

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED 1],¹
represented by [REDACTED 2],

to Claimant [REDACTED 3],

and to Claimant [REDACTED 4]

in re Account of Jonas Backenroth

Claim Numbers: 005414/HS;² 770418/HS;³ 781504/HS

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 3] (“Claimant [REDACTED 3]”), and [REDACTED 4], née [REDACTED], (“Claimant [REDACTED 4]”) (together the “Claimants”) to the published account of Jonas Backenroth (the “Account Owner”) at the [REDACTED] (“Bank I”). This Award is also based in part on the records of an unpublished account at [REDACTED] (“Bank II”), which indicate that the Account Owner held power of attorney over an account owned by a firm in Vienna, Austria.

¹ Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) passed away on 29 July 2003.

² Claimant [REDACTED 4] (“Claimant [REDACTED 4]”) filed an additional claim to the account of [REDACTED], which is registered under the Claim Number 005415. The CRT did not locate an account belonging to Claimant [REDACTED 4]’s relative, [REDACTED], in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Claimant [REDACTED 4] should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information she has provided or upon information from other sources.

³ Claimant [REDACTED 1] and Claimant [REDACTED 3] (“Claimant [REDACTED 3]”) did not submit Claim Forms to the CRT. However in 1999, Claimant [REDACTED 1] submitted an Initial Questionnaire (“IQ”), numbered ENG-0018035, and Claimant [REDACTED 3] submitted an IQ, numbered ENG-0447042, 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 Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQs submitted by Claimant [REDACTED 1] and Claimant [REDACTED 3] were forwarded to the CRT and have been assigned the numbers 770418 and 781504, respectively.

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 maternal uncle, Jonas Backenroth. [REDACTED 2], who is Claimant [REDACTED 1]’s son and the representative of his estate, submitted Jonas Backenroth’s will, dated 10 October 1942 in Drohobycz, Poland. In this document, Jonas Backenroth indicated that he was born on 9 February 1892 in Weldzisz, Poland, and that he resided in Drohobycz when the will was drafted. According to the will, Jonas Backenroth’s parents were [REDACTED] and [REDACTED], née [REDACTED], and his sisters were [REDACTED], née [REDACTED], and [REDACTED], née [REDACTED] (whom [REDACTED 2] identified as Claimant [REDACTED 1]’s mother). In his will, Jonas Backenroth further indicated that he was married to [REDACTED], née [REDACTED], and that they had a daughter, [REDACTED], who was born on 20 July 1925 in Vienna. The will further indicates that Jonas Backenroth’s legal representative was Dr. Elias Nacht, who was a lawyer in Drohobycz before the Second World War.

Furthermore, in his IQ, Claimant [REDACTED 1] indicated that Jonas Backenroth, who was Jewish, worked from 1934 to 1938 as a banker in Vienna, and resided there at 36 Lassallestrasse. Claimant [REDACTED 1] also indicated that his uncle had approximately 100,000.00 United States Dollars (“US \$”) in gold on deposit with a Swiss bank in Zurich. Claimant [REDACTED 1] explained that his uncle fled to Poland in 1938, residing from 1939 to 1941 in Weldzisz.

In his will, Jonas Backenroth listed the most important components of his estate as of October 1942, noting also that his wealth was not easily accessible on account of the War. The listed assets include shares in oil wells in the regions of Boryslaw and Schodnica, Poland, a villa in Drohobycz, and bank accounts containing gold, securities, and various international currencies in Drohobycz, Vienna, Paris, France, and branches of the *Anglo-Palestine Bank* in Tel Aviv, Palestine, and London, the United Kingdom. The will does not mention a Swiss bank account.

In his will, Jonas Backenroth named his daughter, [REDACTED], as his sole heir. However, Jonas Backenroth also explained in the will that some months before the date of its drafting, [REDACTED] had been taken away from Bolechow, Poland, and that he did not know whether she was still alive or where she resided. In his will, Jonas Backenroth indicated that in case his daughter predeceased him, then his heirs would be Mr. [REDACTED] and Dr. [REDACTED], both residents of Drohobycz, under whose direction Jonas Backenroth’s fortune should be used to finance charitable and religious events in memory of [REDACTED]. The will also includes several legacies, including sums for Jonas Backenroth’s wife, his parents, his sisters, and the Jewish Community in Drohobycz, “should there be Jews in Drohobycz.”

Claimant [REDACTED 1] stated that Jonas Backenroth was deported to the ghetto in Bolechow, where he was killed in 1943. In correspondence with the CRT dated 24 February 2005, [REDACTED 2] indicated that Jonas Backenroth's wife, daughter (his only child), and both sisters were killed during the Second World War.

Claimant [REDACTED 1] indicated that he was born on 29 May 1923. Claimant [REDACTED 1]'s wife, [REDACTED], née [REDACTED], informed the CRT that Claimant [REDACTED 1] passed away on 29 July 2003. [REDACTED] submitted Claimant [REDACTED 1]'s will, naming [REDACTED] as executor of Claimant [REDACTED 1]'s estate; and Claimant [REDACTED 1]'s death certificate, showing that he was born in Poland, and that his mother was [REDACTED], née [REDACTED]. [REDACTED 2] indicated that his father's mother's Hebrew name, [REDACTED], was used within her family, but that her legal name was [REDACTED].

Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted an IQ claiming the accounts of the Backenroth family's oil business and related entities. In a telephone conversation with the CRT on 14 July 2004 and in correspondence dated 9 August 2004, Claimant [REDACTED 3] identified the Account Owner as Jonas Backenroth, the son of [REDACTED], whose brother was Claimant [REDACTED 3]'s great-grandfather, [REDACTED 3]. Claimant [REDACTED 3] further identified Claimant [REDACTED 1] as the son of Jonas Backenroth's sister, [REDACTED]. Claimant [REDACTED 3] indicated that before the Second World War his family owned oil fields and refineries in Schodnica, Boryslaw, and Urycz, Poland, which were stolen after 1941 by puppet companies set up by the German government, known as *Karpatha Öl AG* and *Continental Öl AG*. Claimant [REDACTED 3] explained that the profits from the oil fields and refineries may have been deposited in Swiss bank accounts. Claimant [REDACTED 3] further stated that Jonas Backenroth and his wife and child died during the Second World War. Claimant [REDACTED 3] indicated that he was born on 3 November 1951.

Claimant [REDACTED 4]

Claimant [REDACTED 4] submitted a Claim Form identifying the Account Owner as her father's cousin, Jonas Backenroth, who was born in Schodnica in 1904. Claimant [REDACTED 4] stated that her relative, who was Jewish, was an oil merchant, and that he resided in Vienna for a time, then in Drohobycz, where he died in 1943. Claimant [REDACTED 4] submitted documents, including: a document from an archive of old records, located in Warsaw, Poland, stating that, according to the records of births in Boryslaw, her grandfather, [REDACTED] was born in 1881, at which time his own father resided in Schodnica; Claimant [REDACTED 4]'s parents' marriage certificate, indicating that [REDACTED] was born in 1908 in Bolechow to [REDACTED]; and Claimant [REDACTED 4]'s own birth certificate, indicating that her father's name is [REDACTED]. Claimant [REDACTED 4] also submitted various documents pertaining to her father's side of the family, including an undated document from the Municipal Court in Drohobycz, regarding ownership of an oil field by members of the Backenroth family; and documents relating to restitution claims filed with the German government for confiscated property, dated in 1959, 1965, and 1966, which indicate that members of the Backenroth family resided in Drohobycz and owned oil fields near Schodnica and Boryslaw.

In a telephone conversation with the CRT on 17 September 2002, Claimant [REDACTED 4] stated that she located information about her relative through the Yad Vashem Memorial in Israel, after hearing from her father about a relative named Jonas Backenroth who used to work in Vienna. Claimant [REDACTED 4] added that the only people who could provide her with more information (her father and her uncle) have passed away. Claimant [REDACTED 4] indicated that she was born in Legnica, Poland on 9 October 1949.

Information Available in the Banks' Records

Bank I

Bank I's record consists of a customer card. According to this record, the Account Owner was Jonas Backenroth. Bank I's record indicates that, on 12 March 1938, the Account Owner provided the address of Dr. Elias Nacht in Drohobycz, Poland, as his place of residence. Bank I's record indicates that Bank I was instructed not to correspond with the Account Owner. Bank I's record further indicates that the Account Owner held a custody account, numbered 41760, which was opened on or before 23 February 1938 and was closed on 24 March 1939. Bank I's record does not indicate the value of the account. There is no evidence in Bank I's record that the Account Owner or his heirs closed the account and received the proceeds themselves.

Bank II

Bank II's records indicate that Jonas Backenroth held signature power as of at least 24 February 1938 for an account owned by a firm in Vienna.⁴ According to these records, Bank II was instructed on 15 May 1938 that, as of that date, the Account Owner had sole signature power for the firm's account.

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 the firm mentioned above. These records show that the firm was wholly owned in 60 and 40 percent shares by two partners other than Jonas Backenroth. The majority owner of the firm declared on his Census form, dated 16 July 1938, that the firm was under administration (*kommissarische Verwaltung*, that is, in the process of aryanization) by the Vienna *Giro and Cassen* [sic] *Verein* and was in the process of liquidation. He acknowledged that he was

⁴ Although Bank II's records indicate that from 15 May 1938 Jonas Backenroth held sole signature power for the firm's account, the 1938 Census records indicate that he held no ownership interest in the firm, nor is there any evidence that he held an ownership interest in the account at Bank II. Therefore, the CRT is unable to disclose further details about this account.

personally liable, with all his assets, for the debts of the firm. These records make no mention of assets held in a Swiss 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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants, who have provided substantially similar information about their relative, have plausibly identified the Account Owner. Their relative's name matches the published name of the Account Owner. Moreover, their relative's lawyer's name and residence match the Account Owner's published region of residence and his unpublished correspondence address. Claimant [REDACTED 1]'s son submitted his relative's will, providing independent verification that the person who is claimed to be the Account Owner had the same name and correspondence address as those in the Bank's records.

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 Jonas Backenroth, and that Claimant [REDACTED 3] submitted an IQ claiming accounts owned by the Backenroth family's business, prior to the publication in February 2001 of the 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"). This indicates that Claimant [REDACTED 1] and Claimant [REDACTED 3] based their claims not on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as their relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that Claimant [REDACTED 1] and Claimant [REDACTED 3] had reason to believe that their relative or a member of the Backenroth family owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants. Finally, the CRT notes that there are no other claims to this account.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Jonas (or Yona) Backenroth, and indicates that he was born in Schodnica in 1904, which corresponds to the information provided to Claimant [REDACTED 4] by the Yad Vashem Memorial (the CRT's victim database is a compilation of names from various sources, including Yad Vashem). This database also indicates that Jonas Backenroth resided in Drohobycz and Vienna, and that he perished at the end of 1942, which matches or is consistent with the other information about the Account Owner provided by the Claimants and contained in the Banks' records.

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. According to the information provided by Claimant [REDACTED 1], the Account Owner, who was Jewish, fled from Vienna to Poland, and was deported to the Bolechow ghetto, where he was killed. Additionally, [REDACTED 2] submitted the Account Owner's will, indicating that the Account Owner's child was taken away from Bolechow. As noted above, a person named Jonas Backenroth was included in the CRT's database of victims.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information demonstrating that the Account Owner was Claimant [REDACTED 1]'s maternal uncle, that he was the nephew of Claimant [REDACTED 3]'s great-grandfather, and that he was the cousin of Claimant [REDACTED 4]'s father. Additionally, [REDACTED 2] submitted the Account Owner's will, which identifies [REDACTED], née [REDACTED], as the Account Owner's sister; and Claimant [REDACTED 1]'s death certificate, indicating that [REDACTED], née [REDACTED], was Claimant [REDACTED 1]'s mother. As noted previously, [REDACTED 2] stated that [REDACTED] and [REDACTED] are the same person. Further, Claimant [REDACTED 4] submitted a document referring to the records of births of Boryslaw, her parents' marriage certificate, her own birth certificate, a document from the Municipal Court of Drohobycz, and documents related to German restitution claims for confiscated property in Drohobycz, showing that her paternal relatives had the same surname as the Account Owner and that they resided in the same city as the Account Owner's correspondence address. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

According to information provided by Claimant [REDACTED 1], the Account Owner fled from Austria to Poland in 1938. Bank I's record indicates that the Account Owner provided Bank I with a correspondence address in Poland on 12 March 1938, the date generally taken as the beginning of the incorporation of Austria into the Reich (the "*Anschluss*"). Based on the records of Bank II, however, the CRT concludes that it is plausible that the Account Owner remained in Vienna after the *Anschluss*, and, possibly, after the aryanization of the firm over whose account he held exclusive power of attorney.

The CRT notes that discriminatory measures against Austria's Jewish residents commenced almost immediately after the *Anschluss*. In addition to murder, imprisonment, deportation, and forced labor, these measures included the confiscation of property, including foreign bank accounts. The CRT notes that even if the Account Owner had fled Austria for Poland before the date of the account's closure on 24 March 1939, Bank I's record does not indicate to whom the account was closed. Moreover, the Account Owner fled Austria due to Nazi persecution, may have had relatives remaining there, and may therefore have yielded to Nazi pressure to turn over his account to ensure their safety. Given the foregoing; and given that there is no record of the payment of the Account Owner's account to him; that the Account Owner's heirs would not have

been able to obtain information about his account after the Second World War from Bank I 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 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 Claimant [REDACTED 1]. First, the claim is 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 that relationship justifies 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. Further, the CRT notes that Claimant [REDACTED 1], as the Account Owner's nephew, has a better entitlement to the account than Claimant [REDACTED 3], who is the great-grandson of the Account Owner's uncle, and Claimant [REDACTED 4], who is the child of the Account Owner's cousin.

Amount of the Award

In this case, the Account Owner held one 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 investigation carried out pursuant to the instructions of ICEP (the "ICEP Investigation"), in 1945 the average value of a custody account was 13,000.00 Swiss Francs ("SF"). 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

According to Article 23(1)(d), 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. As discussed earlier, Claimant [REDACTED 1], who is the Account Owner's nephew, has a better entitlement to the account than Claimant [REDACTED 3] and Claimant [REDACTED 4].

The CRT notes that the Account Owner's will names Claimant [REDACTED 1]'s mother as a legatee rather than an heir. However, considering that the Account Owner's only child and heir was killed during the Second World War, that there is no information before the CRT regarding the named alternative heirs, and that Claimant [REDACTED 1] is the closest relative of the Account Owner to submit a claim, the CRT determines that Claimant [REDACTED 1] is entitled to 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
15 July 2005