

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1], [REDACTED 2], and [REDACTED 3]

in re Account of Fritz Berger

Claim Numbers: 221494/MBC; 601247/MBC; OTH-0002-184/MBC;
ENG-0506-016/MBC; ENG-0732-161/MBC; OTH-0007-057/MBC¹

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”), [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”), and [REDACTED 3], née [REDACTED], (“Claimant [REDACTED 3]”) (together the “Claimants”) to the account of Fritz Berger (the “Account Owner”) at the Biel 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 claimants, and relatives of the claimant other than the Account Owner, and banks have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1] submitted a claim to the Holocaust Claims Processing Office in December 1998,² and Claimant [REDACTED 2] and Claimant [REDACTED 3] submitted Initial Questionnaires to the Court in 1999, identifying the Account Owner as Claimant [REDACTED 1]’s father-in-law and Claimant [REDACTED 2] and Claimant [REDACTED 3]’s father, Fritz Ephraim Berger, who was born in Vienna, Austria on an unknown date. The Claimants indicated that Fritz Berger was married to [REDACTED], née [REDACTED], who was born on 23 May 1900. The Claimants stated that Fritz and [REDACTED] Berger, who were Jewish, moved to Stettin, Germany when they started a family, which eventually included five children. The Claimants stated that the Berger family lived at Falkenstrasse 10 in Stettin.

¹ [REDACTED 2] and [REDACTED 3] did not submit Claim Forms to the Claims Resolution Tribunal. However, in 1999 they each submitted an Initial Questionnaire to the Court in the United States. Although this Initial Questionnaire was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires 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).

² Claimant [REDACTED 1] also submitted a claim to the account of Eduard Berger, numbered B-01581, on 15 December 2001, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601247. The CRT will treat the claim to this account in a separate decision.

The Claimants indicated that Fritz Berger was a salesman with a law degree and that he opened a Swiss bank account during a business trip to Switzerland. The Claimants further indicated that Fritz Berger was very highly regarded by both Jews and non-Jews in his community, where he was considered a leader. The Claimants explained that Fritz Berger believed that because he was a German citizen and a hero from the First World War, he and his family would be protected from Nazi persecution. The Claimants further explained that despite Fritz Berger's belief that his family would not be harmed, the family was deported by the Nazis to Poland in the autumn of 1938. Thereafter, they spent over one year in the Radom Ghetto, later moving to forced labor and concentration camps, including Birkenau and Mecklenburg. Claimant [REDACTED 3] indicated that her father was arrested and taken to a concentration camp, where he was shot and killed in 1942. According to the Claimants, only [REDACTED] and three of her children, Claimant [REDACTED 2], Claimant [REDACTED 3], and Claimant [REDACTED 1]'s late husband, [REDACTED], survived the Holocaust. Claimant [REDACTED 1] indicated that she was married to [REDACTED], who passed away on 5 November 1984 in New York, New York, United States. The Claimants further indicated that [REDACTED] passed away on 10 June 1999 in Jerusalem, Israel. In support of her claim, Claimant [REDACTED 1] provided several identifying documents, including a family tree, her marriage certificate identifying her husband as [REDACTED], and [REDACTED]'s death certificate. Claimant [REDACTED 1] identified Claimant [REDACTED 2] and Claimant [REDACTED 3] as her sisters-in-law and as the daughters of Fritz and [REDACTED].

Claimant [REDACTED 1] indicated that she was born on 30 April 1936 in Los Angeles, California, United States, Claimant [REDACTED 2] indicated that she was born on 11 September 1928 in Germany and Claimant [REDACTED 3] indicated that she was born on 22 December 1930, also in Germany.

Information Available in the Bank Records

The bank records consist of printouts from the Bank's database. According to these records, the Account Owner was Fritz Berger who resided in an unknown country and whose last communication with the Bank took place on 13 May 1939. The bank records indicate that the Account Owner held an account of unknown type, numbered 18901. The account was transferred to a suspense account on 28 February 1977, at which time the amount in the account was 5.10 Swiss Francs. The account remains open and dormant.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process (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

Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] have plausibly identified the Account Owner as their father-in-law and father, respectively. The Claimants identified their relative's name, which matches published information contained in the bank records. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Ephraim Fritz Berger, a merchant from Stettin, Germany who died on 28 May 1942 at Auschwitz, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. The CRT also notes Claimant [REDACTED 1] filed a claim with the HCPO in 1998 and that Claimant [REDACTED 2] and Claimant [REDACTED 3] filed Initial Questionnaires with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Fritz Berger, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 3] have based their present claims not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as their father-in-law and father, respectively, 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], Claimant [REDACTED 2] and Claimant [REDACTED 3] have reason to believe that their father-in-law and father, respectively, owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants. The CRT further notes that there are no other claims to this account.

Status of Account Owner as a Victim of Nazi Persecution

The Claimants have plausibly shown that the Account Owner was a Victim of Nazi Persecution. They stated that their relative was Jewish and that he was taken to a concentration camp where he was shot and killed by the Nazis in 1942, as noted above.

The Claimants' Relationship to Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that Claimant [REDACTED 1] was married to the son of Fritz Berger. Claimant [REDACTED 1] identified Claimant [REDACTED 2] and Claimant [REDACTED 3] as her sisters-in-law and the daughters of the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The bank records indicate that the account remains open and dormant.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, their claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father-in-law and father, respectively, and those relationships justify an Award. Finally, as the account

remains open and dormant, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held an account of unknown type. The bank records indicate that the value of the account as of 28 February 1977 was 5.10 Swiss Francs. According to Article 29 of the Rules, if the amount in an account of an unknown type was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

Division of the Award

As children of the Account Owner, the Claimants are each entitled to one-third of the total Award amount. As the widow of the Account Owner's son, Claimant [REDACTED 1] is treated as a child of the Account Owner according to Article 23(1)(f).

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
March 11, 2003