

CLAIMS RESOLUTION TRIBUNAL

Case No. CV96-4849

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]
represented by [REDACTED] and [REDACTED]

in re Account of Hans Leipziger

Claim Numbers: 201298/HS; 500367/HS

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED] (formerly [REDACTED]) (“Claimant [REDACTED 1]”), to the published account of Betty Pollack.¹ This Award is to the published account of Hans Leipziger (the “Account Owner”), over which Erna Doris Leipziger, née Schloss, held power of attorney (the “Power of Attorney Holder”). This Award also addresses the entitlement of Claimant [REDACTED 1]’s cousin, Claimant [REDACTED 2], née [REDACTED] (“Claimant [REDACTED 2]”) (together the “Claimants”).

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.

Procedural History

The account at issue in this Award was originally awarded to a different claimant, unrelated to the Claimants in the current Award. In the previous Award, which was approved by the Court on 28 January 2002 (the “January 2002 Award”), the CRT determined that this other claimant had plausibly identified the Account Owner as his relative based upon the information then before the CRT. Although Claimant [REDACTED 1] filed a timely claim with the CRT in which she identified the Account Owner and the Power of Attorney Holder as her relatives, this information was not available for consideration at the time of the January 2002 Award. Following publication of the January 2002 Award, Claimant [REDACTED 2] submitted an appeal to the January 2002 Award, asserting that the January 2002 Award was made in error. Claimant [REDACTED 2] also filed several timely claims with the CRT. In none of those timely claims, however, did she identify the owner of the account at issue as her relative. In an

¹ In a separate decision, the CRT treated the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) to the account of Betty Pollack, which appeared on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of victims of Nazi persecution (“ICEP” or the “ICEP List”). See *In re Accounts of Betty Lipson and Arnold Lipson* (approved on 29 September 2008). The account of Hans Leipziger was also published on the ICEP List.

Order dated 30 April 2007, the Court denied Claimant [REDACTED 2]'s appeal, because it failed to meet the criteria for consideration for an Award in the appeals process as a late claim to an awarded account.²

In light of the information submitted by Claimant [REDACTED 1] in her timely claim and by Claimant [REDACTED 2] in her appeal, the CRT determined that the awarded claimant in the January 2002 Award was not, in fact, related to the owner of the account at issue. Accordingly, in a decision approved by the Court on 24 March 2011, the January 2002 Award was withdrawn. However, because the Court determined that the claimant who received the January 2002 Award acted in good faith, no repayment was sought from that claimant.

Pursuant to the withdrawal of the January 2002 Award, and given the information before the CRT that Claimant [REDACTED 2] is the cousin of Claimant [REDACTED 1], who submitted a timely claim identifying the Account Owner and the Power of Attorney Holder as her relatives, the CRT shall consider Claimant [REDACTED 2]'s entitlement to the Account Owner's account in this Award along with that of Claimant [REDACTED 1].

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form claiming accounts belonging to her mother, Betty Lipson (formerly Leipziger), née Pollack, in which she also identified the Account Owner as her cousin, Hans Leipziger. Claimant [REDACTED 1] stated that Hans Leipziger was born on 28 January 1900, and that Hans Leipziger's father, [REDACTED], was the brother of her paternal grandfather, [REDACTED]. Claimant [REDACTED 1] explained that Hans Leipziger, who was Jewish, later changed his name to Henry J. Leir, and that he was married to [REDACTED]. According to the information provided by Claimant [REDACTED 1], Hans Leipziger was a businessman who owned *International Metals SA* and resided in Germany until the early 1930s. Claimant [REDACTED 1] stated that Hans Leipziger later resided at Place Winston Churchill in Luxembourg, in Venthome, Switzerland, and in New York, New York. Claimant [REDACTED 1] explained that Hans Leipziger was instrumental in saving the lives of her own immediate family, because he provided her parents with the necessary funds to enable them to leave Germany before the Second World War. Claimant [REDACTED 1] stated that she visited Hans and [REDACTED] in Switzerland and Luxembourg in 1980, 1990, and 1993.

² The original deadline of 31 August 2001 for filing Deposited Assets claims was extended several times by Order of the Court. In the Court's last Order on late claims, dated 30 December 2004, the Court extended the deadline to file claims to accounts on the ICEP List to 31 December 2004 (the "Late Claims Order"). However, in extending the claim filing deadline, the Court explicitly excluded claims to accounts that have been previously awarded. Such late claims to awarded accounts were to be treated in the appeals process, provided the claims satisfied three criteria: (1) the late claimant is the Account Owner, the Account Owner's spouse or the Account Owner's child; (2) the late claimant provides an unusually compelling reason for failing to comply with the filing deadlines; and (3) the late claimant demonstrates by clear and convincing evidence that the account was awarded erroneously. In this case, because Claimant [REDACTED 2], née [REDACTED], was neither the Account Owner, the Account Owner's spouse, nor the Account Owner's child, the Late Claims Order barred further consideration of her appeal.

Claimant [REDACTED 1] stated that Hans and [REDACTED] did not have any children, and that Hans Leipziger died in 1997 or 1998.

Claimant [REDACTED 1] also explained that Hans Leipziger had numerous surviving relatives and potential heirs. In correspondence with the CRT dated 10 January 2003, Claimant [REDACTED 1] stated: “Hans Leipziger (Henry Leir) had many closer relatives than myself. I also have first cousins who are equally related to Henry as am I.”

In support of her claim, Claimant [REDACTED 1] submitted documents, including:

- (1) her birth certificate, indicating that she was born on 3 May 1934 in Beuthen, Upper Silesia (today Bytom, Poland), to [REDACTED] and [REDACTED]; and
- (2) a deed poll evidencing change of name, issued by the registrar-general’s office of Melbourne, Australia, on 31 January 1946, indicating that [REDACTED] changed his surname to [REDACTED].

Claimant [REDACTED 1] indicated that she was born on 3 May 1934 in Beuthen.

Claimant [REDACTED 2]

Claimant [REDACTED 2] stated that Hans Leipziger’s father, [REDACTED], was the brother of her maternal grandfather, [REDACTED]. Claimant [REDACTED 2] stated that Hans Leipziger, who was Jewish, was born on 28 January 1900 in Beuthen, and that he was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 2] further stated that Hans Leipziger resided in Frankfurt am Main, Germany, until 1933. According to the information submitted by Claimant [REDACTED 2], Hans Leipziger resided in Luxembourg until 1938, when he emigrated to the United States, settling in New York, New York. Claimant [REDACTED 2] stated that Hans Leipziger changed his name to Henry J. Leir around the time of his emigration to the United States. Claimant [REDACTED 2] stated that [REDACTED] died on 17 January 1996 and that Hans Leipziger died on 15 July 1998 in New York.

Claimant [REDACTED 2] submitted documents, including:

- (1) her own birth certificate, indicating that she was born on 3 July 1919 in Berlin, Germany, to [REDACTED], née [REDACTED], and [REDACTED];
- (2) the Luxembourg residence certificate of Heinrich Hans Leipziger, bearing his signature (“Hans Leipziger”), and indicating that he arrived in Luxembourg on 7 June 1933, that he was a German citizen, that he was born in Rossberg, Upper Silesia (today Rozbark, Poland, in the region of Bytom), on 28 January 1900 to [REDACTED] and [REDACTED], that he was a merchant, that he was married to [REDACTED], née [REDACTED], on 24 January 1929 in Mainz, Germany, that he resided in Bonn, Germany, until 7 June 1933, and that he departed for New York sometime in 1939;
- (3) the Luxembourg residence certificate of [REDACTED], née [REDACTED], bearing her signature (“[REDACTED]”), and indicating that she arrived in Luxembourg on 29 January 1934, that she was a German citizen, that she was born in Framersheim,

Germany, on 2 June 1902, that she was married to Heinrich Hans Leipziger, and that she resided in Mainz until 29 January 1934;

- (4) the application for a United States Social Security number by Henry John Leipziger (Leir), dated 13 July 1939 in New York, New York, indicating that his parents were [REDACTED] and [REDACTED], that he was born in Rossberg on 28 January 1900, and that he resided in New York, New York, where he was an employee of the *Continental Ore Corporation*;
- (5) the application for a United States Social Security number by [REDACTED], née [REDACTED], dated on 4 December 1941 in New York, New York, indicating that she was born in Framersheim, and that she resided in New York, New York; and
- (6) two typed and signed letters on the personal stationery of Henry J. Leir, who resided at Place Winston Churchill in Luxembourg, one dated in 1983 and addressed to “Lilo Cohen” and the other dated in 1988 without any indication of the addressee.

Claimant [REDACTED 2] indicated that she was born on 3 July 1919 in Berlin. Claimant [REDACTED 2] is represented by her daughter, [REDACTED], and her grandson, [REDACTED].

With respect to the Claimants’ relationship to one another and to Hans Leipziger, according to the information the Claimants submitted, [REDACTED] and [REDACTED] had seven children, including: (1) [REDACTED], who in turn had six children, including Hans Leipziger; and (2) [REDACTED], whose children included [REDACTED], formerly [REDACTED], (the father of Claimant [REDACTED 1]), and [REDACTED], née [REDACTED], (the mother of Claimant [REDACTED 2]). Thus, according to the information submitted by the Claimants, Claimant [REDACTED 1]’s father and Claimant [REDACTED 2]’s mother were siblings; and their common grandfather ([REDACTED]) was the brother of Hans Leipziger’s father ([REDACTED]).

Information Available in the Bank’s Records

The Bank’s record originally available to the CRT consists of a power of attorney form, dated 29 May 1935 in Luxembourg. According to this record, which contains the signatures of the Account Owner and the Power of Attorney Holder, the Account Owner was Hans Leipziger and the Power of Attorney Holder was his wife, Erna Doris Leipziger, née Schloss, both of whom lived in Luxembourg. The Bank’s record indicates that the Account Owner held a custody account, numbered 32353-II. The Bank’s record does not show when the account at issue was closed, nor does this record indicate the value of this account. 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 find this account in the Bank’s system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945.

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process (the “Rules”), the CRT requested the voluntary assistance of the Bank to obtain additional information about this

account (“Voluntary Assistance”). The Bank provided the CRT with one additional document, consisting of an extract from a list of Bank customers. The Bank’s record obtained through Voluntary Assistance indicates that the Account Owner, who held custody account 32353, resided in Ludwigshafen, Germany, but the date of his residence there is not indicated.

There is no evidence in the Bank’s records that the Account Owner, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

The CRT’s Analysis

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their relatives’ names and country of residence match the published names and country of residence of the Account Owner and the Power of Attorney Holder. Furthermore, the Claimants stated that their relatives resided in Luxembourg between 1933 and 1938, which is consistent with unpublished information in the Bank’s records that the Account Owner and the Power of Attorney Holder resided in Luxembourg in 1935. The Claimants also stated that the Account Owner and the Power of Attorney Holder resided in Germany, which matches unpublished information in the Bank’s records.

Additionally, Claimant [REDACTED 2] submitted the Luxembourg residence certificates of Heinrich Hans Leipziger (who signed his name “Hans Leipziger”) and Erna Leipziger, providing independent verification that the people who are claimed to be the Account Owner and the Power of Attorney Holder had the same names and the same country of residence as the published names and country of residence of the Account Owner and the Power of Attorney Holder. The Luxembourg residence certificates indicate that Hans and Erna Leipziger were a married couple, and that they also resided in Germany, which matches unpublished information in the Bank’s records. Finally, the signatures of Hans and Erna Leipziger in the Luxembourg residence certificates match the signatures of the Account Owner and the Power of Attorney Holder contained in the Bank’s records.

Claimant [REDACTED 2] also submitted the Social Security number applications of Henry John Leipziger (Leir) and [REDACTED], née [REDACTED], as well as two typed letters on the personal stationery of Henry J. Leir. These documents show that the person who is claimed to be the Account Owner originally used the surname Leipziger, that he resided in Luxembourg and Germany, and that the maiden name of the person who is claimed to be the Power of Attorney Holder was Erna Dora (Doris) Schloss, which matches information about the Account Owner and the Power of Attorney Holder contained in the Bank’s records.

The CRT notes that, as indicated above, the only other claim to this account was disconfirmed upon withdrawal of the January 2002 Award.

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 indicated that the Account Owner, who was Jewish, fled Germany in 1933. Claimant [REDACTED 2] submitted the Account Owner's and the Power of Attorney Holder's Luxembourg residence certificates, indicating that they left Germany in 1933 and 1934, respectively. Furthermore, the Bank's record obtained through Voluntary Assistance indicates that the Account Owner resided in Germany.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner's father, [REDACTED], was the brother of the Claimants' grandfather, [REDACTED]. Claimant [REDACTED 1] submitted her birth certificate and a deed poll evidencing change of name, indicating that her father's surname was originally the same as the Account Owner's; and Claimant [REDACTED 2] submitted her birth certificate, indicating that her mother's maiden name was the same as the Account Owner's surname. The CRT additionally notes that the Account Owner's birthplace of Rossberg (Rozbark), indicated in the Luxembourg residence certificate submitted by Claimant [REDACTED 2], is in the region of Claimant [REDACTED 1]'s birthplace of Beuthen (Bytom), indicated in her birth certificate.

The CRT notes that Claimant [REDACTED 1] indicated that the Account Owner has other surviving relatives and potential heirs, in addition to herself and Claimant [REDACTED 2], but that because they are not represented in the Claimants' claims, the CRT will not treat their potential entitlement to the Account Owner's account in this decision.

The Issue of Who Received the Proceeds

Given that the Bank's records show that the Account Owner resided in Germany at some point while he held the account; 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 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 Owner, the Power of Attorney Holder, 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, Claimant [REDACTED 1]'s claim is admissible in accordance with the criteria contained in Article 18 of

the Rules; and the CRT has determined that it is appropriate to include Claimant [REDACTED 2] in the present Award, given the information before the CRT indicating that Claimant [REDACTED 2] is Claimant [REDACTED 1]'s cousin. Second, the Claimants have plausibly demonstrated that their grandfather and the Account Owner's father were brothers, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held a 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 ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs ("SF").³ 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 162,500.00.

Division of the Award

Under 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. Accordingly, as descendants of the Account Owner's grandparents, Claimant [REDACTED 1] and Claimant [REDACTED 2] are each entitled to one-half of the Award amount.

As noted above, according to the information submitted by Claimant [REDACTED 1], the Account Owner has additional relatives and potential heirs, in addition to the Claimants addressed in this Award. The CRT notes that the Acknowledgement Form accompanying this Award provides that in the event that other heirs of the Account Owner entitled under Article 23 of the Rules make a claim to this account, the Claimants shall share any payment with them.

³ The CRT notes that, in an Order dated 16 June 2010, the Court amended Article 29 of the Rules Governing the Claims Resolution Process (the "Rules"), which establishes value presumptions for accounts with unknown or low values. Full information regarding the methodology and procedure used to determine the revised Article 29 presumptive values is available at www.swissbankclaims.com. The CRT notes that any adjustment for accounts awarded at the previous Article 29 values, such as the account described herein, will be addressed to Claimant [REDACTED 2] and Claimant [REDACTED 2] separately.

Certification of the Award

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

Claims Resolution Tribunal
30 April 2011