

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimants [REDACTED 2], [REDACTED 3],
[REDACTED 4], and [REDACTED 5]
represented by [REDACTED 1]

in re Accounts of Mathieu Bernheim and Marie Bernheim

Claim Numbers: 205658/TW; 205659/TW; 213667/TW; 213668/TW; 213669/TW;¹
221354/TW; 221370/TW; 221371/TW; 221427/TW; 222267/TW

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 2] (“Claimant [REDACTED 2]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) (together “Claimants [REDACTED 2&3]”) to the published account of Marguerite Bernheim² and the claims of [REDACTED 4] (“Claimant [REDACTED 4]”), [REDACTED 5] (“Claimant [REDACTED 5]”) and [REDACTED 1] (“Claimant [REDACTED 1]”) (together “Claimants [REDACTED 1,4&5]”) (collectively referred to as “the Claimants”) to the published accounts of Mathieu Bernheim and Marie Bernheim. This Award is to the published accounts of Mathieu Bernheim and Marie Bernheim (the “Account Owners”) at the Basel branch of the [REDACTED] (the “Bank”).³

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 Claimant [REDACTED 4] submitted two additional claims to the account of Marguerite Bernheim, which are registered under the Claim Numbers 205656 and 221428. Claimant [REDACTED 5] submitted two additional claims to the account of Marguerite Bernheim, which are registered under the Claim Numbers 205657 and 221429. Claimant [REDACTED 1] submitted two additional claims to the account of Marguerite Bernheim, which are registered under the Claim Numbers 205655 and 221355. The CRT will treat these claims to this account in a separate decision.

² The CRT will treat the claims to this account in a separate decision.

³ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Mathieu Bernheim is indicated as having one account only and that Marie Bernheim is indicated as a Power of Attorney Holder. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of two accounts and indicate that Marie Bernheim is a joint account holder with Mathieu Bernheim.

Information Provided by the Claimants

Claimants [REDACTED 1,4&5]

Claimants [REDACTED 1,4&5] submitted Claim Forms identifying the Account Owners as their paternal grandparents, Mathieu Bernheim, who was born on 24 September 1900 in Mulhouse, France, and Marie-Suzanne Bernheim, née Schwob, who was born on 27 July 1905. Claimants [REDACTED 1,4&5] stated that their grandparents were married on 28 April 1924 in Paris XVII, France. Claimants [REDACTED 1,4&5] further stated that their grandparents, who were Jewish, had only one child, their father, [REDACTED], who was born on 28 September 1925 in Strasbourg, France. Claimants [REDACTED 1,4&5] indicated that their grandfather was a businessman, who owned a flourmill named *A. Schwob & Cie S.A.R.L.* Claimants [REDACTED 1,4&5] stated that their grandparents resided at Herder 22, Strasbourg from 1924 until 1928, and then moved to rue de la Moselle 17, Mulhouse, where they resided until 1939. Claimants [REDACTED 1,4&5] further stated that their grandfather was called up under the mobilization of the French Army in 1939-1940. Claimants [REDACTED 1,4&5] stated that after their grandfather was discharged from the army, he and his family were moved to Clermont-Ferrand, France,⁴ from where they fled to the United States in 1942 to return to France in 1945. Claimants [REDACTED 1,4&5] stated that their father died on 17 February 1969 in Colmar, France, that their grandfather died on 6 March 1976 in Mulhouse, and that upon his death, their grandmother inherited his entire estate. Claimants [REDACTED 1,4&5] further stated that their grandmother died on 3 September 1983 in Modenheim, France, and that upon her death, Claimants [REDACTED 1,4&5] inherited her entire estate.

Claimants [REDACTED 1,4&5] submitted a certificate from the Office of Private Interests and Assets, Department of Looted Assets, in Mulhouse, dated 20 August 1945, declaring that Claimants [REDACTED 1,4&5]'s grandparents were expelled from Alsace by the German occupiers and that their movable assets were seized and sold by order of the Gestapo. This certificate shows that their address was rue de la Moselle 17, Mulhouse. Claimants [REDACTED 1,4&5] also submitted several additional documents confirming this address, as well as the post-expulsion address in Clermont-Ferrand; copies of their grandparents' passports, containing their signatures; requests to exit France in 1942 and requests for return visas to France in 1945; their grandparents' United States of America Declarations of Intention dated 1942, containing their signatures and stating that the father of Claimants [REDACTED 1,4&5] was their only son; a certificate of inheritance indicating that Claimants [REDACTED 1,4&5] are the sole heirs of Marie-Suzanne Bernheim; and a letter issued by a notary public in Mulhouse, indicating that Mathieu Bernheim died intestate.

⁴ The CRT notes that shortly after the Armistice, German administrators decided to expel all Jews and other "undesirables" of French nationality from Alsace-Lorraine to the unoccupied zone of France. Expulsion from Alsace-Lorraine started on 16 July 1940 in Colmar and was generalized in October 1940 in an Agreement between the chiefs of the German and the French Armistice Commission, respectively. According to Raoull Hilberg, the expulsions affected 105,000 people, of whom 22,000 were Jews from Alsace. See *The Destruction of the European Jews*, p. 614.

Claimant [REDACTED 4] indicated that he was born on 5 January 1956 in Mulhouse, Claimant [REDACTED 5] indicated that he was born on 9 July 1954 in Mulhouse, and Claimant [REDACTED 1] indicated that he was born on 30 October 1959, also in Mulhouse.

Claimants [REDACTED 2&3]

Claimants [REDACTED 2&3] submitted Claim Forms identifying the Account Owners as their maternal uncle and aunt, respectively. Claimants [REDACTED 2&3] identified the Power of Attorney Holder as their father, Edmond Beretz, who was Jewish, and was married to Mathieu Bernheim's sister, [REDACTED], née Bernheim.

Claimants [REDACTED 2&3] submitted documents, including the death certificate of their maternal grandfather, [REDACTED], indicating their mother's last name as Bernheim; their maternal grandmother, Marguerite Bernheim's United States of America Declaration of Intention, showing that [REDACTED], née [REDACTED] and Mathieu Bernheim are her children; and Marguerite Bernheim's certificate of inheritance, demonstrating that her heirs are her grandchildren, [REDACTED 2], [REDACTED 3] and [REDACTED], and her son, Mathieu Bernheim.

Claimant [REDACTED 2] indicated that he was born on 24 March 1924 in Strasbourg. Claimant [REDACTED 3] indicated that he was born on 11 May 1934 in Strasbourg.

Information Available in the Bank's Records

The Bank's records consist of an account opening contract and a power of attorney form, both dated 18 May 1933. According to these records, the Account Owners were Mathieu Bernheim and *Madame* (Mrs.) Marie Bernheim, née Schwob, who resided at rue de la Moselle 17 in Mulhouse, France, and the Power of Attorney Holder was Edmond Beretz. The Bank's records contain the signatures of the Account Owners and the Power of Attorney Holder. The Bank's records indicate that the Account Owners held a custody account numbered 38551-II. These records indicate that the account-opening contract was also for one or more demand deposit accounts in addition to the custody account. There is no evidence in the Bank's records that the Account Owner held more than one demand deposit account.

The Bank's records indicate that the accounts were closed on 2 February 1950. The amounts in the accounts on the date of their closure are unknown. There is no evidence in the Bank's records that the Account Owners, the Power of Attorney Holder, 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 10 claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. Claimants [REDACTED 1,4&5]'s grandparents' names, city and country of residence match the published names, city and country of residence of the Account Owners. Claimants [REDACTED 2&3]'s father's name matches the published name of the Power of Attorney Holder. Claimants [REDACTED 1,4&5] identified their grandparents' street address, which matches unpublished information about the Account Owners contained in the Bank's records. In support of their claims, Claimants [REDACTED 1,4&5] submitted documents, including a certificate from the Office of Private Interests and Assets, Department of Looted Assets, in Mulhouse, dated 20 August 1945, declaring that Mathieu Bernheim and Marie Bernheim were expelled from Alsace by the German occupiers, that their movable assets were seized and sold by order of the Gestapo and that shows their address to have been rue de la Moselle 17, Mulhouse; several additional documents showing the same address; and Mathieu Bernheim's demobilization document stating his pre-war address in Mulhouse and later address in Clermont-Ferrand . These documents provide independent verification that the persons who are claimed to be the Account Owners had the same names and addresses recorded in the Bank's records as the names and addresses of the Account Owners. Finally, Claimants [REDACTED 1,4&5] submitted samples of Mathieu Bernheim's and Marie Bernheim's signatures, which match the signature samples contained in the Bank's records. The CRT notes that there are no other claims to these accounts.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners were Jewish, that they were expelled from Alsace and deported to the unoccupied zone of France in 1940 and fled to the United States in 1942.

The Claimants' Relationships to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting specific information and documents demonstrating that the Account Owners were the paternal grandparents of Claimants [REDACTED 1,4&5] and the uncle and aunt of Claimants [REDACTED 2&3]. These documents include Marie-Suzanne Bernheim's certificate of inheritance, which indicates that as the grandchildren of Marie Bernheim, wife of Mathieu Bernheim, Claimants [REDACTED 1,4&5] are her sole heirs, and Marguerite Bernheim's

certificate of inheritance, which indicates that her heirs are her son, Mathieu Bernheim and her grandchildren, [REDACTED 2], [REDACTED 3] and [REDACTED]. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owners were expelled by the German occupier from their place of residence and forced to flee France in 1942; that there is no record of the payment of the Account Owners' accounts to them or their heirs; that the Account Owners or their heirs would not have been able to obtain information about the 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 (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 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 Claimants [REDACTED 1,4&5]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimants [REDACTED 1,4&5] have plausibly demonstrated that the Account Owners were their grandparents, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts. Further, the CRT notes that Claimants [REDACTED 1,4&5], as the Account Owners' grandchildren, have a better entitlement to the accounts than Claimants [REDACTED 2&3], the Account Owner's nephews.

Amount of the Award

In this case, the Account Owners held one custody account and one demand deposit 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 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) and the average value of a demand deposit account was SF 2,140.00 to produce a total 1945 average value of SF 15,140.00. 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 189,250.00.

Division of the Award

According to Article 25(1) of the Rules, if an account is a Joint Account and Claimants related to each of the Account Owners have submitted claims to the Account, it shall be presumed that

each Account Owner was the owner of an equal share of the Account. Consequently, Mathieu Bernheim is presumed to have had a half-share in the account and Marie Bernheim is presumed to have had a half-share in the account. With respect to Mathieu Bernheim's share of the Account, Article 23(1)(c) of the Rules provides that if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. In this case, Claimants [REDACTED 1,4&5] are direct descendants of Mathieu Bernheim, whereas Claimants [REDACTED 2&3] are descendants of Mathieu Bernheim's parents. Accordingly, Claimants [REDACTED 1,4&5] have better entitlement to the share of Mathieu Bernheim's account than Claimants [REDACTED 2&3], and they are each entitled to one-third of Mathieu Bernheim's share of the account.

With respect to Marie Bernheim's share of the Account, Article 23(2)(a) provides that if a claimant has submitted the Account Owner's will or inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. In this case, Claimants [REDACTED 1,4&5] submitted Marie Bernheim's certificate of inheritance in support of their claim, providing for distribution of her estate among her three grandchildren. Accordingly, Claimant [REDACTED 4], Claimant [REDACTED 5] and Claimant [REDACTED 1] are each entitled to one-third of Marie Bernheim's share of the account.

Accordingly, Claimant [REDACTED 4], Claimant [REDACTED 5] and Claimant [REDACTED 1] are each entitled to one-third of the total award amount.

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
8 August 2004