

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award upon Request for Reconsideration

to the Estate of Claimant [REDACTED]¹

in re Accounts of Alfred Loewenthal

Claim Number: 751151/BW²

Award Amount: 216,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published accounts of Alfred Loewenthal (the “Account Owner”) at the St. Moritz branch of the [REDACTED] (the “Bank”).³

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relative of the claimants other than the account owner, and the bank have been redacted.

Procedural History

In 1998 the Claimant submitted an ATAG Ernst & Young claim form (“ATAG Form”) to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules

¹ In a letter to the CRT dated 22 September 2008, [REDACTED], the wife of Claimant [REDACTED] (the “Claimant”), informed the CRT that the Claimant passed away.

² The Claimant did not submit a CRT Claim Form. However, in 1998 he submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-I-80-810-153-647, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 751151.

³ The CRT notes that on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Alfred Loewenthal is indicated as having one account. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of a total of three accounts.

Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004) (the “30 December 2004 Court Order”). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 751151.

Prior to the 30 December 2004 Court Order, the accounts of the Account Owner were awarded to an unrelated claimant on 8 June 2004 (the “June 2004 Award”). At the time of the June 2004 Award, the ATAG Form of the Claimant was not available to the CRT for consideration.

Subsequently, on 23 June 2008, the Court approved an Certified Denial to the Claimant for the accounts of the Account Owner (the “June 2008 Denial”), based upon the CRT’s determination that the Claimant had not identified the Account Owner as his relative. In the Certified Denial, the CRT noted that Claimant indicated a city of residence of the Account Owner that differed from the city of residence of the Account Owner as indicated in the Bank’s records. Subsequently, on 22 September 2008, a representative of the Claimant’s estate, who informed the CRT that the Claimant had since passed away, appealed the June 2008 Denial, submitted additional documents and information, and requested a reconsideration of the June 2008 Denial, as further described below.

Upon the CRT’s review of the new information and documents provided by the representative of the Claimant’s estate in the Request for Reconsideration, as well as information obtained by additional research conducted by the CRT, the CRT concludes that the Account Owner was, in fact, the Claimant’s relative, and not the relative of the claimant who received the June 2004 Award.

Admissibility of the Request for Reconsideration

According to Article 30 of the Rules, any request for reconsideration must be accompanied by new documentary evidence not previously submitted to the CRT that, if considered, would have led to a different outcome of the claim. Article 30 specifies that the Claimants seeking reconsideration should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the denial decision.

The CRT has determined that the Claimant has satisfied the requirements of Article 30 by submitting new documentary evidence that directly addresses the conclusions stated in the June 2008 Denial.

Information Provided by the Claimant

Information Submitted with the ATAG Form

The Claimant submitted an ATAG Form identifying the Account Owner as his paternal grandfather, Alfred Loewenthal, who was born on 8 March 1880. The Claimant stated that his grandfather, who was Jewish, was married to [REDACTED], and that the couple had two sons:

[REDACTED] (the Claimant's father), and [REDACTED]. The Claimant explained that his grandfather, together with his two brothers, ran the family-owned department store named '*House of Loewenthal*,' which was located in Elbing, Germany (today Elblag, Poland), and which their father, [REDACTED], had founded. The Claimant stated that in the early 1930s, the family fled Nazi persecution in Germany, leaving the family department store behind. According to the Claimant, Alfred Loewenthal resided in Zurich during at least part of the Second World War.

In support of his claim, the Claimant submitted copies of documents, which include:

- (1) a letter written by Alfred Loewenthal to the Claimant's father in August 1961, in which Alfred Loewenthal stated that he and his wife had been detained in concentration camps, and had become refugees from Germany, fleeing to France, Switzerland, Spain, England, and Israel, and that after the defeat of the Nazis and the conclusion of the Second World War, he and his wife had returned to Berlin in an attempt in part to recoup some of their lost assets;
- (2) his father's death certificate, which indicates that [REDACTED] was born on 25 February 1920 in Germany, that he died on 18 October 1961, and that his parents were Alfred and [REDACTED] of Germany; and
- (3) his father's Berlin school report card, which indicates that [REDACTED], the son of businessman (*Kaufmann*) Alfred Loewenthal, was born on 25 February 1920, and began attending secondary school in Berlin in April 1935.

The Claimant stated that his father changed his surname from Loewenthal to [REDACTED] when he emigrated to the United States. The Claimant indicated that his grandfather died some time after August 1961. The Claimant further indicated that he was born on 30 November 1946.

Information Provided with the Request for Reconsideration

In the Request for Reconsideration, the representative of the Claimant's estate explained that, although the family store was located in Elbing, Alfred Loewenthal lived in Berlin both before and after the Second World War. The representative of the Claimant's estate stated that Alfred and [REDACTED] sent both their sons out of Germany on an unknown date in an attempt to save them from Nazi persecution; that [REDACTED] was sent to Italy, and [REDACTED] was sent to England. According to the information provided by the representative, he had a copy of the manifest of the ship on which [REDACTED] was sent to England. The Claimant's representative wrote: "I have a copy of the manifest listing his father's [*i.e.*, Alfred Loewenthal's] address but because it's so fuzzy all I can make out is that the street name begins with B and it looks like there may be an e in the word but very clearly says Strasse 42 Berlin Germany." Additional documents submitted by the representative of the Claimant's estate include a copy of the registry of a passenger ship, indicating that on 16 February 1938, Alfred Loewenthal, who was a merchant from Berlin, and his wife [REDACTED], traveled on a ship sailing from Southampton, England, to the United States.

Information Obtained by Additional Research Conducted by the CRT

The CRT conducted additional research regarding the Claimant's relative and obtained a short biography of his relative Alfred Loewenthal from a published anthology of the lives of Jewish citizens of Elbing.⁴ That biography contains a photograph of Alfred Loewenthal and his unnamed wife, and indicates that Alfred Loewenthal was a well-known businessman who last lived in Berlin-Wilmersdorf, and who died at the age of 82 on 10 October 1962. According to the article, Alfred Loewenthal, together with his brothers, owned and operated the *Kaufhaus D. Loewenthal* in Elbing, ownership of which they assumed from their parents. The article indicates that after 1933 and the imposition of Nazi racial laws, Alfred Loewenthal was imprisoned by Nazi authorities for sixteen days, but his wife was able to secure his release and the family subsequently emigrated to Palestine. After some years, the family moved to Switzerland, and ultimately returned to Berlin in 1953. The article also indicates that Alfred Loewenthal's eldest son was [REDACTED], who emigrated to the United States.

Information Available in the Bank's Records

The Bank's records consist of a letter from the Account Owner to the Bank, dated 18 June 1937; instructions to the Bank regarding account-related correspondence; lists of accounts; and printouts from the Bank's databases. According to these records, the Account Owner was Alfred Loewenthal who resided at Brandenburgische Strasse 42 in Berlin, Germany. The Bank's records indicate that the Account Owner held one custody account as well as at least two demand deposit accounts, which were opened no later than 18 June 1937, however the exact number of demand deposit accounts is not indicated.⁵ In a letter dated 18 June 1937, the Account Owner made a request to the Bank that the accounts be held under and referred to by the number 830 and the password "Alfred." In addition, in another letter dated 18 June 1937, the Account Owner made a request to the Bank that all account-related correspondence be sent to Mr. [REDACTED], Scala Hotel, Bozen, Italy, until further notice.

The Bank's records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts. 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 these accounts in the Bank's system of open accounts, and they

⁴ See "Die jüdische Gemeinde in Elbing," at: http://www.elbing.de/20001_20-23.pdf.

⁵ The Bank's records refer to the existence of a custody account and at least two demand deposit accounts in two places. In the letter from the Account Owner to the Bank, dated 18 June 1937, the Account Owner wrote: "I recognize in advance all orders and directions, without any limitations, regarding my custody account and my demand deposit accounts..." ["*Ich anerkenne im voraus alle aufträge und Weisungen ohne jede Einschränkung betreffend mein Depot und meine Konti...*"]. Additionally, in the instructions to the Bank regarding account-related correspondence, also dated 18 June 1937, the Account Owner wrote: "I hereby ask you to take notice that all correspondence regarding my custody account and my demand deposit accounts with you should be regularly and until further notice be addressed to Herr [REDACTED], Scala Hotel, Bozen" ["*Hierdurch ersuche ich Sie davon Vormerkung zu nehmen, dass alle Korrespondenzen mein Depot und meine Konti bei Ihnen betreffend, regelmässig und bis auf weitere Anzeige an Herrn [REDACTED], Scala Hotel, Bozen, zu adressieren sind*"].

therefore presumed that they were closed. 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 grandfather's name, city and country of residence match the published name, city and country of residence of the Account Owner. The Claimant also indicated that the Account Owner's son, [REDACTED], resided in Italy, which matches unpublished information concerning the name and country of residence of the contact person for the accounts provided in the Bank's records. The CRT notes that the Claimant's representative stated that the manifest for the ship that brought [REDACTED] to England identifies Alfred Loewenthal's as a street name beginning with the letter "B," containing the letter "e" and including the words/number "Strasse 42 Berlin Germany." This matches information in the Bank's records indicating that the Account Owner resided at Brandenburgische Strasse 42 in Berlin, Germany.

In support of his claim, the Claimant submitted his father's death certificate and his father's school report card, which both indicate the name of the Claimant's grandfather, and which provide independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the Bank's records as the name and city of residence of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Alfred Loewenthal, and indicates that his places of residence were Berlin and Zurich, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the Claimant filed an ATAG Form in 1998, 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 the Claimant 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 the Claimant 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 Claimant [REDACTED].

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 was detained in a concentration camp, that he was forced to leave all of his assets in Germany when he fled Nazi

Persecution, and that he lived with little money in a number of countries before returning to Germany following the Second World War. The Claimant also submitted a letter from the Account Owner recounting his fate prior to and during the Second World War. As noted above, a person named Alfred Loewenthal was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was his grandfather.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records; that the Claimant filed an ATAG Form in 1998, identifying the relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List; and that the Claimant also identified information which matches information contained in the Yad Vashem records. The CRT further notes that the Claimant submitted a copy of his father's Berlin school report card, which indicates that [REDACTED]'s father was Alfred Löwenthal. The CRT notes that it is plausible that this document is a document which most likely only a family member would possess. 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 was related to the Account Owner, as asserted in his Claim Form.

The Issue of Who Received the Proceeds

Given that there is no record of the payment of the Account Owner's accounts to him, nor any record of a date of closure of the accounts; that the Account Owner and his heirs would not have been able to obtain information about the accounts from the Bank after the Second World War 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 was his grandfather, 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 accounts.

Amount of the Award

The CRT notes that the Bank's records indicate that the Account Owner held at least two demand deposit accounts in addition to the custody account. Given that the exact number of demand deposit accounts held by the Account Owner cannot be ascertained based on the available information, the CRT deems it plausible that the Account Owner held two demand deposit accounts.

Consequently, the Award is for one custody account and two demand deposit accounts. 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 upon 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 demand deposit account was SF 2,140.00, resulting in a total 1945 average value of SF 17,280.00 for the three accounts at issue. 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 216,000.00.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
29 September 2009