grandmother’s cousins, Emil Deri (Deutsch) and Dr. Friedrich Deri (Deutsch), who were Jewish and were born in Pressburg, (then Austria-Hungary, today Bratislava, Slovakia) on 16 December 1876 and 11 December 1883, respectively. Claimant [REDACTED 8] explained that Emil and Friedrich Deri (Deutsch) were the sons of [REDACTED], née [REDACTED], and Dr. [REDACTED], and that several of their six children changed their surname from Deutsch to Deri. Claimant [REDACTED 8] stated that [REDACTED], née [REDACTED], was the sister of Claimant [REDACTED 8]’s great-grandmother, [REDACTED], née [REDACTED].

A detailed family tree referenced in Claimant [REDACTED 8]’s submission indicates that Claimant [REDACTED 8]’s great-grandmother [REDACTED] was married to [REDACTED], and that they had four children, [REDACTED] (Claimant [REDACTED 8]’s paternal grandfather), [REDACTED], [REDACTED], and [REDACTED].⁹ [REDACTED] was married to [REDACTED], and their son [REDACTED] was Claimant [REDACTED 8]’s father.

Claimant [REDACTED 8] stated that Emil and Friedrich Deri did not marry and resided together at Langgasse 46 in Vienna 8, Austria. Claimant [REDACTED 8] explained that Emil Deri perished in the Holocaust, and that Dr. Friederich Deri survived the Second World War and passed away in the United Kingdom on 25 January 1950.

⁶ The CRT will treat Claimant [REDACTED 3]’s claims to the accounts of August Löw-Beer, Alice Löw-Beer, Alice Bettina Löw-Beer, Walter Löw-Beer, Gusta Löw-Beerova, Herbert Löw-Beer, George Löw-Beer and Eliska Löw-Beer in a separate decision.

⁷ The CRT will treat Claimant [REDACTED 6]’s claim to the accounts of George (Jiri) Low Beer in a separate decision.

⁸ The CRT will treat Claimant Naomi Low-Beer’s claim to the accounts of Alice Bettina Löw-Beer in a separate decision.

⁹ The family tree is available at <http://www.loebtree.com/pollak.html>.

The CRT notes that Claimant [REDACTED 1], Claimant [REDACTED 3], and Claimant [REDACTED 6], who are cousins, did not identify the Account Owners in their claim forms. However, based upon the information provided in their claim forms and in the claim form of Claimant [REDACTED 8], it is clear that they are related to Emil and Friedrich Deri, as detailed below.

Claimant [REDACTED 1] submitted a Claim Form, an ATAG Ernst & Young Claim Form (“ATAG Form”) and an Initial Questionnaire (“IQ”) indicating that she was the daughter of [REDACTED]; Claimant [REDACTED 3] submitted a Holocaust Claims Processing Office (“HCPO”) Claim Form and two ATAG Forms indicating that he was the son of [REDACTED]; and Claimant [REDACTED 6] submitted an IQ indicating that he and his sister, represented party [REDACTED 7], were the grandchildren of [REDACTED]. Thus, according to the family tree referenced in Claimant [REDACTED 8]’s claim form, Claimant [REDACTED 3] is Claimant [REDACTED 8]’s paternal uncle (the brother of her father [REDACTED]), and Claimant [REDACTED 1], Claimant [REDACTED 6] and represented party [REDACTED 7] are the cousins of Claimant [REDACTED 8]’s father. The detailed family tree submitted by Claimant [REDACTED 8] indicates that the mother of [REDACTED], [REDACTED], and [REDACTED], namely [REDACTED], was the aunt of the Account Owners Emil and Friedrich Deri.

In support of his claim, Claimant [REDACTED 6] submitted an extract from the commercial register in Brno (Brünn), Czechoslovakia (now the Czech Republic) indicating that Claimant [REDACTED 6]’s grandfather, [REDACTED], together with his father [REDACTED] and his brothers [REDACTED] and [REDACTED] owned a company named *Aron & Jacob Low Beer’s Söhne*, and that in 1933, [REDACTED]’s sons [REDACTED] and [REDACTED] replaced him as owners of the company;

In support of her claim, Claimant [REDACTED 1] submitted her father’s death certificate, indicating that [REDACTED] died on 18 May 1942 in Scotland, and his father’s will, dated 18 April 1941, indicating that he appointed his wife, [REDACTED], and his children [REDACTED] and [REDACTED 1], née [REDACTED], as executors of his will, and that he bequeathed his entire estate to [REDACTED] and [REDACTED 1].

In support of his claim, Claimant [REDACTED 3] submitted a certified document indicating that the heir of [REDACTED], who was born on 9 May 1881 and who died on 8 November 1954, was his wife, [REDACTED], and upon her death, his children, [REDACTED 4] of London, England, [REDACTED 5] of Surrey, England, and [REDACTED 3] of Surrey; a court-certified document indicating that [REDACTED] of Cressingham, the Parade, Epsom, Surrey, died on 9 February 1991; and the last will of [REDACTED], indicating that she resided in Surrey on 26 June 1990, and that her estate was to be divided equally among her children [REDACTED 4], [REDACTED 5], and [REDACTED 3]; and indicating that if any of those children pre-deceased her, his or her share should pass to that child’s children. The will notes that the children of [REDACTED 5] include his daughter [REDACTED 8].

Claimant [REDACTED 1] indicated that she was born on 20 November 1919 in Brno. She is representing her sister-in-law (the widow of Claimant [REDACTED 1]’s late brother

[REDACTED]), [REDACTED 2], née [REDACTED], who was born on 3 September 1918 in Berlin, Germany. The CRT has been informed that represented party [REDACTED 2] passed away on 28 April 2002.

Claimant [REDACTED 3] indicated that he was born on 25 February 1932 in Brno. He is representing his siblings, [REDACTED 4], née [REDACTED], who was born on 14 March 1922 in Brno, and [REDACTED 5], who was born on 27 December 1923 in Brno. Claimant [REDACTED 3]'s wife informed the CRT that her husband passed away on 22 November 2001 in South Africa.

Claimant [REDACTED 6] indicated that he was born on 24 [REDACTED] 1954. He is representing his sister, [REDACTED 7], who was born on 18 October 1950.

Claimant [REDACTED 8] (who is also the daughter of represented party [REDACTED 5]), indicated that she was born on 13 October 1965 in London, the United Kingdom.

Information Available in the Bank's Records

The Bank's records consist of reports from 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"). According to these records, the Account Owners were Emil and Friedrich Deri of Vienna, Austria.

The auditor's reports indicate that Emil Deri owned a custody account, numbered 28954, which was opened in 1930 and closed on 16 August 1938. The reports show that Dr. Friedrich Deri held power of attorney over this account. The reports do not indicate the value of the custody account.

The auditor's reports indicate that Friedrich Deri also owned an account, the type of which is not indicated, which was also opened in 1930. The auditor's reports do not indicate when the account of unknown type was closed, nor do these records indicate the value or number of this account. The auditors who carried out the ICEP Investigation did not find the account of unknown type in the Bank's system of open accounts, and therefore presumed that it was closed.

There is no evidence in the auditor's reports that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Emil Deri and Dr. Friedrich Deri, numbered 29111 and 29113, respectively.

These records indicate that Emil Deri and Dr. Friedrich Deri were born on 16 December 1876 and 11 December 1883, respectively, that they were not married, that they were both retired, and that they resided at 46 Langegasse in Vienna 8. The records regarding Emil Deri indicate that he was a former employee of the *Angestelltenversicherungsanstalt* (Employees' Insurance Institute) of Vienna. According to the files, Emil Deri and Dr. Friedrich Deri reported that they received monthly pensions of 102.57 Reichsmark ("RM") and RM 163.20, respectively.

The files include a letters dated 12 December 1938 from Dr. Friedrich Deri and Emil Deri to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or 'VVSt. '), in which they each note that their pension payments had been suspended. The records regarding Dr. Friedrich Deri indicate that he was known to have fled Austria by August 1941.

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 seven claims of the Claimants in one proceeding

Identification of the Account Owners

The names, city, and country of residence of Claimant [REDACTED 8]'s relatives match the published names, city, and country of residence of the Account Owners. Claimant [REDACTED 8] identified Dr. Friedrich Deri's professional title and the relationship between the two Account Owners, which match unpublished information about the Account Owners.

The CRT notes that Claimant [REDACTED 1], Claimant [REDACTED 3], and Claimant [REDACTED 6] did not identify the Account Owners. However, the detailed family tree and biographical information submitted by Claimant [REDACTED 8] indicates that these claimants are related to Claimant [REDACTED 8] and the Account Owners.

The CRT notes that a database containing the names of victims of Nazi persecution includes a Page of Testimony submitted in 1977 by Emil Deri's acquaintance, Leopold Sprinzeles of Switzerland, which indicates that Emil Deri was born on 16 December 1876 in Pressburg, that he was not married, that he resided at 46 Langegasse in Vienna, and that he was deported in July 1942 to an unknown destination, which matches the information about Account Owner Emil Deri provided by Claimant [REDACTED 8]. The CRT further notes that the same database contains an entry from the Documentation Centre for Austrian Resistance for a person named Emil Deri, who was born on 16 December 1876, resided at Ferdinandstrasse 19 in Vienna during the Second World War, and was deported to the Maly Trostinec concentration camp, near Minsk,

Belarus, where he perished on 21 August 1938, which also matches the information about Account Owner Emil Deri provided by Claimant [REDACTED 8]. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Finally, the CRT notes that there are no other claims to these accounts.

Status of the Account Owners as Victims of Nazi Persecution

Claimant [REDACTED 8] has made a plausible showing that the Account Owners were Victims of Nazi Persecution. Claimant [REDACTED 8] stated that the Account Owners were Jewish, and that they resided in Austria after its incorporation into the Reich in 1938 (the “*Anschluss*”). The CRT notes that the Account Owners were required to register their assets pursuant to the 1938 Census. As noted above, a person named Emil Deri was included in the CRT’s database of victims.

The Claimants’ Relationships to the Account Owners

Claimant [REDACTED 8] has plausibly demonstrated that she is related to the Account Owners by submitting specific biographical information and referring to a detailed family tree published on the internet, demonstrating that the Account Owners were the cousins of Claimant [REDACTED 8]’s paternal grandmother. The detailed family tree indicates that the Account Owners were the cousins of [REDACTED], [REDACTED], and [REDACTED].

The CRT notes that Claimant [REDACTED 1], Claimant [REDACTED 3], and Claimant [REDACTED 6] did not indicate that they are related to the Account Owners. However, based upon the information in their claim forms and the claim form of Claimant [REDACTED 8], it is clear that they, too, are related to the Account Owners. Furthermore, Claimant [REDACTED 1] submitted her father’s will indicating that the Account Owners’ cousin, [REDACTED], was her father, and Claimant [REDACTED 3] submitted a court-certified document indicating that the Account Owners’ cousin, [REDACTED], was his father.

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 Owners’ accounts in this decision.

The Issue of Who Received the Proceeds

Given that there is no record of the payment of the Account Owners’ accounts to them; that Account Owner Emil Deri’s custody account was closed on 16 August 1938, following the *Anschluss*; that there is no record of a date of closure of Account Owner Friedrich Deri’s account of unknown type; that the Account Owners’ heirs would not have been able to obtain information about their accounts 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 were not paid to the Account Owners 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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owners were their cousins, and these relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Further, the CRT notes that Claimant [REDACTED 1], as the daughter of the Account Owners' cousin [REDACTED], is better entitled to the accounts than represented party [REDACTED 2], who is the widow of Claimant [REDACTED 1]'s late brother [REDACTED] and thus related to the Account Owners through marriage only. The CRT also notes that represented party [REDACTED], as the son of the Account Owners' cousin [REDACTED], is one generation closer to the Account Owners than his daughter, Claimant [REDACTED 8], and is therefore more entitled to the accounts than she is.

Amount of the Award

In this case, Account Owner Emil Deri owned a custody account, and Account Owner Friedrich Deri owned an account of unknown type.

According to Article 29 of the Rules, when the values of accounts are unknown, as is the case here, the average value of the same or similar types of accounts in 1945 is used to calculate the current value of the accounts being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs ("SF"), and the average value of an account of unknown type was SF 3,950.00. Thus, the total 1945 average value for the two accounts at issue is SF 16,950.00. 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 211,875.00.

Division of the Award

According to Article 23(1)(e) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner's parents have submitted a claim, the award shall be in favor of any descendants of the Account Owner's grandparents who have submitted a claim, in equal shares by representation. In addition, under Article 23(1)(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23(1)(a-f) has submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or marriage, who has submitted a claim, consistent with principles of fairness and equity.

In this case, Claimant [REDACTED 1], as the child of the Account Owners' cousin [REDACTED], is entitled to one-third of the award amount; Claimant [REDACTED 3] and represented parties [REDACTED 4] and [REDACTED 5], as the children of the Account Owners' cousin [REDACTED], are entitled to share equally one-third of the award amount, or one-ninth of the total award amount each; and Claimant [REDACTED 6] and represented party [REDACTED 7], as the grandchildren of the Account Owners' cousin [REDACTED], are entitled to share equally one-third of the award amount, or one-sixth of the total award amount each.

As noted above, Claimant [REDACTED 8] is less entitled to the Award than her father, represented party [REDACTED 5], who is one generation closer to the Account Owners than she is; and represented party [REDACTED 2], who is related to the Account Owners by marriage only, is not entitled to share in the Award.

Certification of the Award

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

Claims Resolution Tribunal
16 April 2010