

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2],
[REDACTED 3], [REDACTED 4], and [REDACTED 5]
represented by Uwe Radack

in re Account of Theodor Guttman

Claim Number: 401720/HS¹

Award Amount: 15,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], formerly [REDACTED 1] (the "Claimant"), to the published account of Theodor Guttman (the "Account Owner") at the [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 his father, Theodor Guttman, who was born on 24 March 1891 in Vienna, Austria, to [REDACTED] and [REDACTED]. The Claimant stated that his father resided in Vienna and that he was married to the Claimant's mother, [REDACTED], née [REDACTED], on 9 June 1919. The Claimant further indicated that his father, who was Jewish, was a merchant, and that he owned the company *Ludwig Guttman, Seiden und Wollfutter-Engros*. Moreover, according to the Claimant, after Austria was incorporated into the Reich in March of 1938 (the "*Anschluss*"), Nazi authorities forced his father to sell his property. According to the information provided by the Claimant, he fled from Austria together with his parents in May 1939. Finally, the Claimant stated that his father passed away on 22 August 1964 in New York, New York, the United States.

¹ [REDACTED 1](the "Claimant") submitted two additional claims, to the accounts of S. Guttman and Stefanie Guttman, which are registered under the Claim Numbers 401722 and 501406, respectively. In a separate decision, the CRT awarded the accounts of Stefanie Guttman to the Claimant. See *in re Accounts of Stefanie Guttman* (approved 31 December 2005). The CRT will treat the Claimant's claim to the account of S. Guttman (Claim Number 401722) in a separate determination.

In support of his claim, the Claimant submitted a letter from an archive in Vienna (*Wiener Stadt- und Landesarchiv*), dated 7 October 2003, reporting on research into the birth records of the city's Jewish community (*Geburtenbuch der Israelitischen Kultusgemeinde Wien*). According to this letter, the records confirm that Theodor Guttman was born on 24 March 1891 in Vienna, to [REDACTED] and [REDACTED]; that he was married to [REDACTED], née [REDACTED], in Vienna; and that they had three children, [REDACTED 2], [REDACTED], and [REDACTED 1]. This letter also indicates that [REDACTED 2] left Vienna for the United States, arriving there sometime before 3 November 1938, followed by his sister [REDACTED], who arrived sometime before 30 March 1939. Furthermore, according to the letter, Theodor Guttman left Vienna on 8 May 1939, and [REDACTED 1] and his mother left Vienna sometime in May 1939, for an unknown destination.

The Claimant also submitted documents from the Austrian State Archive pertaining to his father, which are described in more detail below. Finally, the Claimant submitted Theodor Guttman's will, dated 24 March 1964, which indicates that his only heirs are his three children, [REDACTED], [REDACTED 2], and [REDACTED 1].

The Claimant indicated that he was born on 13 July 1931 in Vienna. The Claimant is representing his brother, [REDACTED 2] (formerly [REDACTED 2]), who was born on 3 February 1921 in Vienna, and his brother-in-law, [REDACTED 3], who was born on 11 May 1921 in Prague, and who was married to the Claimant's sister, [REDACTED] (who was born on 3 February 1921 in Vienna and who passed away on 5 October 1979 in the United States). The Claimant is also representing [REDACTED] and [REDACTED 3]'s daughters, [REDACTED 4], née [REDACTED 4], and [REDACTED 5].

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Theodor Guttman, who originally resided in Schluckenau, Czechoslovakia (today Sluknov, the Czech Republic), and later in Vienna, Austria. The Bank's record further indicates that the Account Owner held one safe deposit box, numbered 3964, which was closed on 11 May 1940. The Bank's record does not indicate the value of this account. There is no evidence in the Bank's record that the Account Owner or his heirs closed this account and received the proceeds themselves.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Theodor Guttman, numbered 26404. These records indicate that Theodor Guttman was born on 24 March 1891, and that he was married to [REDACTED], née [REDACTED]. These documents further indicate that Theodor Guttman was a merchant and that he resided at

Grailichgasse 3 in Vienna III. According to these records, Theodor Guttmann owned several buildings in whole or in part in Vienna and Berlin, Germany. The records indicate that he sold these interests between March 1938 and December 1938. The records further indicate that Theodor Guttmann's firm, named *Ludwig Guttmann*, was "aryanized" in 1938.

The 1938 Census records include a letter, dated 14 December 1938, in which Theodor Guttmann informed the office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or "VVSt") that his entire assets amounted to 30,638.14 Reichsmark ("RM"); and, pending the VVSt's approval of the sale price of a building in Vienna, he would cash in his life insurance policies in order to pay the taxes assessed against him. According to these records, Theodor Guttmann paid atonement tax (*Judenvermögensabgabe*) of RM 7,200.00. Finally, these records indicate that he was ordered to pay flight tax (*Reichsfluchtsteuer*) of RM 17,531.00 by 10 March 1939. These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name matches the published name of the Account Owner. The Claimant identified the Account Owner's city of residence as Vienna, which matches unpublished information about the Account Owner contained in the Bank's record. In support of his claim, the Claimant submitted documents, including a letter from the *Wiener Stadt- und Landesarchiv* and 1938 Census records pertaining to his father, providing 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 record as the name and city of residence of the Account Owner. The CRT notes that the other claims to this account were disconfirmed because those claimants provided different countries and/or cities of residence for the Account Owner.

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 was Jewish, that he lived in Austria after the *Anschluss*, that he was forced by Nazi authorities to sell his property, and that he fled with his family to the United States in 1939. The CRT notes that the 1938 Census records submitted by the Account Owner demonstrate that he resided in Austria after the *Anschluss*, that he was required to register his assets pursuant to the 1938 Census, that his business was "aryanized," that he paid atonement tax, and that he was ordered to pay "flight tax."

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's father. These documents include a letter from the *Wiener Stadt- und Landesarchiv* and Theodor

Guttman's will, confirming that his children and heirs are [REDACTED], [REDACTED 2], and the Claimant. There is no information to indicate that the Account Owner has surviving heirs other than the parties which the Claimant is representing.

The Issue of Who Received the Proceeds

The CRT notes that the Bank's record indicates that the account was closed on 11 May 1940, at which time, according to information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. However, given that the Bank's record does not indicate to whom the account was closed, that the Account Owner fled his country of origin due to Nazi persecution, that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his account to ensure their safety, 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, even for the stated purpose of obtaining indemnification from the German authorities, 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 (a), (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 was his father, 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. The CRT notes that the Claimant and his brother, represented party [REDACTED 2], as the Account Owner's sons, and represented parties [REDACTED 4], and [REDACTED 5], as the Account Owner's granddaughters, have a better entitlement to the account than represented party [REDACTED 3], who is related to the Account Owner by marriage to the Account Owner's daughter, [REDACTED].

Amount of the Award

In this case, the Account Owner held one safe deposit box. 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 safe deposit box was 1,240.00 Swiss Francs ("SF"). 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 15,500.00.

Division of the Award

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 distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. In this case, the Claimant is representing his brother, [REDACTED 2], and his late sister's children, [REDACTED 4] and [REDACTED 5]. The Account Owner's will indicates that he bequeathed his assets to his three children in equal shares. Accordingly, the Claimant and represented party [REDACTED 2] are each entitled to one-third of the total award amount.

Furthermore, with regard to represented parties [REDACTED 4] and [REDACTED 5], as indicated above, they are not named in the Account Owner's will, but they are the children of the Account Owner's child and heir, [REDACTED]. Under Article 23(2)(a) 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.² Therefore, represented parties [REDACTED 4] and [REDACTED 5] are entitled to equal shares of [REDACTED]'s one-third share of the account, or one-sixth each of the total award amount. As noted above, represented party [REDACTED 3] is not entitled to share in the Award.

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 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
12 October 2007

² Under 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.