

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]

in re Account of Samuel Goldenberg

Claim Numbers: 726897/HB; 739463/HB¹

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the account of Natan Goldenberg, and the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together “the Claimants”) to the account of Avram Goldenberg.² This Award is to the published account of Samuel Goldenberg (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]

Claimant [REDACTED 1] submitted an Initial Questionnaire (“IQ”) identifying the Account Owner as his paternal uncle, Samuel (Shmuel) Goldenberg. In a telephone conversation with the CRT on 28 June 2006, Claimant [REDACTED 1] indicated that his uncle, who was Jewish, was born in Yassi (Iasi), Romania, in approximately 1906 or 1907, and that he was married. Claimant [REDACTED 1] further indicated that his uncle was a student in Romania, and after the outbreak of the Second World War, he fled from Romania to Geneva or Zurich, Switzerland,

¹ [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) did not submit Claim Forms to the CRT. However, in 1999 they submitted Initial Questionnaires (“IQs”), numbered RUS 0095 173 and HEB 0406 006, respectively, 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 IQs which can be processed as claim forms be treated as timely claims. Order Concerning Use of IQs 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 726897 and 739463, respectively.

² The CRT will treat the claims to these accounts in separate determinations.

where he owned a jewelry shop. According to Claimant [REDACTED 1], while his uncle was in Switzerland, he financially supported Claimant [REDACTED 1]'s family, who resided at Barduloy 10 Street in Bucharest, Romania. Claimant [REDACTED 1] stated that his uncle's brother, [REDACTED], also fled from Romania, in order to deposit his money in his brother's safe deposit box in Switzerland, but since he could not flee from Romania together with his family, he returned to Bucharest, where he was arrested and taken to a slave labor camp. Claimant [REDACTED 1] further stated that, together with his wife, his uncle was likely deported to a concentration camp in Germany, where he perished. According to Claimant [REDACTED 1], he is his uncle's only surviving heir.

Claimant [REDACTED 1] indicated that he was born on 9 March 1941.

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted an IQ identifying himself as the Account Owner, Shmuel Goldenberg, who was born on 25 March 1925.³ According to Claimant [REDACTED 2], he is Jewish, and he resided in Belz (Beltsy), Bessarabia, Romania (now the Republic of Moldova) with his father, [REDACTED], and two sisters, from 1934 until 8 June 1941, when they attempted to flee to Odessa, Ukraine, but because the Nazis invaded there as well, they fled instead to Kerch, Ukraine, and finally to Kamenogorsk, Union of Soviet Socialist Republics (USSR) (now Oskemen, Kazakhstan), where they remained until the end of the Second World War. Claimant [REDACTED 2] stated that he returned to Romania in 1945.

Claimant [REDACTED 2] indicated that he was born on 25 March 1925.

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 Samuel Goldenberg during their investigation of the Bank. The existence of an account at the Bank is evidenced by documents from the Swiss Federal Archive in Bern, Switzerland.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962 (the "Federal Decree"), the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution ("the 1962 Survey"). In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the registration of assets belonging to Samuel Goldenberg, numbered 85. According to these records, the Account Owner was Samuel Goldenberg, whose last known country of residence was Romania. These records indicate that

³ The CRT notes that "Shmuel" is the Hebrew and Jewish equivalent of "Samuel."

the Account Owner held a numbered demand deposit account under a designation 9285, which was opened through a payment of Mr. Michel T. Kohan on 20 August 1942.

These records indicate that the balance of the account as of 1 September 1963 was 643.50 Swiss Francs (“SF”). These records indicate that the account was appointed a legal custodian in 1966, pursuant to the Federal Decree. The records from the Swiss Federal Archive do not indicate the ultimate disposition of the assets.

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

Claimant [REDACTED 1]’s uncle’s name and Claimant [REDACTED 2]’s name both match the published name of the Account Owner. The Claimants each identified the Account Owner’s country of residence, which matches unpublished information about the Account Owner contained in the records of the Swiss Federal Archive.⁴ The CRT notes that Claimant [REDACTED 2] did not claim an account belonging to himself. However, given that he was only 17 years old at the time the account was opened, the CRT finds it plausible that the account could have been opened in his name by a family member without his knowledge.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Shmuel Goldenberg, and indicates that he resided Romania, 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 Claimant [REDACTED 1] filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Natan Goldenberg (Shmuel Goldenberg’s brother), and Claimant [REDACTED 2] filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Avram Goldenberg (his father), prior to the publication in January 2005 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “2005 List”). This indicates that the Claimants have based their present claims not simply on the fact that an individual identified on the 2005 List as owning a Swiss bank account bears the same name as their relatives, but rather on a direct family relationship that was known to them before the publication of the 2005 List. It also indicates that the Claimants had reason to believe that their relative owned a Swiss bank account prior to the publication of the 2005 List. This supports the credibility of the information provided by the Claimants.

The CRT notes that Claimant [REDACTED 1]'s relative and Claimant [REDACTED 2] are not the same person. However, given that the Claimants have identified all published and unpublished information about the Account Owner that is available in the records of the Swiss Federal Archive; that the information provided by each claimant supports and in no way contradicts any information available in the records of the Swiss Federal Archive; that there is no additional information in the records of the Swiss Federal Archive which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that the other claims to this account were disconfirmed because those claimants provided a different country of residence than the country of residence of the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimants have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 1] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish, that he fled from Romania to Switzerland, and that he was deported to Germany, where he perished.

Claimant [REDACTED 2] has also made a plausible showing that he was a Victim of Nazi Persecution. Claimant [REDACTED 2] stated that he is Jewish, and that he fled from Romania in 1941, due to Nazi persecution.

As noted above, a person named Shmuel Goldenberg was included in the CRT's database of victims.

The Claimants' Relationships to the Account Owner

Claimant [REDACTED 1]

Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was Claimant [REDACTED 1]'s uncle. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT further notes that Claimant [REDACTED 1] identified unpublished information about the Account Owner as contained in the records of the Swiss Federal Archive; that Claimant [REDACTED 1] filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 1], prior to the publication of the 2005 List; and that Claimant [REDACTED 1] also identified information which matches information contained in the Yad Vashem records. 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 Claimant [REDACTED 1] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 1] is related to the Account Owner, as he has asserted in his Claim Form.

Claimant [REDACTED 2]

Claimant [REDACTED 2] has also plausibly demonstrated that he is the Account Owner by submitting specific biographical information, demonstrating that he is the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT further notes that Claimant [REDACTED 2] identified unpublished information about the Account Owner as contained in the records of the Swiss Federal Archive; that Claimant [REDACTED 2] filed an IQ with the Court in 1999, identifying himself as the Account Owner, prior to the publication of the 2005 List; and that Claimant [REDACTED 2] also identified information which matches information contained in the Yad Vashem records. 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 Claimant [REDACTED 2] as himself, and all of this information supports the plausibility that Claimant [REDACTED 2] is the Account Owner, as he has asserted in his Claim Form.

The Issue of Who Received the Proceeds

The records of the Swiss Federal Archive indicate that the Account Owner held one demand deposit account, which existed since 20 August 1942, and which was reported in the 1962 Survey. Given 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 Presumption (h), 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 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 claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was his uncle, and Claimant [REDACTED 2] has plausibly demonstrated that he is the Account Owner, and those relationships justify 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 Account Owner held one numbered demand deposit account. The records of the Swiss Federal Archive indicate that the balance of the account as of 1 September 1963 was SF 643.50. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment

of SF 1,235.00, which reflects numbered account fees and standardized bank fees charged to the account between 1945 and 1963. Consequently, the adjusted balance of the account at issue is SF 1,878.50. According to Article 29 of the Rules, if the amount in a demand deposit account was 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. 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 26,750.00.

Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each claimant has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1] is entitled to one-half of the total Award amount, and Claimant [REDACTED 2] is 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
27 February 2007