

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

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

in re Account of F. Born

Claim Numbers: 207326/AV; 211613/AV

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the published account of F. Born (the “Account Owner”) at [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her maternal grandfather, Friedrich Born (or de Born), who was born on 25 June 1873 in Berlin, Germany, and was married to [REDACTED] in 1899. According to Claimant [REDACTED 1], her grandfather, who was Jewish, resided at Andràsyuka 132 in Budapest, Hungary, and also in St. Anna, Oberkrain, Yugoslavia (today Slovenia), and Bormia, Italy. Claimant [REDACTED 1] stated that her grandfather was a farmer and landowner, and that he held the title of “Baron.” Claimant [REDACTED 1] indicated that her grandfather had one son, [REDACTED], and two daughters, [REDACTED], née [REDACTED], and [REDACTED], née [REDACTED] (Claimant [REDACTED 1]’s adoptive mother). Claimant [REDACTED 1] further stated that her grandfather was arrested and detained at the Dachau concentration camp in September 1943, and that he perished at Dachau on 5 February 1944.

Claimant [REDACTED 1] submitted a decision from the chief of the civil administration for the Kärnten and Krain districts of the German Reich, dated 29 May 1941, declaring the seizure of all

of Friedrich Born's assets by the Nazi government; an application for restitution from the German government submitted by [REDACTED], dated 26 March 1958, indicating that Friedrich Born was her father and that he resided in Budapest; a decision from the appellate court in Trente, Italy, dated 8 November 1963, approving the adoption of Claimant [REDACTED 1] by [REDACTED] and [REDACTED]; and [REDACTED]'s will, dated 7 April 1981, naming Claimant [REDACTED 1] as her adoptive daughter and sole heir.

Claimant [REDACTED 1] indicated that she was born on 19 April 1944 in Graz, Austria. Claimant [REDACTED 1] previously submitted an ATAG Ernst & Young claim form in 1998 and an Initial Questionnaire ("IQ") with the Court in 1999, asserting her entitlement to a Swiss bank account owned by [REDACTED], née [REDACTED].¹

Claimant [REDACTED 2]

Claimant [REDACTED 2], who is Claimant [REDACTED 1]'s cousin, submitted a Claim Form also identifying the Account Owner as his maternal grandfather, Friedrich von Born, who was born on 25 June 1873 in Berlin, and was married to [REDACTED] on 22 February 1899 in Budapest. Claimant [REDACTED 2] specified that his grandfather, who was Jewish, had three children: [REDACTED], née [REDACTED], (Claimant [REDACTED 2]'s mother), [REDACTED], and [REDACTED], née [REDACTED]. Claimant [REDACTED 2] indicated that his grandfather held German and Hungarian citizenship, that he was a landowner, and that he resided in St. Anna until 1943. Claimant [REDACTED 2] further stated that his grandfather was subsequently detained at Dachau, where he perished in February 1944.

Claimant [REDACTED 2] submitted Friedrich Born's citizenship certificate, indicating that he resided in Budapest, and his death certificate, indicating that he resided in Budapest and that he perished on 5 February 1944 at Dachau. Claimant [REDACTED 2] further submitted [REDACTED]'s birth certificate, indicating that Friedrich Born was her father, and his own birth certificate, indicating that [REDACTED], née [REDACTED], was his mother. Finally, Claimant [REDACTED 2] submitted a genealogical handbook tracing the ancestry of the Born family, indicating that Friedrich Born was the father of [REDACTED] and that [REDACTED] was the father of [REDACTED 3].

Claimant [REDACTED 2] indicated that he was born on 26 January 1938 in Budapest. Claimant [REDACTED 2] is representing his cousin, [REDACTED 3], who was born on 9 April 1946 in Budapest.

¹ The CRT did not locate an account belonging to Claimant [REDACTED 1]'s relative, [REDACTED], née [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"). Claimant [REDACTED 1] should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information provided by Claimant [REDACTED 1] or upon information from other sources.

Information Available in the Bank's Record

The Bank's record consists of an extract from a bank ledger for the period of January 1943 to June 1943. According to this record, the Account Owner was F. Born, who resided in Budapest, Hungary. The Bank's record indicates that the Account Owner held a demand deposit account. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") indicated that the account was opened on 1 April 1943. The Bank's record further indicates that the account had a balance of 1,750.00 Swiss Francs ("SF") by June 1943. The Bank's record does not show when the account at issue was closed. The auditors who carried out the ICEP investigation of this bank did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. There is no evidence in the Bank's record that the Account Owner or his or her heirs closed the account 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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants' grandfather's last name, first initial, and city and country of residence match the published last name, first initial, and city and country of residence of the Account Owner.

In support of her claim, Claimant [REDACTED 1] submitted documents, including a declaration from the chief of the civil administration for the Kärnten and Krain districts of the German Reich and a claim for restitution from the German government, identifying her grandfather as Friedrich Born and indicating that he resided in Budapest. In support of his claim, Claimant [REDACTED 1] submitted his grandfather's citizenship and death certificates, identifying his grandfather as Friedrich Born and indicating that he resided in Budapest. These documents provide independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner.

In addition, the CRT notes that Claimant [REDACTED 1] filed an ATAG Ernst & Young claim form in 1998 and an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by [REDACTED], Friedrich Born's daughter, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED 1] had reason to

believe that her relatives owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 1].

The CRT further notes that the name F. Born appears only once on the ICEP List. 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 Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and that he perished at Dachau in February 1944. Claimant [REDACTED 1] also submitted a decision from the chief of the civil administration for the Kärnten and Krain districts of the German Reich, dated 29 May 1941, declaring the seizure of all of the Account Owner's assets by the Nazi government, and Claimant [REDACTED 2] submitted the Account Owner's death certificate, indicating that he perished on 5 February 1944 at Dachau.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimants' grandfather. Claimant [REDACTED 1] submitted her mother's claim for restitution from the German government, identifying the Account Owner as [REDACTED]'s father, and a decision from the appellate court in Trente, Italy, approving the adoption of Claimant [REDACTED 1] by [REDACTED] and [REDACTED]. Claimant [REDACTED 2] submitted his mother's birth certificate, identifying the Account Owner as [REDACTED]'s father, and his own birth certificate, identifying [REDACTED], née [REDACTED], as his mother.

The Issue of Who Received the Proceeds

Given that the Account Owner was arrested and detained at the Dachau concentration camp in September 1943; that the account was opened on 1 April 1943, only a few months before the Account Owner's arrest; that the Account Owner perished in Dachau in February 1944; that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; that the Account Owner's 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 the Claimants. First, the claims

are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their grandfather, and that relationship justifies 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.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The Bank's record indicates that the value of the demand deposit account was SF 1,750.00 on an unspecified date between April 1943 and June 1943. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 26,750.00.

Division of the Award

According to Article 23(1)(c) of the Rules, 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, Claimant [REDACTED 2] is representing [REDACTED 3], and Claimant [REDACTED 1], Claimant [REDACTED 2], and [REDACTED 3] are all grandchildren of the Account Owner.² Accordingly, Claimant [REDACTED 1], Claimant [REDACTED 2], and [REDACTED 3] 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
21 September 2005

² The CRT notes that, according to Article 46(5) of the Rules, the definition of "child" includes an adopted child.