

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Maria Victoria Altmann
also acting on behalf of Nelly Auersperg,
Francis Gutmann and Elinor Campiche
represented by E. Randol Schoenberg

in re Accounts of Otto Gutmann

Claim Number: 215866/LV

Award Amount: 242,750.00 Swiss Francs

This Certified Award is based upon the claim of Maria Victoria Altmann, née Bloch-Bauer, (the “Claimant”) to the published accounts of Otto Gutmann (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner, Otto Gutmann, as the brother of her sister’s husband, who was born on 26 February 1890 in Vienna, Austria. The Claimant indicated that her sister, Luise Gutmann, née Bloch-Bauer, was married to Viktor Gutmann, and that they had two children: Nelly Auersperg, née Gutmann, and Francis Gutmann. According to information provided by the Claimant’s niece, Nelly Auersperg, Otto Gutmann’s parents were Aladar Gutmann von Gelse and Beliscse and Ottilie Pollak von Rudin. According to Ms. Auersperg, Otto Gutmann had two brothers, Erno and Viktor. According to information provided by Ms. Auersperg, Aladar Gutmann von Gelse and Beliscse and Ottilie Pollak von Rudin were given the titles Baron and Baroness, respectively, by King Franz Josef I, and their sons Erno, Otto and Viktor were given the title Baron. Ms. Auersperg indicated that Otto Gutmann was a civil engineer and industrialist who owned a factory named *S.H. Gutmann, Inc.*, which was located in Beliscse, Yugoslavia (now Croatia). Ms. Auersperg stated that her uncle, who was Jewish, never married and that he resided at Oelzeltgasse 3 in Vienna. Ms. Auersperg further stated that her uncle fled Austria after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”). Ms. Auersperg explained that she did not know where her uncle resided from 1939 to 1949, but stated that her mother contacted her uncle in Havana, Cuba in 1950. Ms. Auersperg stated that her uncle passed away in Havana in approximately 1950.

Ms. Auersperg submitted a detailed family tree; an extract from the *Almanach de Gotha*, an aristocratic genealogical reference book, stating that Aladar Gutmann von Gelse and Beliscse and his wife, Ottilie Pollak von Rudin, were given the titles Baron and Baroness and that their sons Erno, Otto and Viktor were also given the title Baron by King Franz Josef I; and a marriage announcement printed in a newspaper, stating that Baron Erno Gutmann von Gelse and Beliscse, married Mia Winkler on 16 May 1927. The announcement also stated that Erno Gutmann was from Vienna and that he was the son of *Baron* Alfred Gutmann von Gelse and Beliscse and Ottilie Pollak von Rudin.

The Claimant represents the children of Viktor Gutmann: her niece, Nelly Auersperg, who was born on 13 December 1928 in Vienna, and her nephew, Francis Gutmann, who was born on 5 November 1934 in Vienna, and the daughter of Erno Gutmann, her niece, Elinor Campiche, née Gutmann, who was born on 28 December 1928 in Vienna.

Information Available in the Bank's Records

The Bank's records consist of two customer cards. According to these records, the Account Owner was Baron Otto Gutmann, who resided in Vienna, Austria. The Bank's records indicate that the Account Owner held four demand deposit accounts, one of which was in Pound Sterling, and one custody account. The Bank's records also indicate that the accounts were held under the numbered identity 60817.

The Bank's records indicate that one of the demand deposit accounts was closed on 10 April 1937. These records further indicate that the demand deposit account in Pound Sterling was closed on 10 April 1938, and that the remaining two demand deposit accounts were closed on 31 August 1938. According to the Bank's records, the custody account was closed on 27 October 1938. The amount in the accounts on the dates of their closures is unknown. There is no evidence in the Bank's records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's relative's name and country of residence match the published name and country of residence of the Account Owner. The Claimant's niece, Nelly Auersperg, identified the Account Owner's title of *Baron* and city of residence, which match unpublished information about the Account Owner contained in the Bank's records.

In support of the Claimant's claim, Ms. Auersperg submitted documents, including an extract for the *Almanach de Gotha*, stating that Aladar Gutmann von Gelse and Beliscse and his wife, Ottilie Pollak von Rudin, were given the titles Baron and Baroness and that their sons Erno, Otto and Viktor were also given the title Baron by King Franz Josef I; a marriage announcement

printed in a newspaper, stating that Baron Erno Gutmann von Gelse and Beliscse married Mia Winkler on 16 May 1927. The announcement also stated that Erno Gutmann was from Vienna and that he was the son of Baron Alfred Gutmann von Gelse and Beliscse and Otilie Pollak von Rudin, providing independent verification that the person who is claimed to be the Account Owner had the same name, title and resided in the same city recorded in the Bank's records as the name, title and city of residence of the Account Owner.

The CRT notes that the name Otto Gutmann appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") to be probably or possibly those of victims of Nazi persecution. The CRT notes that the other claim to this account was disconfirmed because that claimant did not identify the Account Owner's title.

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's niece, Nelly Auersperg, stated that the Account Owner was Jewish and that he fled Austria after the *Anschluss* in 1938.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner. The Claimant's niece, Nelly Auersperg, submitted specific information and documents demonstrating that the Account Owner was the brother of the Claimant's brother-in-law and Ms. Auersperg's paternal uncle. These documents include an extract from the *Almanach de Gotha*, stating that Aladar Gutmann von Gelse and Beliscse and his wife, Otilie Pollak von Rudin, were given the titles Baron and Baroness and that their sons Erno, Otto and Viktor were also given the title Baron by King Franz Josef I; a marriage announcement printed in a newspaper, stating that Baron Erno Gutmann von Gelse and Beliscse, married Mia Winkler on 16 May 1927. The announcement also stated that Erno Gutmann was from Vienna and that he was the son of Baron Alfred Gutmann von Gelse and Beliscse and Otilie Pollak von Rudin.

The CRT notes that Ms. Auersperg identified unpublished information about the Account Owner as contained in the Bank's records. The CRT further notes that Ms. Auersperg submitted an extract from the *Almanach de Gotha* and a marriage announcement, containing information about her relatives, which provide independent verification that Ms. Auersperg's relatives bore the same family name as the Account Owner and that they resided in Vienna. 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 Ms. Auersperg and the Claimant as a family member, and all of this information supports the plausibility that Ms. Auersperg and the Claimant are related to the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs other than the parties which the Claimant is representing.

The Issue of Who Received the Proceeds

With respect to the demand deposit account closed on 10 April 1937, given that this was before the *Anschluss*, the CRT concludes that the Account Owner closed the account and received the proceeds.

With respect to the other three demand deposit accounts and the custody account, given that the Account Owner fled Austria after the *Anschluss*; that there is no record of the payment of the Account Owner's accounts to him; that the Account Owner and his heirs would not have been able to obtain information about his accounts 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 Claimant. 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 Account Owner is her brother-in-law's brother 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 three demand deposit accounts and the custody account.

Amount of the Award

In this case, the Award is for three demand deposit accounts and one custody account. 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs ("SF") and the average value of a custody account was SF 13,000.00. Thus, the total 1945 average value of the accounts at issue is SF 19,420.00. 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 a total award amount of SF 242,750.00.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, the Claimant is representing the children of Viktor Gutmann, Nelly Auersperg, née

Gutmann, and Francis Gutmann, and the daughter of Erno Gutmann, Elinor Campiche, née Gutmann, who, as descendants of the Account Owner's parents, have a better entitlement to the accounts than the Claimant, who is related to the Account Owner through marriage. Accordingly, Nelly Auersperg and Francis Gutmann are entitled to share one-half of the total award amount, or SF 60,687.50 each, and Elinor Campiche is entitled to one-half of the total award amount, or SF 121,375.00.

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 she 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
18 November 2004