

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Mary Postlethwaite

in re Account of Gertrud Hengst

Claim Numbers: 215977/CN; 215978/CN; 215979/CN

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claims of Mary Postlethwaite, née Machlup, (the “Claimant”) to the accounts of Gustav Machlup, Walter Weissenstein, and Fritz Popper.¹ This Award is to the published account of Gertrud Hengst (the “Account Owner”), over which Fritz Popper (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of 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 Claim Forms identifying the Account Owner as her maternal aunt by marriage, Gerda (Gertrude) Helen Perry, formerly Popper, who was born in approximately 1900, and was married to Fritz Popper in approximately 1933 in Germany. The Claimant indicated that her aunt and uncle, who were Jewish, lived in Berlin, Germany, until 1937, when they fled to England, and that they subsequently emigrated to Australia in 1938. The Claimant indicated that her aunt and uncle changed their last name from Popper to Perry after arriving in Australia, but that she did not know her aunt’s maiden name. The Claimant indicated further that her uncle died in approximately 1985, and her aunt died in 1982, both in Sydney, Australia, and that they did not have any children.

The Claimant submitted copies of (1) her birth certificate, indicating that her mother was Olga Machlup, née Popper; (2) a detailed family tree, indicating that her mother, Olga Machlup, née

¹ In a separate decision, the CRT awarded the account of Fritz Popper to the Claimant. See *In re Account of Fritz Popper* (approved on 31 December 2003). The CRT did not locate an account belonging to Gustav Machlup or Walter Weissenstein 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”).

Popper, was the sister of Fritz Popper, and the sister-in-law of Fritz's wife, Gerda Popper; and (3) her aunt's will, dated 12 January 1982, and a letter of correction from her aunt's lawyer, indicating that Gertrude Helen Perry left her residual estate to her nieces (including Mary Postlethwaite) and nephew. The Claimant indicated that she was born on 31 December 1923 in Vienna, Austria.

Information Available in the Bank's Records

The Bank's record consists of a printout from the Bank's database. According to this record, the Account Owner was Gertrud Hengst, who resided in Berlin, Germany, and the Power of Attorney Holder was Fritz Popper. The Bank's record indicates that the Account Owner held one account, the type of which is not indicated.

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). The Bank provided the CRT with an additional document, a power of attorney form executed on 3 March 1931, which indicates that the Account Owner and Power of Attorney Holder both resided at Droysenstrasse 16 in Berlin-Charlottenburg. The power of attorney form also contains the signatures of the Account Owner and the Power of Attorney Holder.

The Bank's records do not show when the account at issue was closed, nor do these records indicate the value of this account. The auditors who carried out the investigation of this bank 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 find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945.

There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of 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 three claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant's aunt's first name matches the published first name of the Account Owner.² The

² The CRT notes that the names Gertrude, as used in Gertrude Perry's will, and Gerda, as indicated by the Claimant in the Claim Form, are variations of the first name Gertrud, used in the Bank's records.

Claimant identified the Account Owner's city of residence, which matches unpublished information about the Account Owner contained in the Bank's records.

The Bank's records received pursuant to Voluntary Assistance, examined in connection with the Bank's records relating to a different account belonging to the Power of Attorney Holder,³ indicate that the Account Owner and Power of Attorney Holder were married sometime between 1931 and 1934, and that the Account Owner's married name was Popper. First, the signature of the Account Owner contained in the 1931 power of attorney form is similar to the signature of Gertrud Popper, who was granted power of attorney over the Power of Attorney Holder's account in 1934.⁴ Additionally, the 1931 power of attorney form contains the same address for the Account Owner and Power of Attorney Holder. Taken together, these records thus provide evidence of the spousal relationship identified by the Claimant, and support a determination that the Account Owner's married name was Popper. Additionally, the Claimant indicated that her aunt and uncle were married in approximately 1933, which is also consistent with unpublished information in the Bank's records.

In support of her claims, the Claimant also submitted her aunt's will, signed by Gertrude Perry in 1982.⁵ This signature is similar to the signatures of the Account Owner from 1931, and Gertrud Popper from 1934. The CRT notes that the will identifies the Claimant as Gertrude Perry's niece.

The CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified 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, and that she resided in Nazi Germany until 1937, when she fled to England.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's aunt. These documents include her aunt's will, indicating that Mary Postlethwaite was Gerda Perry's niece.

³ This 1934 signature sample is contained in a power of attorney form, as described the decision *In re Account of Fritz Popper. Id.*

⁴ This 1934 signature sample is contained in a power of attorney form, as described the decision *In re Account of Fritz Popper. Id.*

⁵ The CRT notes that the Claimant indicated her aunt and uncle changed their last name from Popper to Perry after arriving in Australia in 1938. This is consistent with both the Claimant's birth certificate, indicating her mother's maiden name was Popper, and the Claimant's family tree, which indicates that Olga Machlup, née Popper, was the sister-in-law of Gerda Popper.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records. The CRT further notes that the Claimant submitted a copy of her birth certificate, which provides independent verification that the Claimant's relatives bore the same family name as the Power of Attorney Holder, who was the spouse of 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 the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Forms.

The CRT notes that the Claimant's aunt's will indicates that she bequeathed her residual estate to her two nieces and nephew, but that the Claimant is the only heir who has submitted a claim to the CRT for the Account Owner's account, and the CRT therefore will not treat the potential entitlement of the other two beneficiaries in this decision.

The Issue of Who Received the Proceeds

Given that the Account Owner resided in Nazi Germany until 1937; that there is no record of the payment of the Account Owner's account to her nor any record of a date of closure of the account; that the Account Owner and her heirs would not have been able to obtain information about her 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 (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their 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 claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her aunt, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one account of unknown type. 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 ICEP Investigation, in 1945 the average value of an account was 3,950.00 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 49,375.00.

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 her claims 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
17 November 2006