

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]
represented by [REDACTED]

in re Accounts of Siegfried Berl

Claim Numbers: 501538/AV; 220025/AV¹

Award Amount: 364,875.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published accounts of Siegfried Berl and [REDACTED].² This Award is to the published accounts of Siegfried Berl (the “Account Owner”), over which [REDACTED] (the “Power of Attorney Holder”) 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 two Claim Forms identifying the Account Owner as Siegfried Berl, the cousin of his great-uncle’s mother-in-law, who was born on 17 May 1889. The Claimant stated that Siegfried Berl was the nephew of [REDACTED], and that [REDACTED] and his wife,

¹ The Claimant submitted two additional claims to the account of [REDACTED], which were registered under the claim numbers 216019 and 220024. The CRT has determined that these claims were duplicate claims and is treating them under the consolidated Claim Number 216019. In a decision dated 15 May 2003, the Court approved an award to the Claimant for the account of [REDACTED]. See *In Re Account of [REDACTED]*. The Claimant also submitted two additional claims to the accounts of [REDACTED] and [REDACTED], which are registered under the Claim Numbers 220023 and 220026, respectively. The CRT did not locate accounts belonging to the Claimant’s relatives, [REDACTED] and [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). The Claimant should be aware that the CRT will carry out further research on his claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

² In a decision dated 8 June 2004, the Court approved an award to the Claimant for the account of [REDACTED]. See *In Re Account of [REDACTED]*.

[REDACTED], née [REDACTED], had a daughter, [REDACTED], née [REDACTED], on 8 January 1881. According to the Claimant, [REDACTED], née [REDACTED], had a daughter, [REDACTED], née [REDACTED], who was the sister-in-law of the Claimant's maternal grandmother, [REDACTED], née [REDACTED].

The Claimant indicated that Siegfried Berl, who was Jewish, was a physician. The Claimant stated that he obtained further information about his relative from records he obtained from the Austrian State Archive, which are detailed below. The Claimant stated that Siegfried Berl was a medical doctor who practiced out of his home at Hauptstrasse 113 in Vienna, Austria, that he subsequently moved to Dampfschiffstrasse 8 in Vienna, and that he was unmarried. According to the Claimant, his relative initially remained in Vienna after the incorporation of Austria into the Reich in March 1938 (the "*Anschluss*"). The Claimant stated that his relative was arrested on *Kristallnacht* (the "Night of Broken Glass" pogrom) and was imprisoned at the Dachau concentration camp until February 1939. The Claimant further stated that his relative fled Austria in the fall of 1939, intending to emigrate to Bolivia.

The Claimant submitted several documents in support of his claim, including the birth certificate of [REDACTED], the Claimant's great-aunt, indicating that she was born to [REDACTED] and [REDACTED], née [REDACTED], on 10 June 1900 in Vienna. The Claimant further submitted [REDACTED]'s will, which indicates that [REDACTED] was her heir, and specifically makes reference to property owned by [REDACTED] in Austria. In addition, the Claimant submitted [REDACTED]'s will, identifying [REDACTED] as her husband's niece, and [REDACTED 1] and [REDACTED 2] as [REDACTED]'s children, and naming all three [REDACTED]'s heirs. Finally, the Claimant submitted a decision from a magistrate in Berlin, Germany, ordering the restitution of property wrongfully taken by the Nazi government from [REDACTED] to [REDACTED], his wife.

The Claimant indicated that he was born on 19 June 1957 in New York, New York, the United States. The Claimant is representing his sister, [REDACTED 2], née [REDACTED], who was born on 12 August 1954 in New York.

Information Available in the Bank's Records

The Bank's records consist of a customer card, a registry card for a safe deposit box, a letter from the Account Owner to the Bank, dated 9 November 1945 and sent from Haifa, Palestine (now Israel), and the Bank's response to that letter, dated 23 November 1945. According to these records, the Account Owner was Dr. Siegfried Berl, who originally resided in Vienna, Austria. The Bank's records indicate that the Account Owner held one demand deposit account, one custody account, numbered L56907, and one safe deposit box, numbered S250. The Bank's records indicate that the demand deposit account was opened on 31 May 1933, that the safe deposit box was opened on 21 September 1936, and that the custody account was opened on 1 October 1936.

In the letter of 9 November 1945 from the Account Owner to the Bank, the Account Owner inquired whether the contents of his safe deposit box were still in the custody of the Bank.

Notations on this letter apparently made by a Bank employee and dated 22 November 1945 indicate that the custody account held by the Account Owner contained the following securities: 4% *Eidgenoss. von 1930* bonds, with a total nominal value of 15,000.00 Swiss Francs (“SF”), and 3½% *British War Loan* bonds, with a total nominal value of 500.00 Pound Sterling (“£”). Moreover, these notes indicate that on 18 March 1939, the Account Owner granted a special power of attorney to Prof. Dr. [REDACTED], who resided in St. Gallen, Switzerland, and that the custody account and safe deposit box were closed to the Power of Attorney Holder on 21 March 1939.³ In its response of 23 November 1945, the Bank informed the Account Owner that a special power of attorney had been granted in favor of the Power of Attorney Holder on 18 March 1939, and that the safe deposit box had been closed to the Power of Attorney Holder on 21 March 1939. The CRT notes that neither the actual document granting power of attorney to Dr. [REDACTED] over the accounts nor a document confirming receipt of the proceeds by the Power of Attorney Holder is included in the Bank’s records.

The Bank’s records indicate that the demand deposit account was closed on 31 March 1939 to an unknown party. The amount in the demand deposit account on the date of its closure is unknown. There is no evidence in the Bank’s records that the Account Owner, the Power of Attorney Holder or their heirs closed this 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 Siegfried Berl, numbered 29672. In addition to the information in these records cited by the Claimant, the records indicate that Siegfried Berl owned a residence at Hauptstrasse 115 in Vienna, valued at 18,200.00 Reichsmark (“RM”), a one-fifth share of another residence valued at RM 6,666.00, a summer cottage valued at RM 1,000.00, securities held at an unspecified bank valued at RM 6,249.99, accounts at Austrian banks worth RM 12,340.85, insurance policies worth RM 7,054.50, and jewelry and art valued at RM 6,886.00.

These records further indicate that Siegfried Berl was assessed atonement tax (*Judenvermögensabgabe*) of RM 12,000.00, and “flight tax” (*Reichsfluchtsteuer*) of RM 14,587.00, which was reduced to RM 11,588.00 on 14 June 1939. The records also contain a statement made by Siegfried Berl, indicating that he was imprisoned at Dachau from 10 November 1938 until 4 February 1939, and that his assets had decreased in value by RM 32,221.18 after his release. Furthermore, the records indicate that Nazi authorities had seized his

³ According to research conducted by the CRT, Prof. Dr. [REDACTED] received a law degree in Vienna and was named professor of law at the University of Munich in 1919. In 1929 he was made director of that university’s new Institute for Reich and State Administrative Law. He became an important advisor to the Bavarian state government. At the end of the Weimar Republic, he became the target of National Socialist attacks, and in the first days following the Nazis’ rise to power in 1933, he was driven from his apartment. Dr. [REDACTED] then emigrated to Switzerland, where he obtained a teaching position at a commercial school in St. Gallen. Dr. [REDACTED] died on 11 August 1961 in St. Gallen. See [www.ndb.badw-muenchen.de/NDB_Musterartikel_\[REDACTED\].htm](http://www.ndb.badw-muenchen.de/NDB_Musterartikel_[REDACTED].htm) (last visited 21 June 2005).

real estate holdings to secure his *Reichsfluchtsteuer* liability. The records further show that after Siegfried Berl fled Austria in the fall of 1939, the seized real estate was sold, all furniture and other property remaining in his house were taken and warehoused, and, on 28 March 1941, all his remaining assets were seized by the Gestapo. The records make no mention of assets held in a Swiss bank account.

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 Owner

The Claimant has plausibly identified the Account Owner. The Claimant's relative's name and country of residence match the published name and country of residence of the Account Owner. The Claimant identified the Account Owner's city of residence and professional title, which matches unpublished information about the Account Owner contained in the Bank's records.

The CRT notes that a database containing the names of victims of Nazi persecution includes a person named Siegfried Berl, and indicates that his date of birth was 17 May 1889, that he was a physician, and that he resided on Hauptstrasse in Vienna, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT further notes that the name Siegfried Berl appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably those of victims of Nazi persecution (the "ICEP List"). Finally, the CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, that he lived in Austria after the *Anschluss*, and that he was imprisoned at the Dachau concentration camp before he fled Austria in February 1939. The CRT notes that the 1938 Census records submitted by the Account Owner indicate that the Account Owner was arrested by the Gestapo on 10 November 1938 and imprisoned at the Dachau concentration camp until 4 February 1939, and that the Gestapo seized both real estate and other assets belonging to the Account Owner. As noted above, a person named Siegfried Berl was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information, demonstrating that the Account Owner was the cousin of his great-uncle's mother-in-law. The CRT notes that the Claimant submitted copies of his great-aunt's birth certificate and will, and his great-uncle's mother-in-law's will, which provide independent verification that the Claimant's relatives bore the same family name as the Account Owner and that they resided in Vienna. The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records, and that the Claimant also identified information which matches information contained in the Yad Vashem records. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his Claim Form.

The Issue of Who Received the Proceeds

The Bank's records indicate that the Account Owner's demand deposit account was closed on 25 March 1939. With regard to the Account Owner's custody account and safe deposit box, notations, apparently made by a Bank employee, indicate that these accounts were closed to the Power of Attorney Holder on 21 March 1939. The CRT notes, however, that neither the actual document granting power of attorney to Dr. [REDACTED] over the accounts nor a document confirming receipt of the proceeds by the Power of Attorney Holder is included in the Bank's records. Moreover, in a letter to the Bank dated 9 November 1945 (*i.e.*, only six years after the account was purportedly closed by the Power of Attorney Holder), the Account Owner inquired whether the contents of his safe deposit box were still in the custody of the Bank. Given that the Bank's records do not contain a document in which the Account Owner granted Dr. [REDACTED] power of attorney over his accounts or a document confirming receipt by Dr. [REDACTED] of the proceeds of the custody and safe deposit box; that the Account Owner inquired about the contents of the safe deposit box only six years after it was purportedly paid to the Power of Attorney Holder; that the custody account and safe deposit box were closed on 21 March 1939 and the demand deposit account was closed on 25 March 1939, which was after the *Anschluss* and while the Account Owner was still living in Vienna following a three-month imprisonment at the Dachau concentration camp; that there is no record of the payment of the Account Owner's accounts to him or to the Power of Attorney Holder; that the Account Owner and his heirs would not have been able to obtain information about his 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 (a), (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, the Power of Attorney Holder 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 Owner was the cousin of his great-uncle's mother-in-law, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one demand deposit account, one custody account, and one safe deposit box. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case for the demand deposit account and safe deposit box, 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 demand deposit account was SF 2,140.00, and the average value of a safe deposit box was SF 1,240.00. The combined average value for these two accounts is therefore SF 3,380.00. 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 an award amount of SF 42,250.00 for these two accounts.

With regard to the custody account, notations on the Bank's records indicate that the account contained the following securities: 4% *Eidgenoss. von 1930* bonds, with a total nominal value of SF 15,000.00 and a market value of SF 15,975.00, and 3½% *British War Loan* bonds, with a total nominal value of £500.00, which was worth SF 9,835.00 in 1939.⁴ The total value of the securities is therefore SF 25,810.00. 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 an award amount of SF 322,625.00 for this account.

Consequently, the total award amount is SF 364,875.00.

Division of the Award

According to Article 23(1)(g) of the Rules, the CRT may make an award to any relative of the account owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity. In this case, no relative with a stronger connection to the Account Owner than the Claimant has submitted a claim. The Claimant is representing [REDACTED 2], his sister, who shares the same familial relationship to the Account Owner.

⁴ The CRT uses official exchange rates when converting the amounts in foreign currencies into Swiss Francs. When available, the CRT uses the market values of securities traded in Switzerland, as published in the *Kursblatt der Zürcher Effektenbörse*, or as indicated in bank documents, claimant-provided documents, or the Account Owner's 1938 Census records. When no market value is available, as is the case for the British War Loans, the CRT uses the nominal value to determine the award amount. The market value of the Swiss bonds is taken from the 30 December 1938 issue of the *Kursblatt der Zürcher Effektenbörse*.

Accordingly, the Claimant and [REDACTED 2] are each entitled to one-half of the total award amount.

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
10 August 2005