

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Erez Bernstein

in re Accounts of David Pohorille and Cécilie Pohorille-Mermelstein

Claim Number: 401225/BW/AC

Award Amount: 211,875.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], (the “Claimant”) to the published account of David Pohorille (“Account Owner Pohorille”) and Cécilie Pohorille-Mermelstein (“Account Owner Pohorille-Mermelstein”) (together the “Account Owners”), and to the published accounts of Account Owner Pohorille, over one of which M. Finkler (the “Power of Attorney Holder”) and Account Owner Pohorille-Mermelstein held power of attorney, 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 Claimant

The Claimant submitted a Claim Form identifying the Account Owners as his paternal great-aunt, [REDACTED], née [REDACTED], who was born on 10 March 1895 in Boryslaw, Poland (now Boryslav, Ukraine), and her husband, [REDACTED], who was born on 15 December 1884. The Claimant indicated that his great-aunt and her husband were married on 9 March 1924 in Lwow, Poland (now Lviv, Ukraine). The Claimant indicated that his great-aunt, who was a medical doctor, and her husband, who was an attorney, resided in Vienna, Austria. According to the Claimant, his great-aunt and her husband, who were Jewish, fled from Vienna to Tel Aviv, Palestine (today Israel) after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”). Finally, the Claimant stated that his great-aunt and her husband had no children, that his great-aunt died in 1986, and that her husband died in 1964, both in Israel.

The Claimant stated that his great-grandfather was [REDACTED], and that his children were [REDACTED] (the Claimant’s paternal grandfather) and [REDACTED] (the Claimant’s great-aunt). The Claimant stated further that his paternal grandfather ([REDACTED]) had three children, including the Claimant’s father, [REDACTED]. The Claimant indicated that a son of one of his father’s siblings may still be alive, but that he and his cousin are the family’s only

surviving heirs. The Claimant submitted a copy of his family tree, which indicates that [REDACTED] was the sister of [REDACTED], the Claimant's paternal grandfather, and a copy of his own Israeli identification card, indicating that his last name is [REDACTED].

The Claimant indicated that he was born on 18 March 1939 in Palestine (today Israel).

Information Available in the Bank's Records

The Bank's records consist of a customer card, a joint account opening contract, power of attorney forms, Bank correspondence, and printouts from the Bank's database. According to these records, the Account Owners were *Herr* (Mr.) Dr. David Pohorille and his wife, *Frau* (Mrs.) Dr. Cäcilie Pohorille-Mermelstein, a medical doctor, and the Power of Attorney Holder was *Herr* M. Finkler, a pharmacist. These records include signature samples for the Account Owners and the Power of Attorney Holder.

These records indicate that the Account Owners held a joint account, the type of which is not indicated, which was opened on 23 June 1931. The Bank's records indicate that the Account Owners resided at Werdertorgasse 12 in Vienna, Austria at the time that this account was opened. The Bank's records do not show when the account was closed, nor do these records 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. There is no evidence in the Bank's records that the Account Owners or their heirs closed this account and received the proceeds themselves.

The Bank's records also indicate that Account Owner Pohorille held a custody account and related demand deposit account, numbered 38516. The Bank's records indicate that he granted power of attorney over his accounts to Account Owner Pohorille-Mermelstein on 3 September 1934, and that, as of that date, the Account Owners provided the address of the Power of Attorney Holder at Albisstrasse 26 in Zurich, Switzerland. According to the Bank's records, custody account 38516 was closed on 4 August 1938, and the related demand deposit account was closed on or before that date. The amounts in the accounts on the dates of their closure are unknown.

The Bank's records indicate that Account Owner Pohorille held an additional custody account.¹ The Bank's records further indicate that on 3 August 1938 in Zurich, Account Owner Pohorille granted power of attorney without right of substitution over this account to the Power of Attorney Holder. According to the Bank's records, the Bank sent a letter to Account Owner

¹ The Bank's records contain two power of attorney forms that reference a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that Account Owner Pohorille held a custody account, in the absence of evidence to the contrary, the CRT concludes that it is plausible that he held such an account.

Pohorille, requesting that he execute a new power of attorney form granting power of attorney to his wife, Account Owner Pohorille-Mermelstein, which he did in Zurich on 12 August 1938. The Bank's records indicate that the account was closed on or after 20 February 1940. The Bank's records do not indicate the value of the account. There is no evidence in the Bank's records that the Account Owners, the Power of Attorney Holder, or their heirs closed the account 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 Dr. Cäcilie Pohorille, numbered 38044. These records indicate that Cäcilie Pohorille, a medical doctor, was born on 10 March 1895, was married to Dr. David Pohorille, and resided in Vienna. These records indicate that the medical practice of Dr. Cäcilie Pohorille was valued at 279.80 Reichsmark ("RM"); that her other assets were valued at RM 7,000.00; and that she owned a life insurance policy valued at RM 710.00. These records make no mention of assets held in a Swiss bank account.

The records further contain a letter from Dr. Cäcilie Pohorille, to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or "VVSt."), dated 5 April 1939, informing the VVSt. that she and her husband had moved to Palestine in August 1938, and that due to the costs incurred in the move, she no longer possessed taxable assets.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's great-aunt and great-uncle's names match the published names of the Account Owners. The Claimant also identified the relationship between the Account Owners, the Account Owners' professional titles, Account Owner Pohorille-Mermelstein's occupation, and the city and country of residence of the Account Owners, which matches unpublished information about the Account Owners contained in the Bank's records.

The CRT notes that the other claim to these accounts was disconfirmed because that claimant provided a different country of residence than the country of residence of the Account Owners.

Status of the Account Owners as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and that they fled Austria for Tel Aviv after the *Anschluss*.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific information demonstrating that the Account Owners were the Claimant's great-aunt and great-uncle.

The CRT notes that the Claimant identified unpublished information about the Account Owners as contained in the Bank's records. The CRT further notes that the Claimant submitted a copy of his own Israeli identification card, indicating that his last name is [REDACTED], which provides independent verification that the Claimant bears substantially the same family name as the Account Owners. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owners were well known to the Claimant as family members, and all of this information supports the plausibility that the Claimant is related to the Account Owners, as he has asserted in his Claim Form.

The CRT notes that the Claimant indicated that he has one surviving paternal cousin, but that his cousin has not submitted a claim to the CRT, and is not represented in the Claimant's claim.

The Issue of Who Received the Proceeds

With regard to the custody account numbered 38516 and related demand deposit account belonging to Account Owner Pohorille, the Bank's records indicate that custody account 38516 was closed on 4 August 1938, and that the related demand deposit account was closed on or before that date. According to the Bank's records, Account Owner Pohorille executed two power of attorney forms in Zurich on 3 August 1938 and 12 August 1938. Therefore, the CRT concludes that Account Owner Pohorille was able to access his accounts at the Bank during that time, and determines that he therefore closed these accounts and received the proceeds himself.

With respect to the Account Owners' joint account of unknown type, which was closed on an unknown date, given that the Account Owners resided in Nazi-controlled Austria before fleeing to Palestine; that there is no record of the payment of the Account Owners' account to them nor any record of a date of closure of the account; that the Account Owners and their heirs would not have been able to obtain information about their 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 Owners or their heirs.

With respect to Account Owner Pohorille's second custody account, the CRT notes that the Bank's records indicate that the account was closed on or after 20 February 1940, at which time, according to information provided by the Claimant, Account Owner Pohorille was outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the account was closed, that Account Owner Pohorille fled his country of origin due to Nazi persecution, that Account Owner Pohorille may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his account to ensure their safety, that Account Owner Pohorille and his heirs would not have been able to obtain information about his account after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were his paternal great-aunt and her husband, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, nor the Power of Attorney Holder, nor their heirs received the proceeds of two of the claimed accounts.

The CRT notes that the Claimant indicated that he has one surviving paternal cousin, who would be equally entitled to the Account Owners' accounts. The CRT notes that the Claimant's cousin has not submitted a claim to the CRT and is not represented in the Claimant's claim, and the CRT therefore will not treat his potential entitlement to the Account Owner's accounts in this decision.

Amount of the Award

In this case, the Award is for one custody account held by Account Owner Pohorille and one account of unknown type held jointly by the Account Owners. 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") and the average value of an account of unknown type was SF 3,950.00. Thus, the total 1945 average value of the 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.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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