

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED] and [REDACTED]

in re Account of Joseph Berliner and Klara Berliner

Claim Numbers: 208265/MB; 220809/MB; 220818/MB

Award Amount: 174,110.00 Swiss Francs

This Certified Award is based upon the separate claims of [REDACTED], representing himself, and [REDACTED], acting on behalf of himself and sixteen of his relatives, (the "Claimants") to the Account of Joseph Berliner and Klara Berliner (the "Account Owners") at the Zürich 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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimants submitted separate Claim Forms indicating that Joseph Berliner and Klara Berliner were their relatives. Claimant [REDACTED] indicated that Joseph Berliner was his great-uncle (the brother of his maternal grandmother, [REDACTED]) and that Klara Berliner was his first cousin once removed (the daughter of his great-uncle). Claimant [REDACTED] indicated that Joseph Berliner was his uncle four times removed (the brother of his great-great grandfather Manfred Berliner) and that Klara Berliner was his first cousin three times removed (the daughter of his uncle four times removed). Both stated that Joseph Berliner was born 22 August 1858 in Hannover, Germany and that Klara Berliner was born on 22 December 1897 in Hannover, Germany. The Claimants stated that Klara Berliner was the daughter of Joseph Berliner and that Joseph Berliner's spouse and all of his other children pre-deceased both Joseph Berliner and Klara Berliner. The Claimants each stated that they are descended from different siblings of Joseph Berliner and that Klara Berliner died unmarried and childless.

The Claimants identified Joseph Berliner as the owner and director of a gramophone company in Hannover, Germany. The Claimants indicated that Joseph Berliner started "J. Berliner Telephonfabrik" in 1881, "Deutsche Grammophon G.M.B.H." in 1898 and "Hackethaldraft-Gesellschaft" in 1900. The Claimants also indicated that Joseph Berliner was the president of the Jewish Community of Hannover, that he lived at Brühlstrasse 7 in Hannover, Germany, and that he died on 23 May 1938 in Hannover. The Claimants did not state the cause of his death.

The Claimants identified Klara Berliner as Joseph Berliner's daughter, both stating that she lived at the home of her father and that both her parents, as well as all her

siblings, predeceased her. The Claimants stated that Klara Berliner never married or had children and that she died on 14 December 1943 in the Theresienstadt concentration camp.

Information Available in the Bank Records

The bank records consist of a signature card with signature samples of Herr Joseph Berliner, Frau [REDACTED], Fraulein Klara Berliner and Herr [REDACTED] and printouts from the Bank's database. According to these bank records, the joint Account Owners were Joseph Berliner and Klara Berliner, and the Power of Attorney Holder was attorney [REDACTED]. The bank records indicate that Joseph Berliner, [REDACTED] and Klara Berliner lived at Brühlstrasse 7, Hannover. The signature card contains comments dated 31 August 1934 and 23 May 1938, indicating the deaths of Frau [REDACTED] and Joseph Berliner, respectively. The bank records indicate that the Account Owners held a custody account and a current account, both of which were opened in 1934, but they do not show if or when these accounts were closed, or to whom the proceeds were paid, nor do they 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 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.

Additional documents contained in the bank records indicate an ongoing correspondence between representatives of the Account Owners' heirs and the Bank beginning in 1951. In response to these requests, the Bank repeatedly and falsely stated that it had no information regarding the existence of accounts of Joseph Berliner or Klara Berliner.

Tribunal's Analysis

Joinder of Claims

According to Article 43(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 discretion of the Claims Judges. In this case, the Tribunal determines it appropriate to join the claims of Claimant [REDACTED] and of Claimant [REDACTED] in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. Their relatives' names match the published names of the Account Owners. The Claimants have provided their relatives' precise street address in Hannover before the Second World War, which exactly matches the unpublished address contained in the bank records. The Claimants also provided the dates of death of Account Owner Joseph Berliner and his spouse [REDACTED], both of which match unpublished information in the bank records. Moreover, the Claimants submitted documents demonstrating the

relationship between Joseph Berliner and his wife, [REDACTED], which also matches unpublished information contained in the bank records.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have plausibly shown that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners, their relatives, were Jewish and were the targets of Nazi persecution while living in Germany until their deaths in 1938 and 1943. The Claimants have further shown that Account Owner Klara Berliner died in the Theresienstadt concentration camp.

The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that the Account Owners are their relatives by providing documentation including family trees, copies of the will of Klara Berliner and excerpts from books regarding the history of the Berliner family. Both Claimants stated that they are related to the Account Owners as descendants of siblings of Account Owner Joseph Berliner. The credibility of other information provided by the Claimants gives the Tribunal no basis to question the veracity of this information concerning their relationship to the Account Owners.

The Issue of Who Received the Proceeds

Since the Claimants would not be entitled to an award if the accounts at issue were paid to the Account Owners or their heirs, the Tribunal must consider the question of what happened to the funds in this case.

The historical evidence developed by the Independent Committee of Eminent Persons during its investigation of Swiss banks (the "ICEP Investigation") demonstrates that the funds of Nazi victims in Swiss banks were disposed of in various ways. In some cases, the account owners and/or their families withdrew and received the funds. In other cases, Nazi authorities coerced account owners to withdraw the balances in their Swiss accounts and transfer the proceeds to banks designated by the Nazi authorities, and the funds fell into Nazi hands. For other accounts, no transfers occurred, but account values were consumed by regular and special bank fees and charges, which resulted ultimately in closure without any payment to the account owners. In still other cases, particularly after a period of inactivity or dormancy, the proceeds were paid to bank profits. Thus, if the funds were not in fact paid to the account owners or their family, as is apparently the case here as described below, there is a substantial likelihood that the funds went to the Nazis or to the Swiss bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the accounts at issue, the Tribunal concludes that it is plausible that neither the Account Owners nor their heirs received the proceeds.¹ Neither Account Owner

¹ In reaching this conclusion, the Tribunal is relying in part on research cataloguing more than forty different laws, acts, and decrees used by the Nazi Regime to confiscate Jewish assets abroad. Although some of these laws were promulgated before the Nazis came into power, and although many of the laws were facially non-discriminatory, the Nazi Regime increasingly enforced these laws on a discriminatory basis against Jewish asset holders. These laws included, for example, increasingly stringent registration and repatriation requirements for assets held outside Germany and special

escaped Nazi Germany, and neither survived the Second World War. One died of natural causes in 1938 and the other died in a concentration camp in 1943. Article 34(e) of the Rules Governing the Claims Resolution Process (“Rules”) provides that where, as is the case here, a claim was made to an account after the Second World War and was not recognized by the bank, the Tribunal shall presume that neither the account owners nor their heirs received the proceeds of the claimed account. Moreover, there is no evidence in the bank records suggesting that the Account Owners closed the accounts at issue and received the proceeds themselves.

Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimants. First, the claim is admissible as the claimed accounts belonged to Victims of Nazi Persecution. Second, the Claimants have plausibly demonstrated that the Account Owners were their relatives. Finally, the Tribunal has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

Pursuant to Article 35 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 present value of the account being awarded. Based on the ICEP investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs, and the average value of a current account was 2,140.00 Swiss Francs, giving a total account value of 15,140.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 174,110.00 Swiss Francs.

In cases where the value of an account is based on the presumptions of Article 35 of the Rules, or where the Tribunal has determined that an account may be subject to later competing valid claims, claimants shall receive an initial payment of 35% of the total award amount. In this case, the value of the accounts at issue is based on the Article 35 presumptions. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 65% of the total award amount. In this case, 35% of the total award amount is 60,938.50 Swiss Francs.

confiscatory taxes for emigrants who wished to flee Germany. Until 1937, the laws generally did not explicitly target Jews, although in practice the laws were enforced more stringently against Jews. Over the course of 1937, however, the spoliation process became increasingly wholesale and systematic and Nazi expropriations of Jewish assets held in Swiss banks and elsewhere became widespread. A decree dated 26 April 1938 required Jews to register their assets, and subsequent to that date the Nazi Regime began to enact legislation and orders to repatriate and confiscate foreign assets both for Jews who sought permission to flee the Reich and for those unable to flee. A listing of the principal laws invoked by the Nazi Regime in specific confiscatory situations appears at the CRT-II website, www.crt-ii.org.

Division of the Award

As noted above, the accounts at issue were joint accounts. Because Account Owner Joseph Berliner predeceased Account Owner Klara Berliner, Klara Berliner was the sole Account Owner for purposes of distribution of the proceeds of these accounts. Article 29(1)(e) of the Rules states that in cases where neither the Account Owner's spouse nor children nor the descendants of the Account Owner's parents have submitted claims, the Award will be divided equally "among any of the children of the Account Owner's grandparents or their descendants who have submitted claims to the Account." In accordance with these principles of distribution, the Tribunal has determined that each of the descendants of Klara Berliner's grandparents who has made a claim or is represented by a Claimant is entitled to the following shares of the Award²:

[REDACTED]:	one-half (1/2)
[REDACTED]:	one-eighteenth (1/18)
[REDACTED]:	one-one hundred and eighth (1/108)
[REDACTED]:	one-one hundred and eighth (1/108)
[REDACTED]:	one-one hundred and eighth (1/108)
[REDACTED]:	one-eighteenth (1/18)
[REDACTED]:	one-one hundred and eighth (1/108)
[REDACTED]:	one-thirty sixth (1/36)
[REDACTED]:	one-twenty fourth (1/24)
[REDACTED]:	one-thirty sixth (1/36)
[REDACTED]:	one-fifty fourth (1/54)
[REDACTED]:	one-eighteenth (1/18)
[REDACTED]:	one-one hundred and eighth (1/108)
[REDACTED]:	one-fifty fourth (1/54)
[REDACTED]:	one-thirty sixth (1/36)
[REDACTED]:	one-twenty fourth (1/24)
[REDACTED]:	one-twelfth (1/12)

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 of the Rules, the Tribunal 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).


² One of the sixteen persons Claimant Joseph Fendel represents, Hildegard Berliner, is not entitled to a portion of the Award. Mrs. Berliner's husband was the nephew of Account Owner Joseph Berliner and the cousin of Account Owner Klara Berliner. Mrs. Berliner herself, however, is not a blood relative of either Account Owner and therefore is not entitled to an award pursuant to Article 29 of the Rules.

Certification of the Award

At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a plausible case for entitlement to an award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same account will be forthcoming. The Special Masters appointed by the Court to supervise the Claims Resolution Process for Deposited Assets Claims have stressed the importance of moving ahead quickly to begin to make awards to Holocaust victim claimants or their heirs. They have therefore instructed the Tribunal that in particular cases where the Tribunal is satisfied that the currently identified claimant has a plausible claim and that the risk of future competing claims is low, the Tribunal shall prepare an award to that claimant and submit it to the Court for approval. This is such a case.

In this case, the Tribunal is of the opinion that the Claimant has presented a plausible claim to the accounts at issue, thus substantially reducing the likelihood of competing claims. On this basis, and taking into account the instructions of the Special Masters, the Tribunal recommends approval of the present Award by the Court for payment by the Special Masters in accordance with Article 37(3) of the Rules.

27 Feb. 2002
Date


Roberts B. Owen
Senior Claims Judge