

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], [REDACTED 3], and [REDACTED 4]

and to Claimant [REDACTED 5]

**in re Accounts of *Firma Heinrich Gutmann*
and
Account of Emil Koch and Georgine Käte Gutmann**

Claim Numbers: 222979/AZ, 401776/AZ

Award Amount: 351,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the published account of Emil Koch and the claim of [REDACTED 5] , née [REDACTED], (“Claimant [REDACTED 5]”) to the published account of Georgine Käte Gutmann.¹ This Award is to the unpublished accounts of *Firma Heinrich Gutmann* (“Account Owner Heinrich Gutmann”) and to the published account of Emil Koch (“Account Owner Koch”) and Georgine Käte Gutmann (“Account Owner Gutmann”) at the Basel 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 1]

Claimant [REDACTED 1] submitted a Claim Form identifying Account Owner [REDACTED] as his maternal grandfather’s brother, [REDACTED], who was born on approximately 6 March 1868. Claimant [REDACTED 1] stated that his great-uncle, who was Jewish, lived in Munich, Germany, and that he owned a factory and a business in Munich importing feathers for hats.

¹ The CRT notes that the name Emil Koch was published on the February 2001 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 will treat Claimant [REDACTED 1]’s claim to this account in a separate determination.

Claimant [REDACTED 1] indicated that his great-uncle never married and had no children. Claimant [REDACTED 1] further stated that his great-uncle disappeared from Germany in approximately 1943 and that he is presumed to have perished in the Holocaust.

In support of his claim, Claimant [REDACTED 1] submitted documents, including: 1) his mother's birth certificate, indicating that [REDACTED] was born on 1 September 1900 in Mönchsroth, Germany and that her parents were [REDACTED] and [REDACTED], née [REDACTED]; 2) his maternal uncle's birth certificate, indicating that [REDACTED] was born on 7 December 1901 in Mönchsroth; 3) his sister's birth certificate, indicating that [REDACTED] was born on 9 February 1932 in Augsburg, Germany and that her parents were [REDACTED] and [REDACTED], née [REDACTED]; 4) his mother's German passport, dated 1937, indicating that [REDACTED], née [REDACTED], was born on 8 September 1900 in Mönchsroth, that she lived in Augsburg, that her children were [REDACTED] and Claimant [REDACTED 1], and that she and her children were given immigration visas to the United States in 1937; 5) his mother's certificate of naturalization as a United States citizen, dated 1944, indicating that [REDACTED] was from Germany; 6) his aunt's birth certificate and Certificate of Naturalization as a United States citizen, indicating that [REDACTED], née [REDACTED], was born on 11 February 1918 in Heilbronn, Germany; and 7) his own certificate of naturalization as a United States citizen, dated 1944, indicating that [REDACTED] was from Germany.

Claimant [REDACTED 1] indicated that he was born on 7 February 1931 in Augsburg. Claimant [REDACTED 1] is representing his sister, [REDACTED 4], née [REDACTED], who was born on 9 February 1932 in Augsburg; his cousin [REDACTED 2], the son of [REDACTED], who was born on 25 February 1944 in Tampa, Florida, the United States; and his aunt [REDACTED 3], née [REDACTED], [REDACTED]'s spouse, who was born on 11 February 1918 in Heilbronn. Claimant [REDACTED 1] previously submitted an Initial Questionnaire to the Court in 1999, asserting his entitlement to a Swiss bank account owned by [REDACTED].

Claimant [REDACTED 5]

Claimant [REDACTED 5] submitted a Claim Form identifying Account Owner [REDACTED 5] as her mother, [REDACTED], née [REDACTED], who was born on 9 October 1883 in Neumarkt, Germany, and was married to [REDACTED] in approximately 1902 in Germany. Claimant [REDACTED 5] indicated that her mother lived in Munich, Germany, where she resided at Schwantalerstrasse 99 until 1933 and at Ismaningerstrasse 76 from 1933 to 1942. Claimant [REDACTED 5] further stated that her mother, who was Jewish, owned a factory called *Schmuckfedernfabrik*, located at Bayerstrasse 5 in Munich. Claimant [REDACTED 5] indicated that her parents had three other children: [REDACTED], née [REDACTED], born on 10 February 1905 in Munich; [REDACTED], born on 10 December 1907 in Munich; and [REDACTED], born on 29 January 1919.

Claimant [REDACTED 5] indicated that her brother [REDACTED] died on 25 May 1936 in Munich and that her mother and brother [REDACTED] were deported to Poland in

approximately 1942, where they perished. Finally, Claimant [REDACTED 5] indicated that her sister, [REDACTED], died in California, the United States in 1990.

In support of her claim, Claimant [REDACTED 5] submitted a certificate of inheritance, issued in Munich on December 1948, stating that [REDACTED] perished during deportation to Poland in 1942 and that her heirs were her daughters, [REDACTED] and Claimant [REDACTED 5].

Claimant [REDACTED 5] indicated that she was born on 29 January 1911 in Munich.

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 Emil Koch, *Firma Heinrich Gutmann* or Georgine Käte Gutmann during their investigation of the Bank.² The records for the Account Owners’ accounts at the Bank were obtained from the archival sources in Germany and are described in detail below.

Information Available from the German Archive

In the records of the State Archive Munich, File group “Tax files of racially persecuted persons” (*Staatsarchiv München, Bestand “Steuerakten rassisch Verfolgter”*) (hereinafter referred to as the “Munich Archive”), there are tax declarations and other documents concerning the assets of *Firma Heinrich Gutmann*, Georgine Käte Gutmann, and Emil Koch, numbered 90/2032.

According to these documents, *Firma Heinrich Gutmann*, also known as *Heinrich Gutmann Schmuckfedernfabrik*, was a company that made decorative feathers and hat accessories, and was located at Bayerstrasse 5 in Munich, Germany. The records indicate that Georgine Käte (Käthe) Gutmann, who resided at Ismaningerstrasse 76 in Munich, owned a two-thirds interest in *Firma Heinrich Gutmann*, and that Emil Koch, who resided at Mozartstrasse 12 in Munich, owned the remaining one-third interest in *Firma Heinrich Gutmann*.

Moreover, these documents evidence account ownership at the Bank. Specifically, these documents indicate that *Firma Heinrich Gutmann* held one custody account and one demand deposit account at the Bank, and that Georgine Käte Gutmann and Emil Koch jointly held a custody account at the Bank.

With respect to the accounts owned by *Firma Heinrich Gutmann*, the records indicate that the demand deposit account had a balance of 193.70 Swiss Francs (“SF”) as of 31 December 1932, SF 42.00 as of 1 June 1933, and a balance of SF 16.00 as of 31 October 1938, the date the firm was liquidated (*gelöscht*). In addition, the records indicate that the custody account owned by *Firma Heinrich Gutmann* held the following securities as of 1 June 1935:

² As noted above, an account owned by Emil Koch was published on the ICEP List.

1. 4½% Ungar amort. Staatsrente 1914 bonds, with a nominal value of SF 5,040.00 and a market value of 287.60 Reichsmark (“RM”);
2. 6% Kgl. Ungar Staatskassenscheine 1929 bonds, with a nominal value of SF 150.00 and a market value of RM 25.20; and
3. 7 shares of [REDACTED] stock, with a nominal value of SF 500.00 each and a total market value of RM 2,586.50.

With respect to the custody account jointly owned by Georgine Käte Gutmann and Emil Koch, the records indicate that Georgine Käte Gutmann owned a two-thirds interest in the account, and that Emil Koch owned the remaining one-third interest in the account. The records further indicate that this account held shares of *Vereinigte Stahlwerke A. G. Düsseldorf*, with a reported value of RM 6,000.00 as of 1 June 1933.

According to these records, *Firma Heinrich Gutmann* was liquidated by order of Nazi authorities effective 31 October 1938. The records include a letter, dated 15 April 1939, from the regional authorities in Munich, directing the company to immediately wind down its business in compliance with the Ordinance Regarding the Utilization of Jewish Assets and naming the trustee in charge of the dissolution. This letter explains that with the naming of the trustee the firm’s owners had lost any right over the disposition of the assets of the firm.

The records contain no information regarding the disposition of the accounts held at the Bank.

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 Owners

Claimant [REDACTED 1]

Claimant [REDACTED 1] has plausibly identified Account Owner Koch. Claimant [REDACTED 1]’s great-uncle’s name matches the unpublished name of Account Owner Koch. Claimant [REDACTED 1] identified Account Owner Koch’s city and country of residence, and the type of business he owned, which matches unpublished information about Account Owner Koch contained in the records of the Munich Archive.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Emil Koch, and indicates that his date of birth was 22 February 1867, that his place of birth was Mönchsrot, Germany, that he resided in Munich, Germany, and that he was deported to a concentration camp in 1942, which matches the information about Account

Owner Koch provided by Claimant [REDACTED 1]. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Claimant [REDACTED 5]

Claimant [REDACTED 5] has plausibly identified Account Owner [REDACTED]. Claimant [REDACTED 5]'s mother's name matches the published name of Account Owner [REDACTED]. Claimant [REDACTED 5] identified Account Owner [REDACTED]'s city and country of residence and street address, which matches unpublished information about Account Owner [REDACTED] contained in the records of the Munich Archive. Claimant [REDACTED 5] further identified the city and country of residence and street address of *Firma Heinrich Gutmann*, which matches unpublished information contained in the records of the Munich Archive.

In support of her claim, Claimant [REDACTED 5] submitted documents, including a certificate of inheritance issued in Munich, identifying her mother as [REDACTED], providing independent verification that the person who is claimed to be Account Owner [REDACTED] had the same name and resided in the same city recorded in the Munich Archive records as the name and city of residence of Account Owner [REDACTED].

Additionally, the CRT notes that the CRT's victim database includes a person named Georgine Kaethe Gutmann, née [REDACTED], and indicates that her date of birth was 9 October 1883 and place of birth was Neumarkt, Germany, which matches the information about the owner of the Account Owner provided by Claimant [REDACTED 5].

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

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. Claimant [REDACTED 1] stated that Account Owner Koch was Jewish and that he disappeared from Germany in approximately 1943. Claimant [REDACTED 5] stated that Account Owner Gutmann was Jewish and that in 1942, she was deported to Poland, where she perished. Claimant [REDACTED 5] also submitted a certificate of inheritance, stating that Georgine Käthe Gutmann perished during deportation to Poland in 1942. As noted above, persons named Emil Koch and Georgine Käthe Gutmann were included in the CRT's database of victims.

In addition, the CRT notes that the German Archive records indicate that Account Owner Heinrich Gutmann was liquidated by Nazi authorities effective 31 October 1938, that a trustee was placed in charge of the firm, and that its owners lost any right over the disposition of the firm's assets. The CRT further notes that the Account Owners were required to register their assets pursuant to the 1938 Census.

The Claimants' Relationships to the Account Owners

Claimant [REDACTED 1]

Claimant [REDACTED 1] has plausibly demonstrated that he is related to Account Owner Koch by submitting specific biographical information, indicating that Account Owner Koch was his great-uncle. The CRT notes that Claimant [REDACTED 1] identified unpublished information about Account Owner Koch as contained in the records of the Munich Archive, and that Claimant [REDACTED 1] also identified information that matches information contained in the Yad Vashem records. The CRT further notes that Claimant [REDACTED 1] submitted a copy of his mother's birth certificate and passport, identifying her as [REDACTED], née [REDACTED] and indicating that she resided in Germany, which provides independent verification that Claimant [REDACTED 1]'s relatives bore the same family name as Account Owner Koch and that they resided in Germany. Finally, the CRT notes that information submitted by Claimant [REDACTED 1] is of the type that family members would possess and indicates that Account Owner Koch was well known to Claimant [REDACTED 1] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 1] is related to Account Owner Koch, as he has asserted in his Claim Form. There is no information to indicate that Account Owner Koch has other surviving heirs other than the parties whom Claimant [REDACTED 1] is representing.

Claimant [REDACTED 5]

Claimant [REDACTED 5] has made a plausible showing that she is related to the Account Owner by submitting specific information and documents, indicating that Account Owner Gutmann was her mother. These documents include a certificate of inheritance, identifying Claimant [REDACTED 5] as Account Owner Gutmann's daughter. There is no indication to indicate that Account Owner Gutmann has other surviving heirs.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets to the Nazi regime, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that the Account Owners reported the accounts in their tax declarations; that Account Owner Koch and Account Owner Gutmann lost control over Account Owner Heinrich Gutmann as of 31 October 1938, when it was liquidated by Nazi authorities and later placed under the control of a trustee; that Account Owner Koch and Account Owner Gutmann lived in Germany until they were deported to concentration camps, and therefore could not have repatriated the accounts without losing ultimate control over their proceeds; and given the application of Presumptions (d), (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 Claimant [REDACTED 5], Claimant Koch, and represented parties [REDACTED 4] and [REDACTED 2]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that Account Owner Koch was his great-uncle and Claimant [REDACTED 5] has plausibly demonstrated that Account Owner Gutmann was her mother, and those 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] and represented parties [REDACTED 4] and [REDACTED 2], as the descendants of Account Owner Koch's parents, have a better entitlement to the accounts of Account Owner Koch than represented party [REDACTED 3], who is related to Account Owner Koch through marriage.

Amount of the Award

In this case, Account Owner Heinrich Gutmann held one custody account and one demand deposit account, and Account Owner Koch and Account Owner Gutmann jointly held one custody account.

With respect to the accounts held by Account Owner Heinrich Gutmann, the records in the Munich Archive indicate that the combined value of the securities in the custody account as of 1935 was reported to be RM 2,899.30, which at the time was equivalent to SF 3,586.43.³ Furthermore, the reported value of the demand deposit account was SF 16.00 as of 31 October 1938. With respect to the custody account held jointly by Account Owner Koch and Account Owner Gutmann, the reported value of the account as of 31 October 1933 was RM 6,000.00, which at the time was equivalent to SF 7,356.00.

The CRT determines that it is unable to rely on the balance amounts declared in the Account Owners' tax declarations as it has no evidence regarding the circumstances of the Account Owner's declarations. The CRT notes that, as evidenced in a number of cases, the Account Owners may not have declared all of their assets, or understated their value, in the belief that this might help it safeguard some of them. Pursuant to Article 29 of the Rules, if the amount in a custody account is less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00. Further, if the amount in a demand deposit account is 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. In this case, the CRT does not find that the values of the accounts indicated in the Account Owners' tax declarations constitute plausible evidence sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the value of the Account Owners' custody accounts shall be determined to be SF 13,000.00 and that the value of Account Owner Heinrich Gutmann's

³ The CRT uses official exchange rates when making currency conversions.

demand deposit account shall be determined to be SF 2,140.00. Consequently, the total value of the accounts is determined to be SF 28,140.00. 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 a total award amount of SF 351,750.00.

Division of the Award

According to Article 23(3) of the Rules, if the Account Owner is a legal or other entity (such as a corporation, association, organization, etc.), the Award will be made in favor of those Claimants who establish a right of ownership to the assets of the entity. In this case, Claimant [REDACTED 1]'s great-uncle owned a one-third interest in Account Owner Heinrich Gutmann, and Claimant [REDACTED 5]'s mother owned a two-thirds interest in Account Owner Heinrich Gutmann. Furthermore, with respect to the custody account jointly held by Account Owner Koch and Account Owner Gutmann, the CRT notes that Account Owner Koch owned a one-third interest in the account and Account Owner Gutmann held a two-thirds interest in the account.

With respect to the portion of the award amount relating to Account Owner Koch, 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 1] is representing his sister, [REDACTED 4], his cousin, [REDACTED 2], and his aunt, [REDACTED 3]. Claimant [REDACTED 1] and his sister are the grandchildren of Account Owner Koch's brother, [REDACTED], through his daughter, [REDACTED], and [REDACTED 2] is the grandchild of [REDACTED] through his son, [REDACTED]. Accordingly, represented party [REDACTED 2] is entitled to one-half of this portion of the award amount, or one-sixth of the total award amount, and Claimant [REDACTED 1] and [REDACTED 4] are each entitled to one-quarter of this portion of the award amount, or one-twelfth of the total award amount. [REDACTED 3], who is related to Account Owner Koch through marriage, is not entitled to share in the Award.

With respect to the portion of the award amount relating to Account Owner Gutmann, Claimant [REDACTED 5] is entitled to the entire portion, or two-thirds 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
October 20, 2006