

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED 1]¹

and to the Estate of Claimant [REDACTED 2]²

in re Account of Carl Levy

Claim Numbers: 204519/WI; 741748/WI³

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”) to the account of Albert Seelenberger and Martha Seelenberger, and the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) to the account of Albert Seelenberger.⁴ This Award is to the published account of Carl Levy (the “Account Owner”) over which Bertha Levy (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).⁵

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.

¹ The CRT notes that [REDACTED 1] (“Claimant [REDACTED 1]”) passed away on 4 March 2007.

² The CRT notes that [REDACTED 2] (“Claimant [REDACTED 2]”) passed away on 21 June 2005, and that his sons forwarded a copy of his death certificate to the CRT.

³ Claimant [REDACTED 2] did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered SPA-0020-104, 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 741748.

⁴ The CRT did not locate an account belonging to Albert Seelenberger or Martha Seelenberger 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”).

⁵ The CRT notes that on the February 2001 published list of accounts determined by the ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), the name Carl Levy appears three times. Upon careful review, the CRT has determined that the second and the third Carl Levy are not the same person addressed in the current decision, and consequently, the Claimant did not identify these other account owners as his relatives.

Information Provided by the Claimants

Claimant [REDACTED 1] and Claimant [REDACTED 2], who are siblings, submitted a Claim Form and an Initial Questionnaire identifying the Power of Attorney Holder as their paternal aunt, Berta Levy, née Seelenberger, who resided in Wissembourg, Alsace, France, and was the sister of their father, [REDACTED]. In additional correspondence with the CRT, on 7 November 2006, Claimant [REDACTED 2]'s sons, [REDACTED] and [REDACTED], indicated that their father died on 21 June 2005. In the same correspondence they indicated that their father's aunt was born on 14 April 1881 in Germany, and was married to [REDACTED] on 4 September 1901 in Wissembourg. The Claimants indicated that their aunt, who was Jewish, came from a wealthy family and that she resided in Wissembourg prior to the Second World War. Claimant [REDACTED 1] indicated that she lived in Germany until 1938, when she emigrated to the United States with her husband. Claimant [REDACTED 2] indicated that he and both of their parents resided in Germany during the Second World War, that many members of their family were deported to concentration camps, including Claimant [REDACTED 2] and their parents, and that their parents perished during the Holocaust. The Claimants did not indicate the fate of their aunt during the Second World War or whether she has any other surviving relatives. Claimant [REDACTED 1] indicated that she was born on 8 January 1911. Claimant [REDACTED 2] indicated that he was born on 20 April 1914.

Information Available in the Bank's Record

The Bank's record consists of an extract from a list of accounts belonging to customers domiciled in France, dated 28 December 1936. According to this record, the Account Owner was Carl Levy and the Power of Attorney Holder was *Frau* (Mrs.) Bertha Levy, both of whom resided in Wissembourg, France. The Bank's record indicates that the Account Owner, who was a *pharmacien* (pharmacist), held an account, the type of which is not indicated, numbered 3129, over which Bertha Levy held power of attorney. The Bank's record does not show when the account at issue was closed, nor does this record indicate the value of the 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 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 Claimant/s in one proceeding.

Identification of the Power of Attorney Holder

The Claimants' paternal aunt's name, city and country of residence match the published name, city and country of residence of the Power of Attorney Holder. The CRT notes that the Claimants did not identify the Account Owner. However, the Power of Attorney Holder and the Account Holder share the same last name and city and country of residence. The CRT therefore concludes that they were related. Moreover, the CRT also notes that the Claimants resided in a different country than the Account Owner and the Power of Attorney Holder, and therefore determines that it is plausible that the Claimants would not know the names of all of their aunt's relatives in France.

The CRT notes that Claimant [REDACTED 2] filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Bertha Levy and identifying the Account Owner's city and country of residence, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED 2] has based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that Claimant [REDACTED 2] had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants.

The CRT notes that the other claims to this account were disconfirmed because these claimants provided different countries and cities of residence than the country and city of residence of the Power of Attorney Holder. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Power of Attorney Holder.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The CRT notes that the Claimants did not identify the Account Owner or his victim status. However, as noted above, the CRT has concluded that the Account Owner and the Power of Attorney Holder were related. Claimant [REDACTED 2] stated that the Power of Attorney Holder was Jewish, that she resided in Nazi-occupied France, and that a number of her relatives, including her brother (the Claimants' father) perished in the Holocaust. The CRT therefore concludes that the Account Owner was also Jewish and resided in Nazi-occupied France.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific biographical information, demonstrating that the Power of Attorney Holder was the Claimants' paternal aunt. As noted above, the CRT has concluded that the Power of

Attorney Holder was related to the Account Owner. Accordingly, by extension, the Claimants are also related to the Account Owner.

The CRT notes that Claimant [REDACTED 2] filed an Initial Questionnaire with the Court in 1999, identifying the relationship between the Power of Attorney Holder and the Claimants and the Account Owner's city and county of residence, prior to the publication in February 2001 of the ICEP List. The CRT further notes that the foregoing information is of the type that family members would possess and indicates that the Power of Attorney Holder was well known to the Claimants as a family member, and all of this information supports the plausibility that the Claimants are related to the Power of Attorney Holder, as they have asserted in their Claim Forms.

There is no information to indicate that the Account Owner has other surviving heirs who have submitted claims to the CRT.

The Issue of Who Received the Proceeds

Given that the Account Owner and the Power of Attorney Holder resided in Nazi-occupied France; that there is no record of the payment of the Account Owner's account to him or to the Power of Attorney Holder, or their heirs, nor any record of a date of closure of the account; that the Account Owner, the Power of Attorney Holder, and their heirs would not have been able to obtain information about his 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 Claimants. 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 Power of Attorney Holder was their paternal 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 of unknown type 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.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner’s spouse 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 Claimants are siblings. Accordingly, Claimant [REDACTED 1] is entitled to one-half of the total award amount and Claimant [REDACTED 2] is entitled to one-half of the total award amount.

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
18 December 2007