

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]

in re Accounts of Jenny Gans and Max (Moses) Gans

Claim Numbers: 708134/NB;¹ 708135/NB^{2,3}

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based on the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Jenny Gans-Premsele, Max Gans, and *Premsele & Hamburger*.⁴ This Certified Award is to the unpublished account of Jenny Gans (“Account Owner Jenny Gans”) and Max (Moses) Gans (“Account Owner Max Gans”) (together the “Account Owners”) at the Geneva branch of the [REDACTED] (“Bank I”); the unpublished account of the Account Owners at the Bern branch of Bank I; and the unpublished account of the Account Owners at the [REDACTED] (“Bank II”) (together the “Banks”).

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

¹ Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) did not submit a Claim Form to the CRT. However, in 1999, she submitted an Initial Questionnaire (“IQ”), numbered GER 0002098, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 708134.

² In a separate decision approved on 29 September 2008, the CRT treated the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) to the Account of M. Gans.

³ Claimant [REDACTED 2] did not submit a Claim Form to the CRT. However, in 1999, he submitted an IQ, numbered GER 0002099, to the Court in the United States, which was forwarded to the CRT, and has been assigned claim number 708135.

⁴ The CRT did not locate an account belonging to Jenny Gans (Gans-Premsele), Max Gans, or *Premsele & Hamburger* 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”).

Information Provided by the Claimants

Claimant [REDACTED 1] submitted an Initial Questionnaire (“IQ”) identifying Account Owner Jenny Gans as herself, [REDACTED 1], née [REDACTED], who was born on 25 January 1919, and Account Owner Max Gans as her husband, Max (Moses) Heiman Gans, who was born on 12 May 1917. Claimant [REDACTED 2], who is Claimant [REDACTED 1]’s son, submitted a similar IQ, identifying the Account Owners as his parents, Max (Moses) Heiman Gans and Jenny Gans.

The Claimants indicated that Max Gans, who was an antiques dealer, resided with his wife at 169 Sarphatistraat, Amsterdam, the Netherlands, until they fled to Switzerland in July 1942 in order to escape Nazi persecution. The Claimants stated that upon arrival in Switzerland, Max and Jenny Gans, who were Jewish, were detained in a number of Swiss internment camps, in which they both performed forced labor. According to the Claimants, Max and Jenny Gans ultimately received a release from the internment camps, and subsequently resided as refugees in Geneva. The Claimants stated that the couple did not own a house in Switzerland, but resided at the *Hotel du Lac*, Vesenz-Geneva; at 1 rue Marignac, Geneva; and at 5 Avenue Weber, Geneva.

The Claimants indicated that as Jewish refugees in Switzerland during the Second World War, Max and Jenny Gans were not permitted to work, and therefore were dependant while in Switzerland upon the financial assistance that they received from a person named Hartog J. Lamon, who resided in New York, New York, the United States, and who regularly transferred United States Dollars (“US \$”), from the *Chase National Bank of the City of New York* to Max and Jenny Gans.

The Claimants indicated that Max and Jenny Gans first opened a joint US dollar-denominated account on 12 November 1942 at the Geneva branch of Bank I in order to deposit the financial assistance payments that they received from their acquaintance in the United States. The Claimants explained that due to strict Swiss National Bank regulations prevailing at the time, the Account Owners were only permitted to receive small amounts of dollars, which the Claimants stated were not sufficient to provide for their family.

The Claimants also stated that by October 1943, all assets belonging to refugees living in Switzerland were to be managed by and held at Bank II. Accordingly, the Claimants requested in November 1943 that Bank I transfer all subsequent financial assistance payments received in their name from Mr. Lamon in New York, to a new account which was opened in their name at Bank II.

The Claimants finally stated that on 18 July 1944, Max Gans requested that Bank I open an account in the names of himself and his wife at the Bern branch of Bank I.

The Claimants indicated that Max Gans passed away on 3 July 1987 in Amsterdam.

In support of their claims, the Claimants submitted numerous documents evidencing the existence of accounts held at the Banks by Max and Jenny Gans, which are described in more detail below.

Claimant [REDACTED 1] indicated that she was born on 25 January 1919, and Claimant [REDACTED 2] indicated that he was born on 25 February 1948.

Information Available in the Banks' Records

The CRT notes that the auditors who carried out the investigation of the Banks 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 report any accounts belonging to Jenny Gans or Max Gans during their investigation of the Banks.

The documents evidencing the existence of accounts at the Banks were forwarded by the Claimants to the CRT, and consist of an opening contract letter, account statements from the Banks, receipts and transfer orders, and correspondence with the Banks dating from 21 August 1942 to 8 February 1945.

These documents indicate that the Account Owners were Mr. Max (Moses) Gans and Mrs. Jenny Gans, who resided at the *Lac Hotel*, Vésénaz, Switzerland in late 1942, and later in Geneva, Switzerland.

Accounts at Bank I

According to the records submitted by the Claimants, the Account Owners held a joint US dollar-denominated demand deposit account at the Geneva branch of Bank I, and a US dollar-denominated demand deposit account at the Bern branch of Bank I. The records further indicate that Hartog J. Lamon, who resided at 190 Riverside Drive in New York, regularly transferred various dollar amounts to the joint dollar accounts of Max and Jenny Gans held at Bank I. The Claimants also submitted various items of correspondence with Bank I, indicating that the Account Owners were subject to strict regulations imposed by the Swiss National Bank, with regard to the amount of dollars that could legally be transferred from the United States to Switzerland.

The records also contain a letter dated 18 July 1944 sent by Account Owner Max Gans to Bank I, asking Bank I to transfer US \$750.00 to a dollar account to be opened at the Bern branch of Bank I. The records contain a financial statement issued by the Bern branch of Bank I, dated 15 December 1944, listing various transactions recorded on the Account Owners' demand deposit account at that bank, dating from 25 July 1944 to 14 December 1944. According to these records, the Account Owners' demand deposit account at the Bern branch of Bank I had a balance of US \$753.40 as of 14 December 1944; those records indicate that Bank I paid that entire amount to Account Owner Max Gans on that date.

The final document in the records consists of a notification issued by the Bern branch of Bank I to Account Owner Max Gans, dated 8 February 1945, indicating that a credit of US \$110.00, originating from H. J Lamon, was due to Account Owner Max Gans.

The CRT notes that Bank I's records contain no further documentation regarding the accounts' disposition past 8 February 1945.

Account at Bank II

The records indicate that the Account Owners also held a joint demand deposit account, numbered N3575, at Bank II.

The Banks' records contain a letter dated 3 November 1943 from Account Owner Max Gans and addressed to the Geneva branch of Bank I, indicating that he requested that Bank I henceforth transfer all sums of money received in his name at Bank I to his joint account at Bank II, pursuant to the orders of the Police in Bern and the Swiss regulations regarding refugee assets at the time.⁵ The last-dated Bank II document provided by the Claimants is dated 14 March 1944.

There is no evidence in the Banks' records that the Account Owners or their heirs closed the account held at Bank II 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 Owners

The Claimants have plausibly identified the Account Owners. Claimant [REDACTED 2]' parents' names match the unpublished names of the Account Owners contained in the Banks' records, and Claimant [REDACTED 1]'s own name and her husband's name match the unpublished names of the Account Owners.

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, and that they fled the

⁵ The CRT notes that pursuant to the Swiss Federal Council's Decree of 10 March 1943 (the "Decree"), the assets of all refugees who had entered Switzerland after 1 August 1942 were confiscated by the Swiss Federal authorities and held for them in accounts at the [REDACTED] (Bank II). The Decree applied retroactively to refugees who entered Switzerland after 1 August 1942, and provided that cash exceeding 100.00 Swiss Francs, securities, and valuables belonging to refugees were to be put under the control of the Swiss Federal authorities. See Independent Commission of Experts, Switzerland - Second World War, *Switzerland, National Socialism, and the Second World War: Final Report*, at 158-59 (2002) ("*Bergier Final Report*"). See also Independent Commission of Experts, Switzerland - Second World War, *Die Schweiz und die Fluchtlinge zur Zeit des Nationalsozialismus (Switzerland and Refugees in the Nazi Era)* ("*Refugee Report*").

Netherlands for Switzerland in July 1942 in order to escape Nazi persecution. The Claimants also indicated that the Account Owners were detained in various internment camps in Switzerland, in which they also performed forced labor.

The Claimants' Relationships to the Account Owners

Claimant [REDACTED 1] has plausibly demonstrated that she is Account Owner Jenny Gans and that her husband was Account Owner Max Gans; and Claimant [REDACTED 2] has plausibly demonstrated that he is the son of the Account Owners. The CRT notes that the Claimants identified unpublished information about the Account Owners as contained in the Banks' records.

The Issue of Who Received the Proceeds

With respect to the Account Owners' joint account at the Geneva branch of Bank I, the CRT notes that in November 1943, Account Owner Max Gans requested that Bank I transfer all financial assistance payments received from Hartog J. Lamon, to the Account Owners' demand deposit account at Bank II. Given that the CRT's precedent and historical records indicate that all assets belonging to refugees in Switzerland were to be controlled by the Swiss authorities and held at Bank II,⁶ the CRT concludes that by November 1943, the Account Owners' account at the Geneva branch of Bank I no longer functioned as a regular account, but was used instead as a mere conduit utilized to transfer funds from Bank I to Bank II.

With regard to the demand deposit account held at the Bern branch of Bank I, which had been opened pursuant to the request of Account Owner Max Gans on 18 July 1944, the CRT notes that Account Owner Max Gans was paid the balance of that account. Bank I's records include a bank statement indicating that on 31 December 1944, Bank I's Bern branch paid the full balance of that account, namely US \$753.40, to Account Owner Max Gans, and that Bank I would further credit him US \$110.00 in the near future. Therefore, the CRT concludes that Account Owner Max Gans received the proceeds of the Account Owners' demand deposit account at the Bern branch of Bank I.

With regard to the joint demand deposit account, numbered N3575, held by the Account Owners at Bank II, to which all of the proceeds held by the Account Owners at the Geneva branch of Bank I were transferred, given that refugees in Switzerland whose assets were placed in accounts at Bank II by the Swiss authorities generally could not freely dispose over their accounts;⁷ that a number of account owners could not retrieve the value of those accounts following the Second World War,⁸ that complaints of refugees mostly concerned the fact that their deposited assets were not returned;⁹ that the last-dated bank record provided by the Claimants evidencing the Account Owners' contact with Bank II is dated 14 March 1944; that there is no record of the

⁶ See *supra*, note 5.

⁷ *Refugee Report*, at 295, 315.

⁸ *Refugee Report*, at 309, 312 ff.

⁹ Jung, Joseph (ed.): *Zwischen Bundeshaus und Paradeplatz - Die Banken der Credit Suisse Group im Zweiten Weltkrieg (Between Parliament and Paradeplatz: The Banks of the Credit Suisse Group in the Second World War)*, Zurich: NZZ Verlag, 2001, at 704.

payment of the Account Owners' account to them nor any record of a date of closure of this account; that the Account Owners would not have been able to obtain information about their account after the Second World War from Bank II 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 Owners. 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, Claimant [REDACTED 1] has plausibly demonstrated that she is Account Owner Jenny Gans, and that Account Owner Max Gans was her husband, and that relationship justifies an Award, and Claimant [REDACTED 2] has plausibly demonstrated that the Account Owners were his parents, and that relationship justifies an award. Third, the CRT has determined that it is plausible that the Account Owners did not receive the proceeds of the claimed account held at Bank II.

Amount of the Award

In this case, the Account Owners held one demand deposit account at Bank II. According 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 ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs ("SF"). 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 25(1) of the Rules, if an account is a joint account, as is the case here, 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, the CRT presumes that Account Owner Jenny Gans and Account Owner Max Gans each owned a half-share in the awarded demand deposit account at Bank II.

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. Article 25(1) stipulates that this rule shall apply even if one of the account owners is still alive.

Furthermore, according to Article 23(1)(b) of the Rules, if the account owner's spouse and descendants have submitted a claim, the spouse shall receive one-half of the account and any descendants who have submitted a claim shall receive the other half in equal shares by representation. Accordingly, Claimant [REDACTED 1], who is Account Owner Jenny Gans as well as Account Owner Max Gans' wife, is entitled to the fifty percent of the account that belongs to herself, as well as fifty percent of Account Owner Max Gans's half-share in the demand deposit account. The remainder of Account Owner Max Gans's half-share of the demand deposit account is to be awarded to his son, Claimant [REDACTED 2]. Consequently, Claimant [REDACTED 1] is entitled to three-fourths of the total Award amount, or SF 20,062.50, and Claimant [REDACTED 2] is entitled to one-fourth of the total Award Amount, or SF 6,687.50.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
3 June 2009