

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Erez Bernstein

in re Accounts of Bertel Lindheimer and Hugo Lindheimer

Claim Number: 501820/NB

Award Amount: 335,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Bertel Lindheimer. This award is to the published account of Bertel Lindheimer (“Account Owner Bertel Lindheimer”), over which Hugo Lindheimer held power of attorney, at the Basel branch of the [REDACTED] (the “Bank”);¹ and to the published account of Hugo Lindheimer (“Account Owner Hugo Lindheimer”) (together with Account Owner Bertel Lindheimer, the “Account Owners”), over which Rosi Lindheimer (“Power of Attorney Holder Rosi Lindheimer”) and Ludwig Lindheimer (“Power of Attorney Holder Ludwig Lindheimer”) held power of attorney, at 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 Account Owner Bertel Lindheimer as his paternal grandmother, Bertel Lindheimer, née Marx; Power of Attorney Holder [REDACTED], as his paternal grandfather, [REDACTED]; Account Owner Hugo Lindheimer as his paternal great-uncle, Hugo Lindheimer; and Power of Attorney Holder Rosi Lindheimer as his paternal great-aunt, Rosi Lindheimer, née Simon.

The Claimant indicated that Bertel Lindheimer, who was born on 1 June 1888 in Heidelberg, Germany, was married to [REDACTED], and resided in Frankfurt am Main, Germany. The

¹ The CRT notes that on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), the name of Ludwig Lindheimer is not listed as a power of attorney over the account of Hugo Lindheimer. Upon careful review, the CRT has determined that Ludwig Lindheimer held power of attorney over the account of Hugo Lindheimer (together with *Frau* Rosi Lindheimer, née Simon).

Claimant further indicated that his grandmother, who was Jewish, had one son, [REDACTED] (the Claimant's father), who later changed his name to [REDACTED]. The Claimant stated that his grandfather [REDACTED] had a brother named Hugo Lindheimer, who was married to Rosi Lindheimer, née Simon, who resided in Frankfurt am Main. The Claimant indicated that his relatives were Jewish.

According to the Claimant, his grandmother Bertel Lindheimer was deported in 1941 to the ghetto in Litzmannstadt (Lodz), Poland, where she perished in December 1942; and his great-aunt Rosi Lindheimer was killed in the Holocaust. The Claimant stated that his great-uncle Hugo Lindheimer survived the Second World War by fleeing to the United States.

In support of his claim, the Claimant submitted copies of: (1) his family tree, which indicates that Bertel Lindheimer, née Marx, and [REDACTED], were the parents of [REDACTED] (the Claimant's father), that [REDACTED] was the brother of Hugo Lindheimer, and that Hugo Lindheimer was married to Rosi Lindheimer, née Simon; (2) his grandmother's obituary, published in a newspaper dated 9 November 1945, indicating that Bertel Lindheimer, née Marx, was the mother of [REDACTED], and the sister-in-law of Hugo Lindheimer; (3) his great-aunt's obituary, indicating that Rosi Lindheimer, née Simon, was the wife of Hugo Lindheimer, and the mother of [REDACTED] and [REDACTED]; (4) a Yad Vashem testimony, submitted in 1986 by [REDACTED], which indicates that his mother, Bertel Lindheimer, née Marx, was born on 1 June 1888 in Heidelberg, Germany, that she was married to [REDACTED], that she resided in Frankfurt am Main before the Second World War, and that she was deported in 1941 to the ghetto in Litzmannstadt where she perished in December 1942; and (5) his father's probate document and last will, which indicate that [REDACTED] died on 24 March 2005, and which designates his wife, [REDACTED] and his son, [REDACTED], as his beneficiaries under his will.

The Claimant indicated that he was born on 18 June 1957 in London, the United Kingdom.

Information Available in the Bank's Records

The Bank's records consist of power of attorney forms and a card indicating the receipt of regulations regarding custody accounts. According to these records, Account Owner Bertel Lindheimer was *Frau* Bertel Lindheimer, née Marx, who resided at Wolfsgangstrasse 16, Frankfurt am Main, Germany, and the power of attorney holder was Hugo Lindheimer, who also resided on Wolfsgangstrasse in Frankfurt am Main.

The Bank's records indicate that Account Owner Bertel Lindheimer held a custody account numbered 36261. The value of this account is not indicated in the Bank's records. 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.

The auditors' report includes a note indicating that this account is related to a savings account that was excluded from reporting based upon the "small savings" rule under the ICEP Investigation guidelines, by which savings/passbook accounts with balances under SF 250.00 or with unknown balances were excluded from reporting. Because this savings/passbook account was not reported, there is no information about when the account was open or closed or about its value.

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 the custody account ("Voluntary Assistance"). The Bank provided the CRT with additional documents, which consist of one additional power of attorney form and one custody account regulations acknowledgment card. According to these documents, Account Owner Hugo Lindheimer was Hugo Lindheimer, who resided in Frankfurt am Main, Germany. The Bank's records indicate that Account Owner Hugo Lindheimer held one custody account,² numbered 36260, which was opened on 14 October 1930. According to these records, the power of attorney holders over this account were Account Owner Hugo Lindheimer's wife Rosi Lindheimer, née Simon, and his brother, [REDACTED].

The Bank's records do not indicate when this account was closed, nor do they indicate the value of this account. The ICEP Investigation did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed.

There is no evidence in the Bank's records that the Account Owners, the Power of Attorney Holders or their heirs closed these accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners and the Power of Attorney Holders. The Claimant's grandmother's name, maiden name, and city and country of residence, match the published name, maiden name, city and country of residence of Account Owner Bertel Lindheimer. The Claimant's great-uncle's name and city and country of residence match the published name and city and country of residence of Account Owner Hugo Lindheimer. The Claimant's great-aunt's name and maiden name match the published name and maiden name of Power of Attorney Holder Rosi Lindheimer. Additionally, the Claimant's grandfather's name matches the unpublished name of Power of Attorney Holder [REDACTED]. The Claimant also identified the relationships between his relatives, which match unpublished information about the Account Owners and the Power of Attorney Holders contained in the Bank's records.

² The Bank's records contain a power of attorney form that references a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that Account Owner Hugo Lindheimer held a custody account, in the absence of evidence to the contrary, the CRT concludes that it is plausible that he held such an account.

In support of his claim, the Claimant submitted documents, including Bertel Lindheimer and Rosi Lindheimer's obituary, providing independent verification that the persons who are claimed to be Account Owner Bertel Lindheimer and Power of Attorney Holder Rosi Lindheimer, had the same names recorded in the Bank's records as the names of Account Owner Bertel Lindheimer and Power of Attorney Holder Rosi Lindheimer.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Rosi Lindheimer, née Simon, and indicates that her date of birth was 6 July 1895, that she resided in Frankfurt am Main, and that she died in the ghetto in Litzmannstadt, Poland, which matches the information about Power of Attorney Holder Rosi Lindheimer provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. Furthermore, the CRT notes that this database also includes a page of testimony submitted by the Claimant's father in 1986, which indicates that his mother, Bertel Lindheimer, née Marx, was born on 1 June 1888 in Heidelberg, Germany, that she was married to [REDACTED], that she resided in Frankfurt Main, Germany, before the Second World War, and that she was deported in 1941 to the ghetto in Litzmannstadt, where she perished on December 1942, which matches the information about Account Owner Bertel Lindheimer provided by the Claimant.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and lived in Nazi Germany, and that his grandmother perished in the ghetto in Litzmannstadt, Lodz (Poland).

As noted above, persons named Bertel Lindheimer, née Marx, and Rosi Lindheimer, née Simon, were included in the CRT's database of victims.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific information and documents, demonstrating that Account Owner Hugo Lindheimer was the Claimant's great-uncle, and that Account Owner Bertel Lindheimer was the Claimant's grandmother. These documents include his grandmother's obituary and his father's will, indicating that Bertel Lindheimer was Hugo Lindheimer's sister-in-law and [REDACTED]'s mother, and that [REDACTED] was the Claimant's father. There is no information to indicate that the Account Owners had other surviving heirs.

The Issue of Who Received the Proceeds

The CRT notes that the Bank's records do not contain any information about the savings/passbook account because the account was excluded from reporting under the ICEP Investigation. The auditors, however, determined that the account existed and that it was related to the custody account belonging to Account Owner Bertel Lindheimer. The CRT therefore

concludes that it was an account open or opened during the period from 1933 to 1945, as was the related custody account.

Given that there is no record of the payment of the Account Owners' accounts to them, nor any record of a date of closure of the accounts; that Account Owner Bertel Lindheimer as well as Power of Attorney Rosi Lindheimer perished in the Holocaust; that Account Owner Hugo Lindheimer and the Account Owners' heirs would not have been able to obtain information about their 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 (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, the Power of Attorney Holders, 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 claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner Bertel Lindheimer was his grandmother, and that Account Owner Hugo Lindheimer was his great-uncle, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, nor the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, Account Owner Bertel Lindheimer held one custody account and one savings/passbook account and Account Owner Hugo Lindheimer held 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 ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs ("SF"), and the average value of a savings/passbook account was SF 830.00. Thus, the combined 1945 average value for the three accounts at issue is SF 26,830.00. 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 335,375.00.

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 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
26 November 2008