

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Max Beer, Maria Beer, Othmar Beer and Else Horst

Claim Numbers: 501861/GO; 501862/GO; 501863/GO^{1,2}

Award Amount: 487,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Maria Beer, Max Beer and Othmar Beer. This Award is to the unpublished account of Othmar Beer (“Account Owner Othmar Beer”), to the published account of Max Beer (“Account Owner Max Beer”), the published accounts of Maria Beer (“Account Owner Maria Beer”), and to the published account of Else Horst (“Account Owner Horst”) (together the “Account Owners”) over which Account Owner Othmar Beer and Rudolf Pollack (“Power of Attorney Holder Pollack”) held power of attorney, 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 claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

¹ In a separate decision, the CRT awarded the account of Johanna Friedjung to the Claimant. See *In re Account of Johanna Friedjung* (approved on 6 February 2004). In separate decisions, the CRT treated the Claimant’s claim to the accounts of Albert Sachs and Robert Neumann. See *In re Accounts of Albert Sachs* (approved on 27 February 2007) and *In re Accounts of Robert Neumann* (approved on 23 June 2008). The CRT notes that the Claimant has filed an appeal to the decision regarding the account of Robert Neumann, and that the appeal is currently under consideration. In twelve separate determinations dated 10 March 2006, the CRT treated the Claimant’s claims to the accounts of Otto Friedjung, Antonia Friedjung, Stefanie Friedjung, Emil Friedjung, Flora Friedjung, Julie Friedjung, Anna Friedjung, Hermine Friedjung, Walter Felsenburg, Paul Felsenburg, Paul Bergel and Julius Bergel. In a separate determination dated 14 November 2007, the CRT treated the Claimant’s claim to the account of Hugo Friedjung. In four separate determinations dated 10 January 2008, the CRT treated the Claimant’s claims to the accounts of Lotte Marie Friedjung, Hugo Philip Friedjung, Paul Friedjung and Stefani Fanny Bergel. In two separate determinations dated 27 April 2009, the CRT treated the Claimant’s claims to the accounts of Julius Sinaiberger and Elisabeth Rosen. In seven separate determinations dated 11 November 2008, the CRT treated the Claimant’s claims to the accounts of Friedrich Neumann, Fritz Neumann, Walter Neumann, Leo Neumann, Alice Neumann, Oskar Neumann and Karl Neumann.

² The CRT did not locate accounts belonging to Leonore Sinaiberger and Josef Karl Friedjung 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”).

Information Provided by the Claimant

The Claimant submitted three Claim Forms identifying Account Owner Max Beer as his paternal grandmother's cousin; Account Owner Maria Beer as Max Beer's wife, Maria Beer, née Derka; and Account Owner Othmar Beer as the son of Max and Maria Beer. The Claimant explained that his paternal grandmother's father, [REDACTED], was the half-brother of Max Beer's mother, [REDACTED], née [REDACTED]. According to the Claimant, his great-grandfather's mother, [REDACTED] (formerly [REDACTED]), née [REDACTED], was first married to [REDACTED]. The Claimant explained that Salbine and [REDACTED] had five children, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (also known as [REDACTED], who was the mother of Max Beer). After [REDACTED] died on 5 August 1846, [REDACTED] married [REDACTED], and they had a son [REDACTED]. According to the Claimant, [REDACTED]'s daughter [REDACTED] was the mother of [REDACTED], who in turn was the Claimant's father.

The Claimant stated that Max Beer was born on 21 March 1865 in Vienna, Austria, and that he married Maria Derka, who was born on 8 September 1873 in Marburg, Germany, in Vienna on 26 November 1898. The Claimant further stated that his grandmother's cousin and his wife were both Jewish and that their son, Othmar Beer, was born on 9 June 1899 in Vienna. The Claimant explained that his relative was a businessman who resided with his family at Lichtensteinstrasse 41 in Vienna. According to the Claimant, Othmar Beer emigrated to Buenos Aires, Argentina, on 5 August 1923, and that Max Beer died on 6 February 1928 in Vienna. The Claimant did not indicate the fate of Maria Beer during the Second World War, but did indicate that she died on 12 July 1955 in Vienna.

The Claimant submitted copies of documents, including:

- (1) his great-great-grandmother's marriage certificate, issued by the Jewish Community of Trebic (*Die Truungsmatrikel der jüdischen Kultusgemeinde in Trebic*), Austria (today the Czech Republic), indicating that [REDACTED] married [REDACTED] on 18 June 1837 in Trebic;
- (2) his great-great-grandmother's son's birth certificate, indicating that [REDACTED] [REDACTED]'s mother was [REDACTED] and that [REDACTED], who was born on 21 April 1842, was his sister;
- (3) a certificate issued on 5 June 2006 by the National Archives (*Narodni Archiv*) of the Czech Republic, indicating that [REDACTED] died on 5 August 1846 in Trebic;
- (4) a certificate issued by the Jewish Community in Vienna (*Israelitische Kultusgemeinde Wien*) on 13 February 2009, indicating that:
 - [REDACTED] was born on 21 April 1843 [sic] in Trebitsch, and that [REDACTED] and [REDACTED], née [REDACTED], were her parents;
 - Max Beer was born on 21 March 1865 in Vienna, and that [REDACTED], née [REDACTED], was his mother;

- Othmar Beer was born on 9 June 1899 in Vienna, and that Max Beer and Maria Beer, née Derka, were his parents;
 - [REDACTED] was born on 2 August 1856 in Vienna, and that [REDACTED] (formerly [REDACTED]), née [REDACTED], was his mother;
 - [REDACTED] was born on 26 June 1886 in Vienna, and that [REDACTED] was her father;
 - [REDACTED] married Dr. [REDACTED] on 30 March 1905; and that
 - [REDACTED] died on 24 July 1907 in Ischl, Austria;
- (5) his father's birth certificate, indicating that [REDACTED] was born on 26 April 1908 in Vienna and that [REDACTED] and [REDACTED], née [REDACTED], were his parents;
 - (6) his parents' marriage certificate, issued on 15 May 1941 by the Committee of the Jewish Community at Haifa, Palestine (today Israel) indicating that [REDACTED], who was born on 26 April 1908 in Vienna, married [REDACTED] on 12 August 1938 in Haifa;
 - (7) his own birth certificate, indicating that [REDACTED] was born on 20 October 1943 in Haifa and that [REDACTED] and [REDACTED] were his parents;
 - (8) his grandmother's burial certificate, indicating that [REDACTED] died on 26 January 1946;
 - (9) his father's death certificate, indicating that [REDACTED] died on 29 June 1984 in Haifa; and
 - (10) his mother's death certificate, indicating that [REDACTED] died on 11 May 1991 in Haifa.

The Claimant indicated that he was born on 20 October 1943 in Haifa.

Information Available in the Bank's Records

The Bank's records consist of a signature sample card and a signed confirmation of the receipt of general conditions applying to custody accounts, which were both signed on 5 January 1926 in Vienna, an agreement regarding the opening of a joint account (*Vertrag betreffend eine gemeinschaftliche Rechnung*) belonging to Account Owner Maria Beer and Account Owner Horst, two power of attorney forms and printouts from the Bank's database.

The Bank's records indicate that Account Owner Maria Beer was *Frau* (Mrs.) Maria Beer, née Derka, who resided at Lichtensteinstrasse 41 in Vienna and that Account Owner Horst was *Fräulein* (Miss) Else Horst, who resided at Dollfüßplatz 7 in Langenzersdorf by Vienna, Austria. According to the records, Account Owner Maria Beer and Account Owner Horst jointly held one custody account, numbered 31996, which was opened on 12 January 1926 in Basel,

Switzerland. The records identify *Herr* (Mr.) Max Beer, who resided at Lichtensteinstrasse 41 in Vienna, as a contact person for this account. The records indicate that power of attorney over the account was granted to *Herr* Othman Beer, who resided at Apartado 292 in San Salvador, El Salvador, on 18 April 1932 and revoked on 2 December 1937. On 3 November 1937, power of attorney was granted to *Herr* Dr. Rudolf Pollak, who resided at Neukräftengasse 10 in Vienna.

The Bank's records further indicate that Account Owner Max Beer and Account Owner Maria Beer jointly held one custody account, numbered 31995, which was opened on 18 January 1926, and that Account Owner Maria Beer and Account Owner Othmar Beer jointly held one custody account, numbered 31992, which was opened on 8 October 1927.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents pertaining to the custody accounts numbered 31995 (held by Max and Maria Beer) and 31992 (held by Maria and Othmar Beer).

With regard to custody account numbered 31995, held by Account Owners Max and Maria Beer, the documents obtained through Voluntary Assistance consist of a signature sample card and a signed confirmation of the receipt of general conditions applying to custody accounts, which were both signed on 21 January 1926 in Vienna, and an agreement regarding the opening of a joint account. According to these documents, the account was opened on 18 January 1926, at which time the owners were Account Owner Max Beer and Account Owner Maria Beer. The document shows that Account Owner Max Beer was crossed off that agreement on an unspecified date.

With regard to custody account numbered 31992, held by Account Owners Maria and Othmar Beer, the documents received through Voluntary Assistance consist of three agreements regarding the opening of a joint account, signed in Vienna on 4 January 1926, 8 October 1927 and 11 September 1931. According to the agreement dated 4 January 1926, the owners of this account were *Fräulein* (Miss) [REDACTED] and Account Owner Max Beer, and the agreement was cancelled on 11 August 1927. The subsequent agreement regarding the opening of a joint account numbered 31992, signed and dated 8 October 1927 in Vienna, indicates that the owners of this account were Account Owner Max Beer and Account Owner Maria Beer, and that Account Owner Max Beer was crossed off that agreement on an unspecified date. The third agreement, signed and dated 11 September 1931 in Vienna, indicates that the owners of this account were Account Owner Maria Beer and Othman Beer, who resided at Apartado 292 in San Salvador.

The Bank's records do not show when the three accounts at issue were closed, nor do these records indicate the value of these accounts.

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 these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the Bank's

records that the Account Owners, the Power of Attorney Holders or their heirs closed the accounts and received the proceeds themselves.

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 Claimant in one proceeding.

Identification of the Account Owners

The Claimant's relatives' names and city and country of residence match the published name and city and country of residence of Account Owner Max Beer and Account Owner Maria Beer. The Claimant identified Account Owner Maria Beer's maiden name, which matches the published name of the Account Owner Maria Beer. The Claimant further identified Account Owner Maria Beer's and Account Owner Max Beer's street address, which matches unpublished information about Account Owner Maria Beer and Account Owner Max Beer contained in the Bank's records.

In support of his claims, the Claimant submitted documents, including a certificate issued by the Jewish Community in Vienna, providing independent verification that the persons who are claimed to be Account Owner Max Beer and Account Owner Maria Beer and Account Owner Othmar Beer had the same names as the name of Account Owner Max Beer and Account Owner Maria Beer and Account Owner Othmar Beer, and that the persons who are claimed to be Account Owner Max Beer and Account Owner Maria Beer resided in the same town recorded in the Bank's records as the name and city of residence of Account Owner Max Beer and Account Owner Maria Beer.

The CRT notes that the Claimant did not identify Account Owner Horst. However, given that the Claimant was born in 1943, that the Claimant's family resided in Palestine, whereas the Account Owner Horst resided in Austria, that there is no indication in the Bank's records that the Account Owner Horst was related to Account Owner Max Beer, Account Owner Maria Beer or Account Owner Othmar Beer, the CRT considers it plausible that the Claimant would not know the names of all of his relatives' acquaintances and business associates, and therefore concludes that the Claimant's failure to identify Account Owner Horst does not adversely affect the plausibility of his identification of Account Owner Max Beer, Account Owner Maria Beer and Account Owner Othmar Beer.

The CRT further notes that the other claim to these accounts was disconfirmed because that claimant provided a different familial relationship between Account Owner Maria Beer and Account Owner Othmar Beer than the familial relationship between Account Owner Maria Beer and Account Owner Othmar Beer, and that claimant did not identify Account Owner Max Beer.

Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner Max Beer, Account Owner Maria Beer and Account Owner Othmar Beer.

Finally, the CRT notes that given that the Account Owner Max Beer died in 1928 and therefore he was not listed in the Bank's records as of 1931 as an Account Owner, the CRT concluded to treat Account Owner Maria Beer as a sole Account Owner of the account numbered 31995 and Account Owner Maria Beer and Account Owner Othmar Beer as joint Account Owners of the account numbered 31992.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Maria Beer was a Victim of Nazi Persecution. The Claimant stated that the Account Owner Maria Beer was Jewish and that she resided in Austria after its incorporation into the Reich in March 1938 (the "*Anschluss*"). The Claimant also submitted a certificate issued by the Jewish Community in Vienna, indicating that Maria Beer was Jewish.

The CRT notes that Account Owner Max Beer died in 1928 and therefore was not a Victim of Nazi Persecution. Further, according to the Claimant, Account Owner Othmar Beer emigrated to Argentina in 1923, before the Nazis came to power in Germany and prior to the *Anschluss*. The CRT notes, however, that Account Owner Othmar Beer's mother remained in the Reich and that he jointly owned assets with her. Accordingly, the CRT determines that the Claimant has made a plausible showing that Account Owner Othmar Beer was a Target of Nazi Persecution.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to Account Owner Max Beer, to Account Owner Maria Beer and to Account Owner Othmar Beer by submitting specific information and documents, demonstrating that Account Owner Max Beer was the Claimant's cousin, that Account Owner Maria Beer was the Claimant's cousin's wife and that Account Owner Othmar Beer was the Claimant's cousin's son. These documents include:

- (1) his great-great-grandmother's marriage certificate, indicating that [REDACTED] married [REDACTED];
- (2) his great-great-grandmother's son's birth certificate, indicating that [REDACTED]'s mother was [REDACTED] and that [REDACTED] was his sister;
- (3) a certificate issued on 5 June 2006, indicating that [REDACTED] died on 5 August 1846 in Trebic;
- (4) a certificate issued by the Jewish Community in Vienna, indicating that:
 - [REDACTED]'s parents were [REDACTED] and [REDACTED], née [REDACTED];
 - Max Beer's mother was [REDACTED], née [REDACTED];
 - Othmar Beer's parents were Max Beer and Maria Beer, née Derka;
 - [REDACTED]'s mother was [REDACTED] (formerly [REDACTED]), née [REDACTED];

- [REDACTED]’s father was [REDACTED]; and that
 - [REDACTED] married Dr. [REDACTED]
- (5) his father’s birth certificate, indicating that [REDACTED]’s parents were [REDACTED] and [REDACTED], née [REDACTED];
 - (6) his parents’ marriage certificate, indicating that [REDACTED] married [REDACTED]; and
 - (7) his own birth certificate, indicating that [REDACTED]’s parents were [REDACTED] and [REDACTED].

The CRT notes that the Claimant indicated that he has another surviving relative, but that because he not represented in the Claimant’s claims, the CRT will not treat his potential entitlement to the Account Owners’ accounts in this decision.

The Issue of Who Received the Proceeds

Given that Account Owner Maria Beer, who was sole owner of one of the accounts at issue here and joint owner of the two other accounts at issue here, resided in Austria after the *Anschluss*; that there is no record of the payment of the Account Owners’ accounts them nor any record of a date of closure of the accounts; that Account Owner Othmar Beer left his country of origin but his mother remained in Austria and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure her safety; that the Account Owners and their heirs would not have been able to obtain information about their accounts 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, the Power of Attorney Holders, 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 claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner Max Beer was the Claimant’s cousin, that the Account Owner Maria Beer was the Claimant’s cousin’s wife and that the Account Owner Othmar Beer was the Claimant’s cousin’s son, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, nor the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, Account Owners held a total of three custody accounts. Account Owner Maria Beer and Account Owner Horst jointly held one custody account, numbered 31996; Account Owner Maria Beer and Account Owner Othmar Beer jointly held one custody account, numbered

31992; and Account Owner Maria Beer solely owned one custody account numbered 31995. 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 the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a custody account was 13,000.00 Swiss Francs (“SF”). Thus, the combined 1945 average value for the three accounts at issue is SF 39,000.00. 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 487,500.00.

Certification of the Award

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

Claims Resolution Tribunal
29 September 2009