

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Peter Brumlik
also acting on behalf of Margaret Brumlik

and to Claimant Eli Markus-Levisohn
also acting on behalf of Gerda Markus-Levisohn

in re Account of K. Brumlik

Claim Numbers: 400166/JW/AC;¹ 400829/JW/AC; 400830/JW/AC

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of Peter Brumlik (“Claimant Brumlik”) to the account of K. Brumlik, and the claims of Eli Markus-Levisohn (“Claimant Levisohn”) (together the “Claimants”) to the accounts of K. Brumlik and Oskar Morgenstern.² This award is to the published account of K. Brumlik (the “Account Owner”) at the [REDACTED] (the “Custodian”).³

¹ Claimant Brumlik’s mother submitted an additional claim, which is registered under the Claim Number 209115. The CRT will treat this claim in a separate determination.

² The CRT will treat Claimant Levisohn’s claim to the account of Oskar Morgenstern in a separate determination.

³ The CRT notes that it has jurisdiction over accounts at the *Schweizerische PostFinance* (the “Custodian”), under the Settlement Agreement reached by the parties to the Holocaust Victim Assets Litigation (the “Settlement Agreement”), even though the Custodian is not a bank and was not included in the investigation of Swiss banks carried out pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) in order to identify accounts of Victims of Nazi Persecution. According to the Settlement Agreement, “Deposited Assets means (1) any and all Assets actually or allegedly deposited . . . with *any custodian, including, without limitation, a bank, branch or agency of a bank, other banking organization or custodial institution or investment fund established or operated by a bank incorporated, headquartered or based in Switzerland at any time (including, without limitation, the affiliates, subsidiaries, branches, agencies, or offices of such banks, branches, agencies, custodial institutions, and investment funds that are or were located either inside or outside Switzerland at any time) in any kind of account* (including, without limitation, a safe deposit box or securities account) prior to May 9, 1945, that belonged to a Victim or Target of Nazi Persecution . . . and/or (2) *any and all Assets that the ICEP or the Claims Resolution Tribunal determines should be paid to a particular claimant or to the Settlement Fund because the Asset definitely or possibly belonged to an individual [or business entity] . . . actually persecuted by the Nazi Regime or targeted for persecution by the Nazi Regime for any reason.*” [emphasis added] In re Holocaust Victim Asset Litigation, 105 F. Supp. 2d 139 (E.D.N.Y. 2000), Exhibit I to Plan of Allocation, Class Action Settlement Agreement (26 January 1999), 2-3, text available at http://www.swissbankclaims.com/PDFs_Eng/exhibitItoPlanofAllocation.pdf.

Furthermore, although it was not a party to the Holocaust Victim Assets Litigation, the Custodian is among the parties whose liability is released by the Settlement Agreement, since “Releasees means the Settling Defendants; the Swiss National Bank; Other Swiss Banks; the Swiss Bankers Association; the Swiss Confederation (including,

All awards are published. Where the claimants have not requested confidentiality, as in this case, only the name of the custodian has been redacted.

Information Provided by the Claimants

Claimant Brumlik

Claimant Brumlik submitted a Claim Form identifying the Account Owner as his paternal grandfather, K. Brumlik, who was born in Prague, Czechoslovakia (now the Czech Republic), and was married to Ella Brumlik in Prague. Claimant Brumlik indicated that his grandfather, who was Jewish, worked as a lawyer in Prague, where he lived until 1939, when he moved to Vienna, Austria. Claimant Brumlik indicated that he did not know his grandfather's full first name, only that his first name initial was "K." The Claimant stated that his grandparents had one child, Jan Peter Brumlik (Claimant Brumlik's father), who was born on 28 May 1918, and was married to Margaret Brumlik, née Pollack. Claimant Brumlik indicated that in approximately 1942, his grandparents were deported to Auschwitz, where they perished. According to Claimant Brumlik, his father mentioned that Claimant Brumlik's grandfather had a Swiss bank account, but Claimant Brumlik's father was unable to remember the account number, and was therefore unable to retrieve the assets. Claimant Brumlik submitted a copy of his father's death certificate, probate documents, and will, indicating that Jan Peter Brumlik was married to Margaret Brumlik, née Pollack, that he had a son named Peter Ronald Brumlik, and that he bequeathed his residual estate to his wife.

Claimant Brumlik indicated that he was born on 26 May 1941 in London, the United Kingdom. Claimant Brumlik is representing his mother, Margaret Brumlik, née Pollack, who was born on 10 June 1914 in Vienna.

Claimant Levisohn

Claimant Levisohn submitted a Claim Form identifying the Account Owner as his mother's first husband,⁴ Kurt Brumlik, who was born on 1 July 1907 in Lobositz, Czechoslovakia (now Lovosice, the Czech Republic), and was married to the Claimant's mother, Gerda Brumlik, née Schustermann, on 12 December 1932 in Berlin, Germany. Claimant Levisohn indicated that Kurt Brumlik, who was Jewish, was a businessman and that he lived in Prague during the Second World War. Claimant Levisohn further indicated that his mother's first husband was deported to Theresienstadt in 1942 and subsequently to Auschwitz, where he perished. Claimant Levisohn submitted copies of documents, including: the marriage certificate of his mother and her first husband, indicating that Kurt Brumlik and Gerde Schustermann were married in Berlin on 12

without limitation, the Cantons and *all other political subdivisions and governmental instrumentalities in Switzerland*); *all business concerns (whether organized as corporations or otherwise) headquartered, organized, or incorporated in Switzerland as of October 3, 1996 . . .*" [emphasis added] *Id* at 3. Additionally, the CRT has previously awarded an account held at a Swiss bank which was not included in the ICEP Investigation and was not among the Settling Defendants (*in re Account of Martin Frank*, approved 10 September 2004).

⁴ Claimant Levisohn indicated that Kurt Brumlik was his mother's first husband, and that she remarried as a widow to his father, David Levisohn, after the Second World War.

December 1932, that Kurt Brumlik was born on 1 July 1907 in Lobositz, and that he resided in Prague; a translation of Kurt Brumlik's will dated 25 September 1944 in Theresienstadt,⁵ indicating that his wife, Gerda Brumlik, née Schustermann, was the sole heir of his estate; and a copy of his own Israeli identification card, indicating that Eli Levisohn's mother's name is Gerda.

The Claimant indicated that he was born on 24 October 1951 in Berlin. The Claimant is representing his mother, Gerda Markus-Levisohn, formerly Brumlik, née Schustermann, who was born on 28 February 1910 in Berlin.

Information Available in the Custodian's Records

The CRT notes that the Custodian was not included in the investigation to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"). The documents regarding this account were obtained from the Swiss Federal Archive in Bern, Switzerland, and are described below.

Information Available in the Swiss Federal Archive

In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the registration of assets belonging to K. Brumlik. The records referenced in this award consist of documents relating to the survey of assets held in Switzerland by foreigners or stateless persons who were or who were believed to have been victims of racial, religious or political persecution, conducted by Swiss banks pursuant to a Federal decree in 1962 (the "1962 Survey"), including a report of this account to the Swiss Department of Justice and a statement of assets. According to these records, the Account Owner was K. Brumlik, who resided in Prague, Czechoslovakia. The records indicate that the Account Owner held a demand deposit account. The amount in the account as of 1 September 1963 was 49.52 Swiss Francs ("SF"). The records further indicate that the last recorded date of contact with the Account Owner occurred in 1941. The available records do not indicate the disposition of this account. There is no evidence in the records that the Account Owner or his heirs closed the account and received the proceeds themselves.

⁵ The CRT notes that Claimant Levisohn indicated that his mother's first husband perished on 24 October 1942. The CRT also notes that a database containing the names of victims of Nazi persecution includes a person named Kurt Brumlik, and indicates that his date of birth was 1 July 1907 and that he was transferred from Theresienstadt to Auschwitz on 23 October 1944. Given this information and that Kurt Brumlik's will was signed on 25 September 1944 in Theresienstadt, it is more likely that the Kurt Brumlik perished in 1944.

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

Claimant Brumlik has plausibly identified the Account Owner. Claimant Brumlik's grandfather's first initial and last name match the published first name initial and last name of the Account Owner. Claimant Brumlik identified the Account Owner's city and country of residence, which matches the unpublished information about the Account Owner contained in the Swiss Federal Archive records.

Claimant Levisohn has also plausibly identified the Account Owner. Claimant Levisohn's mother's first husband's first initial and last name match the published first name initial and last name of the Account Owner. Claimant Levisohn identified the Account Owner's city and country of residence, which matches the unpublished information about the Account Owner contained in the Swiss Federal Archive records. In support of his claim, Claimant Levisohn submitted documents, including his mother's first husband's will, providing independent verification that the person who is claimed to be the Account Owner had the same first initial and last name, and resided in the same country recorded in the Swiss Federal Archive records as the first initial and last name, and country of residence of the Account Owner. Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Kurt Brumlik, and indicates that his date of birth was 1 July 1907, which matches the information about the Account Owner provided by Claimant Levisohn. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that Claimant Brumlik's relative and Claimant Levisohn's relative are not the same person. However, given that the Claimants have identified all published and unpublished information about the Account Owner that is available in the Swiss Federal Archive records; that the information provided by each claimant supports and in no way contradicts any information available in the Swiss Federal Archive records; that there is no additional information in the Swiss Federal Archive records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that there are no other claims to this account, the CRT finds that Claimant Brumlik and Claimant Levisohn have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have each made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant Brumlik stated that the Account Owner was Jewish, and that he perished in Auschwitz in 1942. Claimant Levisohn stated that the Account Owner was Jewish

and that he perished in Auschwitz in 1944. As noted above, a person named Kurt Brumlik was included in the CRT's database of victims.

The Claimants' Relationship to the Account Owner

Claimant Brumlik has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was his grandfather.

The CRT notes that Claimant Brumlik identified unpublished information about the Account Owner as contained in the Swiss Federal Archive records. The CRT further notes that Claimant Brumlik submitted copies of his father's death certificate, probate documents, and will, which provide independent verification that Claimant Brumlik's father bore the same family name as the Account Owner. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to Claimant Brumlik as a family member, and all of this information supports the plausibility that the Claimant Brumlik is related to the Account Owner, as he has asserted in his Claim Form. There is no information to indicate that the Account Owner has surviving heirs, other than the party whom Claimant Brumlik is representing.

Claimant Levisohn has also plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the first husband of Claimant Levisohn's mother. These documents include a translation of Kurt Brumlik's will indicating that his wife, Gerda Brumlik, née Schustermann, was the sole heir of his estate; and a copy of his own Israeli identification card, indicating that his mother's name is Gerda. There is no information to indicate that the Account Owner has surviving heirs, other than the party whom Claimant Levisohn is representing.

The CRT notes that Claimant Levisohn identified unpublished information about the Account Owner as contained in the Swiss Federal Archive records. The CRT notes that Claimant Levisohn also identified information which matches information contained in the Yad Vashem records. The CRT further notes that Claimant Levisohn submitted a copy of the will of his mother's first husband. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant Levisohn as a relative, and all of this information supports the plausibility that the Claimant Levisohn is related to the Account Owner, as he has asserted in his Claim Form.

The Issue of Who Received the Proceeds

According to the records from the Swiss Federal Archives, the account was registered in the 1962 Survey and that the last recorded date of contact with the Account Owner was in 1941. Given that the Account Owner lived in Nazi-occupied Czechoslovakia; that the account was dormant since 1941; 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 and his heirs would not have been able to obtain information about his account after the Second World War from the Custodian 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 Presumption (h), 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 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 Margaret Brumlik and Gerda Markus-Levisohn. 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 Claimant Brumlik's paternal grandfather and the first husband of Claimant Levisohn's mother, 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 Margaret Brumlik, as the Account Owner's only son's sole heir, has a better entitlement to the account than Claimant Brumlik, the Account Owner's grandson, and that represented party Gerda Markus-Levisohn, as the Account Owner's widow and sole heir, has a better entitlement to the account than Claimant Levisohn, who is not related to the Account Owner.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The Swiss Federal Archive records indicate that the value of the account as of 1 September 1963 was SF 49.52. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 285.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1963. Consequently, the adjusted balance of the account at issue is SF 334.52. 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, to produce a total award amount of SF 26,750.00.

Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each group of Claimants has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant Brumlik' group and Claimant Levisohn's group are each entitled to one-half of the Award amount.

According to Article 23(2)(c) of the Rules, if a claimant bases a claim of entitlement on a chain of inheritance but has not submitted an unbroken chain of wills or other inheritance documents, the CRT may use the general principles of distribution established in Article 23(1) to make allowance for any missing links in the chain, consistent with the principles of fairness and equity. Moreover, according to Article 23(1)(c), 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 Brumlik is representing his mother, who is the daughter-in-law of the Account Owner. Though Claimant Brumlik did not submit a copy of his grandfather's will, Claimant Brumlik did submit a copy of his father's will, which indicates that Margaret Brumlik was entitled to all of his property. Accordingly, Claimant Brumlik's mother, represented party Margaret Brumlik, is entitled to one-half of the total award amount.

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for the distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. With respect to Claimant Levisohn, the Claimant is representing his mother, whose first husband was the Account Owner. Claimant Levisohn submitted a copy of the Account Owner's will, which states that Gerda Brumlik was the sole heir of the Account Owner. Accordingly, Claimant Levisohn's mother, represented party Gerda Markus-Levisohn, is entitled to one-half of the total award amount.

As noted above, the Claimants are not entitled to share in the award.

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
27 February 2007