

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1],

[REDACTED 2],

[REDACTED 3],

and [REDACTED 4]

in re Accounts of Gilel Turkieltaub

Claim Numbers: 213430/AX; 213878/AX; 220177/AX; 220479/AX

Award Amount: 76,125.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”), [REDACTED 3], née [REDACTED], (“Claimant [REDACTED 3]”) and [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”) to the published accounts of Gilel Turkieltaub (the “Account Owner”) over which Ber Turkieltaub (“Power of Attorney Holder Ber Turkieltaub”), Izaak Turkieltaub (“Power of Attorney Holder Izaak Turkieltaub”), and Hirsz Zarkowski (“Power of Attorney Holder Zarkowski”) (together, the “Power of Attorney Holders”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).

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

Information Provided by the Claimants

The Claimants each submitted a Claim Form identifying the Account Owner as their relative, Hillel (Gilel or Gillel) Turkieltaub (Turkeltaub). Specifically, Claimant [REDACTED 2] stated that the Account Owner was her father, and Claimant [REDACTED 1], Claimant [REDACTED 3], and Claimant [REDACTED 4] stated that the Account Owner was their grandfather. The Claimants stated that Gilel (Gillel) Turkeltaub was born in 1870 in Russia and was married to [REDACTED], née [REDACTED], in 1893 in Russia. According to the Claimants, Gilel Turkeltaub had six children: Claimant [REDACTED 2] (who is the sole living child); [REDACTED] (Claimant [REDACTED 4] and Claimant [REDACTED 1]’s father); [REDACTED] (Claimant [REDACTED 3]’s mother); Boris (Ber Tur) Turkeltaub;

[REDACTED]; and Issak Turkeltaub. The Claimants indicated that their relative, who was Jewish, was a businessman in Warsaw, Poland, until 1934, when he emigrated to Tel Aviv, Palestine. Claimant [REDACTED 2] stated that her father left Poland as result of the unstable situation in Europe after the Nazis came to power in Germany. The Claimants indicated that their relative worked at 5 ul. Przejazd in Warsaw. The Claimants stated that Gilel Turkeltaub died on 7 July 1959 in Tel Aviv, Israel.

In support of her claim, Claimant [REDACTED 2] submitted her Israeli identity card, indicating that her father was named Hillel, and pictures of the tombstone of Hillel Turkeltaub. Claimant [REDACTED 1] and Claimant [REDACTED 4] submitted the death certificate of Hillel Turkeltaub, the death certificate and burial certificate of [REDACTED], indicating that his father was Hillel Turkeltaub, and the certificate of inheritance of [REDACTED], indicating that Claimant [REDACTED 1] and Claimant [REDACTED 4] are the children of [REDACTED]. Claimant [REDACTED 3] submitted the death certificate of Hillel Turkieltaub, the Israeli identity card of [REDACTED], née [REDACTED], indicating that her father was named Hillel, the death certificate of [REDACTED], née [REDACTED], indicating that her father was Hillel Turkeltaub, and the certificate of inheritance of [REDACTED], née [REDACTED], indicating that Claimant [REDACTED 3] was her daughter, and that her husband was Hirsch Zarkowski.

Information Available in the Bank's Records

The Bank's records submitted to the CRT by 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") consist of internal documents and circulars relating to the Polish – Swiss Compensation Agreement of 25 June 1949 (the "Agreement") and the 1955 internal bank survey, taken five years after the Agreement had come into force, of accounts owned by Polish customers who had not been heard from since 1945. The records also contain lists of dormant accounts, also compiled in 1955, owned by customers domiciled in Poland, but with unknown nationality, and printouts from the Bank's database. According to these records, the Account Owner was Gilel Turkieltaub, who resided at Przejazd 5 in Warsaw, Poland. The Bank's 1955 list of account owners domiciled in Poland but whose nationality was not known to the Bank includes a demand deposit account in United States Dollars ("US \$") owned by Gilel Turkieltaub. The list indicates that the account had a balance of US \$13.50 on 11 August 1955 and that the Bank had not been in contact with the Account Owner since at least 9 May 1945. The list indicates that the account was opened on 1 May 1934.

Pursuant to Article 6 of 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 additional documents. These documents consist of a power of attorney form signed on 21 August 1931 in Warsaw and a customer card and indicate that the address used by the Account Owner was the address of *Firma Bracia Turkieltaub* (Turkieltaub Brothers Firm). Those documents also indicate that the Power of Attorney Holders to the account were Ber Turkieltaub, Izaak Turkieltaub, and Hirs Zarkowski, all of whom lived in Warsaw under the address of the Turkieltaub Brothers Firm. These records indicate that the Account Owner also

held another account, the type of which is not indicated, that was opened on or before 21 August 1931.

According to these records, the demand deposit account was considered dormant by the Bank, and was transferred to a suspense account on an unknown date. The Bank's records indicate that the account was eventually closed to Bank's fees. The Bank's records do not show when the account of unknown type was closed nor do they indicate its value. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holders, or their heirs closed the account of unknown type and received its proceeds.

According to a circular to the directors of member banks, dated 13 July 1955 and signed by the Bank's president and secretary, the Agreement called for the payment of dormant assets held in Swiss banks by Polish nationals to the government of Poland in return for compensation to Swiss banks and Swiss life insurance companies that had suffered financial loss as a result of nationalizations in Poland. The circular specifies:

After the Polish government committed to indemnify the Swiss banks and life insurance companies which might be urged to release the assets of entitled people after they delivered these amounts [to the Swiss National Bank], the question comes up whether a letter of indemnity should be requested from the Polish government in each individual case. If the banks consider this step necessary, the Federal [Swiss] Department of Foreign Affairs is willing to submit such a request to the Polish government. For the time being, the banks do not yet have to deliver the assets which are subject to the regulations [at issue], but rather report them to us and inform us about their opinion on the question about the letter of indemnity. We will discuss further proceedings with the Federal Department of Foreign Affairs. Please reply by the end of August 1955.

Please use this circular letter only for internal purposes and not for publication use.¹

¹ The German original reads: "Nachdem sich die polnische Regierung verpflichtet hat, diejenigen schweizerischen Banken und Lebensversicherungsinstitute zu entschädigen, die nach Ablieferung der Vermögen von Berechtigten zur Herausgabe dieser Beträge angehalten werden sollten, stellt sich die Frage, ob nicht in jedem einzelnen Fall von der polnischen Regierung ein Revers zwecks Schadloshaltung zu verlangen ist. Fall die Banken diese Massnahme für nötig erachten, ist der polnischen Regierung zu unterbreiten. Es handelt sich für die Banken somit vorläufig noch nicht darum, die unter die Bestimmungen des Briefwechsels fallenden Guthaben abzuliefern, sondern diese uns vorerst zu melden und uns ihre Ansicht zur Frage des Revers bekanntzugeben. Wir werden dann das weitere Vorgehen mit dem Eidgenössischen Politischen Departement besprechen. Wir bitten Sie um Ihre diesbezügliche Meldung bis Ende August 1955. Wir ersuchen Sie, vom vorliegenden Zirkular lediglich einen internen Gebrauch zu machen und es nicht zu Publikationszwecken benützen." In a postscript, the authors note that only to the directors of the main branches are to receive one copy each of the circular. "Dieses Zirkular wird lediglich den Direktionen der Hauptsitze in je einem Exemplar zugestellt."

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 Owner

The Claimants have plausibly identified the Account Owner. The Claimants' relative's name, country and city of residence match the published name, country and city of residence of the Account Owner. The Claimants identified the names Ber Turkeltaub, Izaak Turkeltaub, and Hirsch Zarkowski, which match the unpublished names of the Power of Attorney Holders contained in the Bank's records. The Claimants indicated that Gilel Turkieltaub worked at 5 Przejazd Street in Warsaw, which matches unpublished information about the Account Owner contained in the Bank's records.

In support of their claims, Claimant [REDACTED 2] submitted her Israeli identity card, indicating that her father was named Hillel, and pictures of the tombstone of Hillel Turkeltaub; Claimant [REDACTED 1] and Claimant [REDACTED 4] submitted the death certificate of Hillel Turkeltaub, the death certificate and burial certificate of [REDACTED], indicating that his father was Hillel Turkeltaub; Claimant [REDACTED 3] submitted the death certificate of Hillel Turkieltaub, the Israeli identity card and the death certificate of [REDACTED], née [REDACTED], indicating that her father was named Hillel, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank's records as the name of the Account Owner.²

The CRT notes that the other claim to this account was disconfirmed because that claimant failed to identify the Power of Attorney Holders and the street address of the Account Owner.

Status of the Account Owner as a Victim or Target of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 2] stated that the Account Owner was Jewish, and that he left Poland after the Nazis came to power in Germany. The CRT further notes that the Account Owner would not have been able to return to his country of residence due to fears of Nazi persecution.

² The CRT notes that the documents provided by the Claimants indicate that their relative's name was Hillel Turkeltaub (Turkieltaub), while the Bank's records indicate that the Account Owner's name was Gilel Turkieltaub. However, the CRT notes that this discrepancy is a result of the transliteration of the Claimants' relative's name from the Russian language, and finds that this is not material to the Claimants' identification of the Account Owner.

The CRT also notes that, although Claimant [REDACTED 2] indicated that the Account Owner left Poland in 1934,³ several years before the Nazi invasion in 1939, the Bank treated at least one of his accounts – the demand deposit account – as a “victim” account. The account was included in a list, compiled in 1955, of dormant accounts owned by customers domiciled in Poland, but with unknown nationality and was likely included in the Polish – Swiss Agreement to offset costs to the Polish government for payments to Swiss banks and insurance companies for financial losses suffered during nationalizations. Therefore, in 1955, the Bank considered it plausible that the account belonged to a person domiciled in Poland who, along with his/her heirs, had perished during the Second World War.

The Claimants’ Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant [REDACTED 2]’s father and Claimant [REDACTED 1]’s, Claimant [REDACTED 3]’s, and Claimant [REDACTED 4]’s grandfather. These documents include Claimant [REDACTED 2]’s Israeli identity card, indicating that her father was named Hillel; the death certificate and burial certificate of [REDACTED], indicating that his father was Hillel Turkeltaub; and the certificate of inheritance of [REDACTED], indicating that Claimant [REDACTED 1] and Claimant [REDACTED 4] are the children of [REDACTED]; the Israeli identity card and the death certificate of [REDACTED], née [REDACTED], indicating that her father was Hillel Turkeltaub, and the certificate of inheritance of [REDACTED], née [REDACTED], indicating that Claimant [REDACTED 3] is her daughter. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

In this case, the Account Owner held one demand deposit account and one account of unknown type.

With regard to the account of unknown type, given that there is no record of the payment of the account to the Account Owner nor any record of a date of closure of the account; that the Account Owner and his 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 (f), (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 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.

³ The CRT notes that the exact date of the Account Owner’s departure from Poland is not known. According to the Bank’s records, the Account Owner was in Warsaw at least until 1 May 1934, on which date he opened his demand deposit account using his Warsaw address.

With regard to the demand deposit account, according to the Bank's records, the Account Owner opened this account using his Warsaw address on 1 May 1934. Claimant [REDACTED 2] stated that the Account Owner emigrated to Palestine in 1934. Apparently, then, the Bank had no further contact with the Account Owner, because if it did his new domicile in Palestine would have been noted in the records. The CRT notes that it is not clear why an account owner would open an account and never use it again, especially in this case, when the Account Owner had emigrated to a new country and would have needed to access his funds. The records also indicate that the demand deposit account had a balance of US \$13.50 on 11 August 1955. If there indeed had been no account owner activity on the account since 1934, it is also not clear why an account owner would open a foreign currency account with such a small balance and then never use it. The Bank's records further note that the account was closed to Bank's fees on an unknown date, though the records suggest that the account's assets were included in the Polish-Swiss Agreement. As evidenced in the precautions detailed in the circular of 13 July 1955, knowledge about this arrangement was guarded. The CRT therefore considers it unlikely that the Account Owner's heirs would have been able to obtain information about the account after its inclusion in the 1955 internal bank survey conducted pursuant to the Agreement.

In its Memorandum and Order of February 19, 2004, the United States District Court for the Eastern District of New York specifically addressed the practice of Swiss banks fending off inquiries about Holocaust-era accounts under the pretext of protecting property rights and banking secrecy, while abandoning these principles when it served their own economic interests, as in the case of the Polish-Swiss agreement:

It is important to reiterate that the Swiss banks' devotion to secrecy and their repeated acts of stonewalling were not based on principles – they were profit-driven. Put differently, “the banks' rhetorical efforts to uphold the existing ‘legal system,’ guarantee the [v]iability of the law and protect ‘property rights’ on the basis of banking secrecy” were merely that – rhetoric. As the Bergier Commission found, “it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of banking secrecy and a clear preference for continuity in private law. Over the many years of such rejections, a large number of accounts were reduced to zero or almost.” Where economics counseled against upholding secrecy, private law and property rights, however, the banks were quick to abandon their supposedly entrenched values.

A particularly telling example of profits being placed over “banking secrecy” is the secret post-war deals reached by the Swiss with Poland and Hungary to loot unclaimed accounts belonging to Holocaust Victims. “[T]he primary aim of [these deals] was to favour Swiss interests in the wake of nationalization of assets in Poland and Hungary.” The Bergier Commission was conservative when it wrote that this was “the primary aim” of the deals. What actually happened was that money was taken from dormant accounts of murdered Polish and Hungarian citizens and transferred to Swiss citizens to ameliorate the claims these citizens were raising against the Polish and Hungarian governments after their assets had been nationalized. And yet, “[t]he agreement[s] got no or very little publicity. It was therefore virtually impossible even for heirs living abroad to assert their claims.” Gerhard Weinberg, an eminent historian of the Nazi era, explained the deal with Poland as follows:

[I]n 1949 the Swiss government signed a secret agreement with the Communist government of Poland under which the Swiss government with the agreement of the regime in Warsaw located the accounts in Swiss financial institutions of those Polish citizens who had been murdered and who either had no heirs or whose heirs had been stonewalled. The proceeds of this looting operation were then paid over to Swiss citizens who had claims on Poland arising out of the nationalization and / or confiscation of their property in Communist Poland.

The deal with Hungary was similar in operation. While the “primary aim” of “favour[ing] Swiss interests” through these deals is clear, it is hard to imagine what secondary aim there could have been.

What is most striking about these secret agreements is that, as the Bergier Commission pointed out, “[s]urprisingly, it was now apparently possible to conduct an internal investigation so that a list of dormant accounts relating to these countries could be drawn up.” Indeed, “[n]either private property rights nor banking secrecy had been a barrier to the release of these assets.” Dr. Weinberg explained: [A]ccounts which previously have been announced in diplomatic negotiations as either not existing or incapable of being located, and which have been withheld from the heirs either for those reasons or because the heirs cannot produce documents acceptable to the financial institutions, can suddenly be identified, their contents removed, and legal title to the assets transferred to Swiss citizens whose claims against Poland or Hungary might hinder future profitable Swiss trade with those countries. The United States opposed the agreement with Poland because “such an agreement would be inconsistent with the declarations previously made by Swiss officials regarding the disposition of heirless assets found in Switzerland.” But its opposition was to no avail. Again, the banks’ focus was on profits, and the deals went forward.⁴

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 Account Owner was Claimant [REDACTED 2]’s father and the grandfather of Claimant [REDACTED 1], Claimant [REDACTED 3], and Claimant [REDACTED 4], and those relationships justify an Award. Finally, the CRT has determined that neither the Account Owner, the Power of Attorney Holders, nor their heirs received the proceeds of the demand deposit account, and that it is plausible that neither the Account Owner, the Power of Attorney Holders, nor their heirs received the proceeds of the account of unknown type.

Amount of the Award

⁴ *In re Holocaust Victim Assets Litigation*, 302 F. Supp. 2d 59, 69-71 (E.D.N.Y. 2004), *amended*, 319 F. Supp. 2d 301 (E.D.N.Y. June 1, 2004) (internal cites omitted).

In this case, the Account Owner held one demand deposit account and one account of unknown type. As for the 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 an award amount of SF 49,375.00.

As for the demand deposit account, the Bank’s records indicate that the value of the account as of 1955 was US \$13.50, which was equivalent to SF 57.92.⁵ In accordance with Article 31(1) of Rules, this amount is increased by an adjustment of SF 165.00, which reflects standardized bank fees charged to the account between 1945 and 1955. Consequently, the adjusted balance of the account at issue is SF 222.92. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of this amount is calculated by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 26,750.00.

Consequently, the total award amount for both accounts is SF 76,125.00.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner’s spouse has not submitted a claim, the award shall be in favor of the descendants of the Account Owner who have submitted a claim in equal shares by representation. Accordingly, Claimant [REDACTED 2], the daughter of the Account Owner, is entitled to one-third of the Award amount, and Claimant [REDACTED 3], the daughter of the Account Owner’s late daughter [REDACTED], is entitled to one-third of the Award amount. Claimant [REDACTED 4] and Claimant [REDACTED 1], who are both the children of [REDACTED], the Account Owner’s late son, are each entitled to one-sixth of the 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

⁵ The CRT uses official exchange rates to convert amounts in foreign currencies into Swiss Francs.

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

Claims Resolution Tribunal
29 March 2006