

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], née [REDACTED]

and Claimant [REDACTED 3]

in re Accounts of Joseph Besso, Menachem G. Besso, Allegra Besso, and G. Besso

Claim Numbers: 218451/MBC; 501282/MBC; 501291/MBC

Award Amount: 261,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the published account of Joseph Levi,¹ and the claims of [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published accounts of Menachem Besso and Allegra Besso. This award is to the published account of Menachem G. Besso (“Account Owner Menachem Besso”) and Allegra Besso (“Account Owner Allegra Besso”) at the Zurich branch of the [REDACTED] (“Bank 1”), the published account of Joseph Besso (“Account Owner Joseph Besso”) at the Zurich branch of Bank 1, and the unpublished account of G. Besso (“Account Owner G. Besso”) at the Lugano branch of the [REDACTED] (“Bank 2”) (together, the “Banks”).²

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 Claimants

Claimant [REDACTED 1] and Claimant [REDACTED 3], who are father and son, submitted three Claim Forms identifying Account Owner Joseph Besso and Account Owner G. Besso as the same person, Giuseppe (Joseph) Besso, who was the cousin of Claimant [REDACTED 1]’s

¹ In a separate decision, the CRT awarded the Claimants’ claims to the account of Josef Guiseppa Levi. See *In re Accounts of Giuseppe Levi* (approved on 30 December 2004), and *In re Account Josef Levi* (approved on 18 November 2004).

² 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”), Allegra Besso and Menachem Besso are indicated as having one account each. Upon careful review, the CRT has concluded that Bank 1’s records evidence the existence of one account which was jointly held by Allegra Besso and Menachem Besso.

mother; Account Owner Menachem Besso as Claimant [REDACTED 1]'s maternal grandmother's cousin; and Account Owner Allegra Besso as Menachem Besso's wife, Allegra Besso, née Zaccar.

Claimant [REDACTED 3] indicated that his paternal great-great-great-grandparents, [REDACTED] and [REDACTED], had two children, [REDACTED] (Claimant [REDACTED 1]'s great-great-grandfather) and [REDACTED], née [REDACTED]. Claimant [REDACTED 3] further indicated that [REDACTED] was married to [REDACTED], and that they had four children: Menachem Besso, [REDACTED] (father of a second Joseph (Giuseppe) Besso, whom the Claimants have identified as Account Owner Joseph Besso and Account Owner G. Besso), [REDACTED], and [REDACTED].

The Claimants indicated that Menachem Besso was born on 15 July 1890 in Corfu, Greece, and was married to Allegra Besso, née Zaccar, who was born on 28 February 1894 in Corfu. The Claimants indicated that Menachem Besso resided at Via Francesco Petrarca 18 and Corso Vercelli 5 (or 7) in Milan, Italy before the Second World War, and that he was a businessman specializing in international trade. The Claimants further indicated that the Bessos, who were Jewish, were deported in 1944 to Auschwitz, where they perished.

The Claimants indicated that Joseph (Giuseppe) Besso, who was born in Corfu in 1902, resided at Via Leopardi 27 and Via Ariosto 10 in Milan before the Second World War, and that he maintained a business in Trieste, Italy. According to the Claimants, Joseph Besso, who was Jewish, hid with his family between 1941 and 1945 in the Lombardy region near Milan. The Claimants indicated that there had been no contact between [REDACTED] (Claimant [REDACTED 1]'s mother) and Joseph Besso since 1950, and they therefore presumed he had died.

In support of their claims, the Claimants submitted a copy of [REDACTED]'s birth certificate, containing signature samples for Joseph (Giuseppe) Besso and Menachem Besso, and a copy of [REDACTED]'s death certificate, indicating that his mother was [REDACTED].

Claimant [REDACTED 1] indicated that he was born on 13 April 1931 in Naples, Italy. Claimant [REDACTED 3] indicated that he was born on 18 April 1960 in Milan. Claimant [REDACTED 1] is representing his sister, [REDACTED 2], née [REDACTED], who was born on 11 April 1927 in Naples.

Information Available in the Banks' Records

Bank 1

Account Owner Menachem Besso and Account Owner Allegra Besso

Bank 1's records consist of an account opening contract and printouts from Bank 1's database. According to these records, Account Owner Menachem Besso was *Monsieur* (Mr.) Menachem G. Besso, and Account Owner Allegra Besso was *Madame* (Mrs.) Allegra Besso, who both

resided at Corso Vercelli 7 in Milan, Italy. These records include signature samples for Account Owner Menachem Besso and Account Owner Allegra Besso. Bank 1's records indicate that Account Owner Menachem Besso and Account Owner Allegra Besso jointly held one account, the type of which is not indicated, which was opened on 8 March 1939. Bank 1's records indicate that the account was closed, but the date of closure is not recorded. The amount in the account on the date of its closure is unknown. 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") indicated that there was no evidence of activity on this account after 1945. There is no evidence in Bank 1's records that Account Owner Menachem Besso, Account Owner Allegra Besso or their heirs closed the account and received the proceeds themselves.

Account Owner Joseph Besso

Bank 1's records consist of a customer card and a form confirming a deposit of securities into a custody account. These records include a signature sample for Account Owner Joseph Besso. According to these records, Account Owner Joseph Besso was *Monsieur* Joseph Besso do Gabriel, who resided at Via Leopardi 27 in Milan. Bank 1's records indicate that Account Owner Joseph Besso, who was a Greek citizen, held one custody account, numbered 38001, which was opened on 17 August 1934, at which time Account Owner Joseph Besso deposited various unspecified securities in the account. The account was closed on 25 March 1939. The amount in the account on the date of its closure is unknown. There is no evidence in Bank 1's records that Account Owner Joseph Besso or his heirs closed the account and received the proceeds themselves.

Bank 2

Account Owner G. Besso

Bank 2's record consists of a printout from Bank 2's database. According to this record, Account Owner G. Besso was G. Besso. Bank 2's record does not contain information about Account Owner G. Besso's domicile. Bank 2's record indicates that Account Owner G. Besso held one account, the type of which is not indicated. This record further indicates that the account was transferred to a suspense account for dormant assets with a balance of 51.00 Swiss Francs ("SF"), but the date of the transfer is not recorded. The account remains suspended.

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 three claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified Account Owner Menachem Besso, Account Owner Allegra Besso, and Account Owner Joseph Besso, who is the same person as Account Owner G. Besso. The Claimants' relatives' names and city and country of residence match the published names and city and country of residence of Account Owner Menachem Besso and Account Owner Allegra Besso. The Claimants' relative's city and country of residence match the unpublished city and country of residence of Account Owner Joseph Besso. The Claimant identified their relatives' street addresses, which match unpublished information contained in Bank 1's records. The Claimant also submitted a sample of Menachem Besso's signature, which matches the signature sample of Account Owner Menachem Besso contained in Bank 1's records. In support of their claim, the Claimants submitted the birth certificate of [REDACTED], containing signature samples for Giuseppe Besso and Menachem Besso, providing independent verification that the person who is claimed to be Account Owner Menachem Besso had the same name recorded in Bank 1's records as the name of Account Owner Menachem Besso.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Menachem Besso, and indicates that his date of birth was 15 July 1890 and that he was born in Greece, and a person named Allegra Besso, and indicates that her date of birth was 28 February 1894, and that she was born in Corfu, which matches information provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. The CRT notes that there are no other claims to these accounts.

The Claimants' relative's first initial and family name match the unpublished first initial and family name of Account Owner G. Besso. The CRT notes that Bank 2's record does not contain any specific information about Account Owner G. Besso other than the first initial and family name. In support of their claim, the Claimants submitted the birth certificate of [REDACTED], containing signature samples for Giuseppe Besso, providing independent verification that the person who is claimed to be Account Owner G. Besso had the same name recorded in Bank 2's record as the name of Account Owner G. Besso. The CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified Account Owner G. Besso.

As noted above, the Claimants identified Account Owner Joseph Besso and Account Owner G. Besso as the same individual, and, given that the information in the Bank records regarding the two is not contradictory, the CRT concludes that the two accounts were, in fact, held by the same individual, and that the Claimants have plausibly identified this person as their relative.

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 Account Owner Menachem Besso and Account Owner Allegra Besso were Jewish, and that they were deported to Auschwitz, where they perished. The

Claimant stated that Account Owner Joseph Besso was Jewish, and was forced to live in hiding from 1941 to 1945.

As noted above, persons named Menachem Besso and Allegra Besso were included in the CRT's database of victims.

The Claimants' Relationships to the Account Owners

The Claimants, who are father and son, have plausibly demonstrated that they are related to the Account Owners by submitting specific information and documents, demonstrating that Account Owner Joseph Besso was Claimant [REDACTED 1]'s grandfather's uncle by marriage, that Account Owner Menachem Besso was Claimant [REDACTED 1]'s grandfather's cousin, and that Account Owner Allegra Besso was Account Owner Menachem Besso's wife.

The CRT notes that the Claimants identified unpublished information about the Account Owners contained in the Banks' records. The CRT further notes that the Claimants submitted the birth certificate of [REDACTED], containing signature samples for Joseph (Giuseppe) Besso and Menachem Besso. The CRT notes that it is plausible that this document is a document which most likely only a family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owners were well known to the Claimants as family members, and all of this information supports the plausibility that the Claimants are related to the Account Owners, as they have asserted in their Claim Forms. The CRT notes that Claimant [REDACTED 1] has a sister, who is not represented in this decision.

The Issue of Who Received the Proceeds

With respect to the account of unknown type owned by Account Owner Menachem Besso and Account Owner Allegra Besso, given that Account Owner Menachem Besso and Account Owner Allegra Besso perished in the Holocaust; that there is no record of the payment of their account to them; that Account Owner Menachem Besso and Account Owner Allegra Besso and their heirs would not have been able to obtain information about their account after the Second World War from Bank 1 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, the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Menachem Besso and Account Owner Allegra Besso 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.

With respect to the custody account owned by Account Owner Joseph Besso, which Bank 1's records indicate was closed on 25 March 1939, the CRT notes that Italy formed an alliance with Germany on 25 October 1936, and that therefore it is considered that from this date there existed the possibility of oppression. Accordingly, an asset closed after 25 October 1936 will only be considered closed properly if there is evidence that the asset was paid to the account owner or

authorized party. In this case, Bank 1's documents do not indicate to whom the account was closed, nor do they reflect the circumstances of the account closure. Given that Account Owner Joseph Besso and his family remained in Italy in hiding during the Second World War; that Account Owner Joseph Besso and his heirs would not have been able to obtain information about his account after the Second World War from Bank 1, even for the stated purpose of obtaining indemnification from the German authorities, 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)(ii), (h) and (j) as provided in Article 28 of the Rules, the CRT concludes it is plausible that the account proceeds were not paid to Account Owner Joseph Besso or his heirs.

With respect to the account of unknown type held by Account Owner G. Besso at Bank 2, Bank 2's record indicates that the account was transferred to a suspense account, where it remains.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that Account Owner Joseph Besso was Claimant [REDACTED 1]'s grandfather's uncle by marriage, that Account Owner Menachem Besso was Claimant [REDACTED 1]'s grandfather's cousin, and that Account Owner Allegra Besso was Account Owner Menachem Besso's wife, and those relationships justify an Award. Third, the CRT has determined that neither Account Owner G. Besso nor his heirs received the proceeds of the account at Bank 2, and that it is plausible that neither the Account Owners nor their heirs received the proceeds of the accounts at Bank 1.

Further, the CRT notes that Claimant [REDACTED 1] is Claimant [REDACTED 3]'s father, and therefore is closer in relationship to the Account Owners, and therefore has a better entitlement to the accounts than does Claimant [REDACTED 3].

Amount of the Award

With respect to the account of unknown type held by Account Owner Menachem Besso and Account Owner Allegra Besso and the custody account held by Account Owner Joseph Besso, 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 SF 3,950.00 and the average value of a custody account was SF 13,000.00, for a combined average value of SF 16,950.00 for the two accounts at issue. 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 211,875.00 for these accounts.

With respect to the account of unknown type owned by Account Owner G. Besso, Bank 2's record indicates that the balance of the account was SF 51.00, but the date of this balance is not recorded. Therefore, the CRT is not able to calculate the historical value of the account and shall

treat it as an account with an unknown value. 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 SF 3,950.00. 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 49,375.00 for this account.

Therefore, the total award amount is SF 261,250.00.

Division of the Award

In this case, Claimant [REDACTED 1] is representing his sister, [REDACTED 2], née [REDACTED].

With respect to the account held by Account Owner Menachem Besso and Account Owner Allegra Besso, according to Article 23(1)(e) of the Rules, if neither the Account Owner's spouse nor any of the descendants of the Account Owner's parents have submitted a claim, the award shall be in favor of any descendants of the Account Owner's grandparents who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 1] and his sister are the great-great-grandchildren of Account Owner Menachem Besso's grandparents, [REDACTED] and [REDACTED]. Accordingly, Claimant [REDACTED 1] and his sister are each entitled to the one-half of the award amount for this account.

With respect to the accounts held by Account Owner Joseph Besso and Account Owner G. Besso, according to Article 23 (1)(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23(1)(a-f) have submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or by marriage who have submitted a claim, consistent with the principles of fairness and equity. In this case, Claimant [REDACTED 1], represented party [REDACTED 2], née [REDACTED], and Claimant [REDACTED 3] are the descendants of Account Owner Joseph Besso's great-grandparents. However, as Claimant [REDACTED 1] and represented party [REDACTED 2], née [REDACTED] are closer in relationship to Account Owner Joseph Besso and Account Owner G. Besso, they are each entitled to one-half of the award amounts for these accounts. Claimant [REDACTED 3], who is Claimant [REDACTED 1]'s son, is not entitled to share in the award amount for these accounts.

In summary, Claimant [REDACTED 1] and represented party [REDACTED 2], née [REDACTED] are each entitled to receive one-half 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
21 June 2006