

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

to Claimant [REDACTED 2]

to Claimant [REDACTED 3]

to Claimant [REDACTED 4]
all represented by Michael Lissner

in re Accounts of Josef Spitz, Ida Spitz and Günter Spitz

Claim Numbers: 401715/DE, 401572/DE, 401047/DE, 401753/DE

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”), [REDACTED 3] (“Claimant [REDACTED 3]”), and [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”) to the published accounts of Josef Spitz (“Account Owner Josef Spitz”) and to the unpublished accounts of Ida Spitz (“Account Owner Ida Spitz”) and Günter Spitz (“Account Owner Günter Spitz”) (together “the Account Owners”) at the Basel branch of the [REDACTED] (the “Bank”).

The CRT notes that in a separate decision, the CRT denied Claimant [REDACTED 1]’s claim to the account of Josef Spitz. See *Certified Denial for Claimed Account Owner Josef Spitz* (approved on May 30, 2007). In that decision, the CRT concluded that Claimant [REDACTED 1] did not identify Account Owner Josef Spitz as his relative, because he stated that Account Owner Josef Spitz resided in Berlin, Germany, before fleeing to London, England, via Palestine, while the Bank’s records indicated that Account Owner Josef Spitz resided in a different country. Upon further review of that claim, and upon comparison of the information contained in it and the claims of the other Claimants, the CRT has concluded that Claimant Spitz did identify Account Owner Josef Spitz as his relative, and that the denial should be rescinded. This Award addresses Claimant [REDACTED 1]’s claim, and the claims of the related Claimants, to the accounts of the Account Owners.

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 Claimants

The Claimants, who are related by marriage, submitted Claim Forms identifying Account Owner Ida Spitz as the paternal aunt of Claimant [REDACTED 1], and Account Owner Josef Spitz as the brother of Claimant [REDACTED 3]'s maternal grandmother and the great-great-uncle of Claimant [REDACTED 4] and Claimant [REDACTED 2] (who are cousins). The Claimants stated that Account Owners Josef and Ida Spitz were married and that Account Owner Günter Spitz was their son, Günter Spitz.

Claimant [REDACTED 1] stated that his father, [REDACTED] was the brother of Ida Spitz, née [REDACTED]. Claimant [REDACTED 3] stated that her maternal grandmother, [REDACTED], was Josef Spitz's sister. According to Claimant [REDACTED 3], [REDACTED], née [REDACTED], was married to [REDACTED], and they had two children, [REDACTED] and [REDACTED], née [REDACTED]. According to the family tree provided by Claimant [REDACTED 3], [REDACTED] had three children: [REDACTED 3], née [REDACTED] (Claimant [REDACTED 3]), [REDACTED], and [REDACTED], formerly [REDACTED], née [REDACTED]. Claimant [REDACTED 4] is the son of Claimant [REDACTED 3]; and Claimant [REDACTED 2] is the child of [REDACTED] from her first marriage.

The Claimants stated that Josef Spitz, who was Jewish, was born on 5 February 1878 in Breslau, Germany (present day Wroclaw, Poland), that he resided in Berlin, Germany, and that he was a merchant. According to the Claimants, Ida and Josef Spitz's son Günter, who was born on 7 August 1909 in Berlin, was disabled, and the family fled Nazi Germany for London, England via Palestine in the late 1930s. In a letter to the CRT, Claimant [REDACTED 1] explained that Josef Spitz and his family emigrated first to Palestine (now Israel) and resided in the Har-Hacarmel neighborhood of Haifa before emigrating to London.

The Claimants submitted copies of several documents in support of their claims, including: 1) Josef Spitz's death certificate, indicating that he died on 19 May 1952; 2) Ida Spitz's death certificate, indicating that she was the widow of Josef Spitz and that she died on 5 December 1961; 3) Günter Spitz's death certificate, indicating that he was the son of Ida Spitz and died on 8 July 1953; 4) a certificate of inheritance for Josef Spitz, which is dated 7 December 1953 in Berlin, is specifically limited to Josef Spitz's estate located in Germany, indicates that he was a merchant, and names his wife, Ida Spitz, as his heir for these assets; and 5) Ida Spitz's will, which indicates that her husband was the late Josef Spitz and which names her brother, [REDACTED], her brother's wife, [REDACTED], her nephew, [REDACTED], and her niece, [REDACTED] as equal heirs to her residual estate.

Claimant [REDACTED 1] submitted documents in support of his claim, including: 1) the marriage certificate of his parents, [REDACTED] and [REDACTED], dated 22 September 1919; 2) his birth certificate, indicating that his parents were [REDACTED] and [REDACTED]; 3) his father's death certificate, indicating that [REDACTED] died on 30 April 1972; 4) his mother's death certificate, indicating that [REDACTED] died on 8 September 1985; 5) [REDACTED]'s will, which names his wife, [REDACTED], as his heir; and 6) [REDACTED]'s will, which names her son, Claimant [REDACTED 1] as her heir.

In support of their claims, Claimant [REDACTED 3], Claimant [REDACTED 4] and Claimant [REDACTED 2] submitted [REDACTED]'s will, which names her three grandchildren as heirs to equal shares of her residual estate, and a copy of their family tree, which indicates that [REDACTED] died on 17 December 1983 and that he left no living heirs. Claimant [REDACTED 3] also submitted [REDACTED]'s death certificate, her own birth certificate, indicating that she is [REDACTED]'s daughter, and the birth certificate of her son, Claimant [REDACTED 4]. Claimant [REDACTED 2] also submitted the death certificate of her mother, [REDACTED].

According to the Claimants, Claimant [REDACTED 1] was born on 22 May 1922 in Berlin; Claimant [REDACTED 3] was born on 8 October 1954 in Jerusalem, Israel; Claimant [REDACTED 2] was born on 13 March 1963 in Kfar Saba, Israel; and Claimant [REDACTED 4] was born on 8 November 1981 in Hadera, Israel.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owners were Josef Spitz, *Frau* (Mrs.) Ida Spitz and Günter Spitz who resided in Haifa, Palestine (now Israel) and Zagreb, Yugoslavia (now Croatia). The Bank's record indicates that the Account Owners held one demand deposit account and one custody account, numbered 11053. The bank's records indicate that the custody account was closed on 2 November 1938 and that the demand deposit account was closed on 16 October 1939. The amount in the accounts on the date of their closure is unknown. There is no evidence in the Bank's record that the Account Owners or their heirs closed the accounts 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 four claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants' relative's name matches the published name of the Account Owner Josef Spitz. The Claimants also identified the names of the two other joint Account Owners, Ida Spitz and Günter Spitz, and their domicile in Haifa, Palestine (now Israel) which matches unpublished information contained in the Bank's record.

In support of their claim, the Claimants submitted several documents including the death certificates of Josef, Ida, and Günter Spitz, a certificate of inheritance for Josef Spitz's estate

located in Germany, and Ida Spitz's will, all providing independent verification that the persons claimed to be the Account Owners had the same name recorded in the Bank's record as the name of the Account Owners.

The CRT notes that the name Josef Spitz appears only once on the List of Account Owners Published in 2005 (the "2005 List").

The CRT notes that the Claimants did not identify the Account Owner's domicile in Zagreb, Yugoslavia (now Croatia). However, the CRT notes that Claimant [REDACTED 1] was a child during the Second World War and that the other Claimants were born after the War. The CRT therefore considers it plausible that the Claimants would not know all of their relatives' domiciles and that the Claimants' failure to identify the Account Owners' domicile does not adversely affect the plausibility of their identification of the Account Owners.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different city or country of residence, spouse's name or child's than the city and country of residence and spouse and child's name of the Account Owner Josef Spitz. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owners.

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, that Account Owner Günter Spitz had a disability, and that the family fled Nazi Germany in the late 1930s.

The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were the Claimants' relatives.

Claimant [REDACTED 1] indicated that he is the son of Ida Spitz's brother, and submitted Ida Spitz's will, his parents' death certificates, and his mother's will.

Claimant [REDACTED 3] indicated that her maternal grandmother was the sister of Josef Spitz. Claimant [REDACTED 4] indicated he is the son of Claimant [REDACTED 3] and the great-grand-nephew of Josef and Ida Spitz. Claimant [REDACTED 2] indicated that she is the niece of Claimant [REDACTED 3] and the great-grand-niece of Josef and Ida Spitz. These Claimants submitted the wills of Ida Spitz and [REDACTED]. Claimant [REDACTED 3] also submitted [REDACTED]'s the death certificate and her and her son's birth certificates. The CRT notes that the foregoing documents and information is of the type that family members would possess and indicates that the Account Owners were well known to the Claimants as family members, and all of this information supports the plausibility that the Claimants are related to the Account Owners, as they have asserted in their Claim Form.

The CRT notes that the Claimants indicated that the Account Owners may have another surviving heir, [REDACTED], who is the child of [REDACTED] from her second marriage. Because he is not represented in the Claimants' claims, the CRT will not treat his potential entitlement to the Owners' account in this decision.

The Issue of Who Received the Proceeds

The CRT notes that the custody account was closed on 2 November 1938 and that the demand deposit account was closed on 16 October 1939, at which time, according to information provided by the Claimants, the Account Owners were outside or in the process of fleeing Nazi-occupied territory. However, given that the Bank's record does not indicate to whom the account was closed, that the Account Owners fled their country of origin due to Nazi persecution, that the Account Owners may have had relatives remaining in their country of origin and that they may therefore have yielded to Nazi pressure to turn over their accounts to ensure their safety, that the Account Owners and their heirs would not have been able to obtain information about their accounts 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 (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 Owners 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, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owners were his paternal aunt, uncle and cousin; Claimant [REDACTED 4] has plausibly demonstrated that the Account Owners were his great-great aunt, great-great uncle and their child; and Claimant [REDACTED 2] has plausibly demonstrated that the Account Owners were her great-great aunt, great-great uncle and their child and that those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts. Further, the CRT notes that Claimant [REDACTED 1], Claimant [REDACTED 4], and Claimant [REDACTED 2], as named beneficiaries in the chain of wills have a better entitlement to the account than Claimant [REDACTED 3] who is not named as such in these documents.

Amount of the Award

In this case, the Account Owners held one custody account and one demand deposit 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 Independent Committee of Eminent Persons (“ICEP” or 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 SF 2,140.00. Thus, the combined 1945 average value for the two accounts at issue is SF 15,140.00. 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 189,250.00.

Division of the Award

According to Article 25(1) of the Rules, if an account is a joint account and claimants related to each of the account owners have submitted claims to the account, it shall be presumed that each account owner was the owner of an equal share of the account. This Rule applies even if one of the account owners is still alive. Accordingly, each of the Account Owners is presumed to have owned one-third of the accounts.

With respect to Account Owner Günter Spitz’s third, according to Article 23(1)(e) 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 grandparents who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 1] is the son of [REDACTED], who is the son of Günter Spitz’s maternal grandparents; and Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 2] are descendants of Günter Spitz’s paternal grandparents. The CRT notes that no will or testamentary documents were provided for Günter Spitz. Accordingly, Claimant [REDACTED 1] is entitled to one-half of this third of the award amount, or one-sixth of the total award amount; and Claimants [REDACTED 3], [REDACTED 4], and [REDACTED 2] are entitled to share the remaining half of this third of the award amount. With respect to this half, Claimant [REDACTED 3], as the great-granddaughter of Günter Spitz’s paternal grandparents, is entitled to one-half of this half, or one-twelfth of the total award amount, and Claimant [REDACTED 2], as the great-great-granddaughter of Günter Spitz’s paternal grandparents, is entitled to the other half of this half, or one-twelfth of the total award amount. Claimant [REDACTED 4], who is the child of Claimant [REDACTED 3], is one generation further removed than his mother, and is therefore not entitled to share in this portion of the Award amount.

With respect to Account Owner Josef Spitz’s third of the award amount, the CRT notes that Claimants submitted a certificate of inheritance for Josef Spitz, which is dated 7 December 1953 in Berlin and which names his wife, as the heir to his estate. This certificate of inheritance is specifically limited to Josef Spitz’s estate located in Germany and therefore only applies to the assets located there. Accordingly, as these assets were not part of Josef Spitz’s estate in Germany at the time that this certificate was issued, the CRT determines that the division of this portion of the Award amount is not governed by this certificate. 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. Accordingly, as descendants of Account Owner Josef Spitz’s parents, Claimants [REDACTED 3], [REDACTED 4], and [REDACTED 2] are entitled to share this third of the Award amount. With respect to

this third, Claimant [REDACTED 3], as the great-granddaughter of Josef Spitz’s parents, is entitled to one-half of this third, or one-sixth of the total award amount, and Claimant [REDACTED 2], as the great-great-granddaughter of Josef Spitz’s parents, is entitled to the other half of this third, or one-sixth of the total award amount. Claimant [REDACTED 4], who is the child of Claimant [REDACTED 3], is one generation further removed than his mother, and is therefore not entitled to share in this portion of the Award amount. Further, as Claimant [REDACTED 1] is a descendant of Ida Spitz’s parents, and not Josef Spitz’s parents, he is not entitled to share in this portion of the award amount.

With respect to Account Owner Ida Spitz’s third of the award amount, the CRT notes that Claimants submitted Ida Spitz’s will, which names her brother, [REDACTED], her brother’s wife, [REDACTED], her nephew, [REDACTED], and her niece, [REDACTED] as equal heirs to her residual estate. According to Article 23(1)(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. The CRT notes that [REDACTED] passed away and that, according to the information provided by the Claimants, he left no surviving heirs. Accordingly, the portion of Ida Spitz’s estate bequeathed to him shall be divided equally among the other three named heirs, whose heirs have all submitted claims to the accounts. With respect to the two-thirds of Ida Spitz’s third of the Award amount bequeathed to [REDACTED] and [REDACTED], the CRT notes that the Claimants submitted the will of [REDACTED], which names his wife as his sole heir, and the will of [REDACTED], which names her son, Claimant [REDACTED 1], as her sole heir. Claimant [REDACTED 1] is therefore entitled to these two-thirds of this third of the award amount, or two-ninths of the total award amount. With respect to the one-third of Ida Spitz’s third of the Award amount bequeathed to [REDACTED], the CRT notes that the Claimants submitted a copy of [REDACTED]’s will, in which she bequeaths her residual estate in equal shares to her three grandchildren. Accordingly, Claimant [REDACTED 4] and Claimant [REDACTED 2], as named beneficiaries in [REDACTED]’s will, are entitled to share equally this third of Ida Spitz’s third of the Award amount, or one-eighteenth each of the total Award amount. Claimant [REDACTED 3] and Claimant [REDACTED 1], who are not named in [REDACTED]’s will, are not entitled to share in this portion of the award amount.

Table 1 below summarizes the distribution of the Award amount.

Table 1. Division of the Award Amount.

	AO Josef Spitz	AO Ida Spitz	AO Günter Spitz	Amount (SF)
Claimant [REDACTED 1]	0.00	42,055.56	31,541.66	73,597.22
Claimant [REDACTED 3]	31,541.66	0.00	15,770.84	47,312.50
Claimant [REDACTED 4]	0.00	10,513.89	0.00	10,513.89
Claimant [REDACTED 2]	31,541.67	10,513.89	15,770.83	57,826.39
Total	SF 63,083.33	SF 63,083.34	SF 63,083.33	SF 189,250.00

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
4 February 2008