

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
acting on behalf of [REDACTED 2] and [REDACTED 3]

in re Account of Eugen Binder

Claim Number: 500607/HS

Award Amount: 75,196.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the unpublished account of Eugen Binder (the “Account Owner”) at the New York branch of [REDACTED] (the “Bank”).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 a Claim Form identifying the Account Owner as Eugen Binder, a family friend whose heirs are the Claimant’s mother and uncle, represented parties [REDACTED 2] and [REDACTED 3]. The Claimant indicated that Eugen Binder, a national of Romania and, later, of Austria, was married to [REDACTED], née [REDACTED], in Constanta, Romania, some time before 1939. The Claimant stated that Eugen Binder was a maritime agent for a firm in Constanta, where he also resided between 1939 and 1953, at Strada Cuza Voda 36. The Claimant indicated that Eugen Binder was persecuted during the Second World War because his wife was Jewish. The Claimant added that Eugen Binder moved to Germany in approximately 1953 and from there to Vienna, Austria, where he and his wife resided at Hügelgasse 6/2. The Claimant stated that his great-aunt and great-uncle, [REDACTED] and [REDACTED], were close friends of Eugen and [REDACTED] Binder. The Claimant further indicated that Eugen Binder passed away on 25 May 1979 in Vienna, that his wife passed away on 30 October 1993, also in Vienna, and that the couple had no children.

The Claimant submitted Eugen Binder’s will, dated in 1939 in Constanta, and signed by Eugen Binder, and an inheritance certificate, dated in 1979 in Vienna, together indicating that Eugen Binder formerly resided in Constanta and that his sole heir was his wife, [REDACTED]. The Claimant also submitted [REDACTED]’s holographic will, dated in 1991 in Vienna, naming [REDACTED] as the heir to her residual estate; and [REDACTED]’s will, dated in 1988, and

her death certificate, together indicating that [REDACTED] passed away in 1997 in Tel Aviv, and that the heirs to her residual estate are [REDACTED 2] and [REDACTED 3].

The Claimant indicated that he was born on 16 November 1952 in Bucharest, Romania. The Claimant represents his mother, [REDACTED 2], née [REDACTED], who was born on 12 June 1924 in Bacau, Romania; and his uncle, [REDACTED 3], who was born on 25 September 1925, also in Bacau.

The Claimant's Correspondence with the Bank

The Claimant indicated that he submitted his claim after seeing the Account Owner's name on a list of accounts at the Bank's New York branch, which were frozen in June 1941 under the United States' Trading With the Enemy Act (the "1941 Freeze").¹ In support of his claim, the Claimant submitted his correspondence with [REDACTED] (the "Bank Official"), dated from January 2002 to August 2002. In a letter to the Claimant, dated 6 May 2002, the Bank Official indicated that the Account Owner held a demand deposit account at the Bank's New York branch which was blocked under the 1941 Freeze from June 1941 until at least 25 April 1960, on which date the balance was 1,151.60 United States Dollars ("US \$").

Also in the Bank's letter of 6 May 2002, the Bank Official stated that a list of blocked accounts in the Bank's possession showed that the account was transferred to an unknown party on 28 August 1962, and that the account was closed by 30 August 1962. According to the Bank Official, accounts belonging to Romanian nationals were unblocked in 1960 pursuant to an American-Romanian treaty. The Bank Official further indicated that, according to the available records, the Bank was never informed that the Account Owner resided outside Romania. Finally, in the letter of 6 May 2002, after noting that the account could have been transferred to Romania, the Bank Official declined to offer an opinion as to its fate and stated that the Bank did not possess any additional information about the Account Owner.

In the Bank's letter of 6 May 2002, the Bank Official informed the Claimant that if he submitted a claim to the CRT, the CRT would be in a position to reimburse the Claimant for fees and lost interest on the account, whereas the Bank could not offer such compensation. In conclusion to the 6 May 2002 letter to the Claimant, the Bank Official offered, without prejudice, to settle the Claimant's claim by paying represented parties [REDACTED 2] and [REDACTED 3] US \$ 1,396.00, based on the earlier account balance.

Finally, the Claimant submitted a letter from the Bank, dated 2 August 2002, in which the Bank Official provided the Claimant with additional information about the CRT and the terms of the Holocaust Victim Assets Litigation, and reiterated the Bank's inability to pay any interest on the account.

In a telephone conversation with the CRT on 19 November 2004, the Claimant explained that the Bank's letter of 2 August 2002 marked his last contact with the Bank.

¹ During the Second World War the United States government froze certain foreign assets located in the United States, under the powers of the Trading with the Enemy Act of 1917 (50 U.S.C. App.). On 14 June 1941, President Roosevelt extended freezing controls to cover all of continental Europe (the "1941 Freeze"). Executive Order 8785 Regulating Transactions in Foreign Exchange and Foreign-Owned Property, Providing for the Reporting of All Foreign-Owned Property, and Related Matters (6 Fed. Reg. 2897). See PLUNDER & RESTITUTION: THE U.S. & HOLOCAUST VICTIMS' ASSETS, Staff Report of the Presidential Advisory Commission on Holocaust Assets in the United States, SR-44 (United States Government Printing Office, 2000) ("PLUNDER & RESTITUTION"), available at <http://www.pcha.gov>.

Information Available in the Bank's Records

The Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department provided the CRT with a list of accounts blocked in the 1941 Freeze, and a document related to foreign asset control regulations during the Second World War. According to these records, the Account Owner was Eugen Binder of Constanta, Romania. These records indicate that the Account Owner held a demand deposit account, numbered A U 8006, which had a balance of US \$ 1,395.75 when it was blocked on 14 June 1941.

The CRT notes that 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”) did not investigate the New York branch of the Bank, nor did the auditors report an account belonging to Eugen Binder. There is no evidence in the Bank's records provided by the HCPO that the Account Owner, or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant submitted Eugen Binder's will and an inheritance certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city as the Account Owner, as indicated in the Bank's records provided by the HCPO and in the Bank's correspondence with the Claimant. The CRT notes that the Bank acknowledged that the Claimant identified the Account Owner. Finally, the CRT notes that there are no other claims to this account.

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, who resided in Romania during the Second World War, was persecuted because his wife was Jewish.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that his mother and his uncle, represented parties [REDACTED 2] and [REDACTED 3], are the Account Owner's heirs by submitting an unbroken chain of wills, including those of the Account Owner, the Account Owner's wife, and the Claimant's great-aunt. Further, the CRT notes that the Bank acknowledged that the represented parties are the Account Owner's heirs.

The Issue of Who Received the Proceeds

The Bank's records provided by the HCPO and the Bank's correspondence together indicate that the Account Owner's account was frozen in June 1941, unfrozen in 1960, and transferred to an unknown party on 28 August 1962. The CRT notes that the United States reached a claims settlement agreement with Romania on 30 March 1960, which provided for payment by Romania to compensate Americans for war damage and for nationalization of property by the Romanian government following the War, and ended blocking of Romanian property located in the United States.²

However, given that, according to the available records, the Bank did not have contact with the Account Owner after he left Romania; that the account remained frozen for at least seven years after the Account Owner left Romania; that there is no record that the Account Owner or his heirs received the proceeds of the account; 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 (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 or his 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 represented parties [REDACTED 2] and [REDACTED 3]. 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 represented parties are the Account Owner's heirs, and those relationships justify an award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor his heirs, received the proceeds of the claimed account. Further, the CRT notes, that the represented parties, having established by an unbroken chain of wills that they are the Account Owner's heirs, have a better entitlement to the account than the Claimant.

Amount of the Award

In this case, the Account Owner held a demand deposit account. The Bank's records provided by the HCPO indicate that the value of the account as of 14 June 1941 was US \$ 1,395.75, equivalent to 6,015.68 Swiss Francs ("SF").³ The current value of this amount is determined 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 75,196.00.

² 25 Fed. Reg. 3458. *See also* PLUNDER & RESTITUTION at SR-232.

³ In converting the account balance to Swiss Francs, the CRT uses official exchange rates.

Division of the Award

According to Article 23(2)(b), if none of the named beneficiaries of the Account Owner's will or other inheritance documents pertaining to the Account Owner has submitted a claim, the CRT shall make an award to any claimant who has submitted an unbroken chain of wills or other inheritance documents, starting with the will of, or other inheritance documents pertaining to the Account Owner. Accordingly, as stated previously, the Claimant is not entitled to the award. As the Account Owner's heirs, represented parties [REDACTED 2] and [REDACTED 3] 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 or the represented parties 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 December 2004