

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Erica Helen Bendix
represented by Hoerner Bank AG

in re Accounts of Otto and Elisabeth Bendix

Claim Numbers: 221396/JT; 221399/JT

Award Amount: 211,875.00 Swiss Francs

This Certified Award is based upon the claim of Erica Helen Bendix, née Bergmann, (the “Claimant”) to the accounts of Otto and Elisabeth Bendix (the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owners as her late husband’s parents, Otto Bendix and Elisabeth Bendix, née Bernhard, who were born on 25 January 1883 and 19 November 1897, respectively, in Berlin, Germany. The Claimant indicated that her husband’s parents, who were Jewish, were married on 17 January 1920 in Berlin and that they had one son, Peter Ludwig Otto Bendix, the Claimant’s husband, who was born on 2 January 1922 in Berlin-Wilmersdorf, Germany and died on 5 December 1998 in Camden, England. The Claimant stated that her father-in-law owned a linen manufacturing firm called *Bendix and Company* in Berlin, and that the couple lived with their son at Berlinerstrasse 8 in Berlin-Wilmersdorf from 1922 to 1941, and later at Lynarstrasse 9 in Berlin-Grunewald. According to a translated testimonial given by the Bendix family on an unknown date (perhaps in 1938) and submitted by the Claimant, Otto Bendix indicated that he began working at his father’s linen factory at the end of 1905, and at the time the testimonial was given, he had been president of the company for twenty-six years. According to this document, Otto Bendix further indicated that he had served as a corporal in the German army during the First World War. Also according to this document, Otto Bendix stated that he intended to leave Germany and wished to close his company in September 1938, and Elisabeth Bendix indicated that she was an actress and performed at English and German theaters in Berlin. The Claimant indicated that her husband’s parents were deported on 27 November 1941 to the ghetto in Riga, Latvia, where they both perished. The Claimant stated that her husband survived the Holocaust, and that she married him on 25 February 1960. In support of her claim, the Claimant submitted copies of the birth

certificates of her father-in-law, her mother-in-law, and her late husband, a copy of her marriage certificate identifying her husband as Peter Bendix and his father as Otto Bendix, and a copy of her late husband's Last Will and Testament. The Claimant indicated that she was born on 26 December 1932 in Halle/Saale, Germany.

Information Available in the Bank's Records

The Bank's records consist of printouts from the Bank's database. According to these records, the Account Owners were Otto and Elisabeth Bendix, who resided in Berlin, Germany. The Bank's records indicate that the Account Owners held an account of unknown type, numbered 30287, that was opened on an unknown date in 1930 and a custody account, numbered 30173. The records do not show when the custody account was opened. The Bank's records do not show when the accounts at issue were closed, or to whom they were paid, 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 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 two claims of the Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her husband's parents' names match the separately published names of the Account Owners. The Claimant identified her relatives' city of residence, which matches published information about the Account Owners contained in the Bank's records. Furthermore, the Claimant identified her relatives' relationship as husband and wife and the years in which they lived in Berlin, which corresponds to unpublished information contained in the Bank's records. The CRT notes that in support of her claim, the Claimant submitted documents including her relatives' birth certificates and her own marriage certificate, indicating that Otto and Elisabeth Bendix were her late husband's parents. Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes persons named Otto and Elisabeth Bendix, and indicates that their dates of birth were 25

January 1883 and 19 November 1897, respectively, and that their place of birth was Berlin, Germany, which matches the information about the Account Owners provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. Finally, the CRT notes that one other claim to this account has been disconfirmed because that claimant's relative had different birth dates and spouses' names than the Account Owners.

Status of the Account Owners as Victims 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 they perished in a ghetto in Riga, Latvia in 1941. As noted above, persons named Otto and Elisabeth Bendix were included in the CRT's database of victims.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents demonstrating that her late husband was the son of the Account Owners.

The Issue of Who Received the Proceeds

Given that the Account Owners lived in Nazi occupied Germany during the Second World War and were deported to a ghetto in Latvia where they both perished; that there is no record of the payment of the Account Owners' account to them; that the Account Owners' heirs would not have been able to obtain information about their relatives' 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 and their relatives 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 (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 her husband's parents, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owners held one account of unknown type and 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 ICEP Investigation, in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs, and the average value of a custody account was 13,000.00 Swiss Francs, which produces a total value of 16,950.00 Swiss Francs for the two accounts. 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 211,875.00 Swiss Francs.

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 her claim to determine whether there are additional Swiss bank accounts to which she 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
August 20, 2003