

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1],

to Claimant [REDACTED 2],

and to Claimant [REDACTED 3]
represented by Mondex Corporation

in re Account of Karl Weinberg

Claim Numbers: 707749/BW; 783397/BW;¹ 501895/BW

Award Amount: 37,665.75 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”), and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the 2005 published account of Karl Weinberg (the “Account Owner”) at the Winterthur branch of the [REDACTED] (the “Custodian”).

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 custodian have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1] and Claimant [REDACTED 2]

Claimant [REDACTED 1] and Claimant [REDACTED 2], who are cousins, submitted similar Initial Questionnaires and documents identifying the Account Owner as their great-uncle, Karl

¹ [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) did not submit Claim Forms to the CRT. However, in 1999 they submitted Initial Questionnaires (“IQs”), numbered FRE-0018-104 and ENG-0527-063, respectively, to the Court in the United States. Although these IQs were not Claim Forms, 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 IQs were forwarded to the CRT and have been assigned claim number 707749 and 783397, respectively.

Weinberg, who was the brother of their grandmother [REDACTED], née [REDACTED].² Claimant [REDACTED 1] and Claimant [REDACTED 2] indicated that their great-uncle, who was Jewish, was born in Germany and later fled to Amsterdam, the Netherlands, where he resided until he was deported to a concentration camp, where he perished. Claimant [REDACTED 1] and Claimant [REDACTED 2] stated their grandmother [REDACTED], née [REDACTED], married [REDACTED] and had two children: [REDACTED] (Claimant [REDACTED 2]'s mother) and [REDACTED] (Claimant [REDACTED 1]'s father). According to Claimant [REDACTED 2], her mother married [REDACTED] on 25 October 1944 in Hampstead, England, and Claimant [REDACTED 2] was born on 23 June 1945 in Hammersmith, England. Claimant [REDACTED 2] explained that most of her grandmother and great-uncle's family perished during the War, and that only one of their siblings named [REDACTED], née [REDACTED], survived, but that she is now deceased. Claimant [REDACTED 1] stated that his father [REDACTED], who is now deceased, married his mother and that he was born on 26 June 1951 in Verviers, Belgium.

In support of her claim, Claimant [REDACTED 2] submitted copies of documents, which include:

- (1) Her parents' marriage certificate, which indicates that [REDACTED] and [REDACTED], the daughter of [REDACTED], were married on 25 October 1944 in Hampstead, England;
- (2) Her birth certificate, which indicates that a child named [REDACTED 2] was born on 23 June 1945 in Hammersmith, England to [REDACTED] and [REDACTED], née [REDACTED];
- (3) Her mother's death certificate, which indicates that [REDACTED] (otherwise known as [REDACTED]), née [REDACTED], who was born on 28 February 1909 and was married to [REDACTED], died on 30 July 1981;
- (4) a letter dated 14 August 1963 and addressed to *Frau* (Mrs.) [REDACTED] and *Herr* (Mr.) [REDACTED] from a notary in Amsterdam referencing payments received and made in the settlement of the estate of Karl Weinberg, which also references the factory *N.V. Krawattenfabrik Derby*;
- (5) a letter dated 3 May 1965 and addressed to *Frau* (Mrs.) [REDACTED] from an attorney in Amsterdam regarding amounts received by the heirs in the settlement of the estate of [REDACTED], née [REDACTED], and indicates that the heirs concerned with this estate were [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED];
- (6) a letter dated 8 February 1967 and addressed to *Frau* (Mrs.) [REDACTED] from an attorney named Dr. Graefinghof in Düsseldorf, which indicates he was taking over the settlement of the estates of [REDACTED], [REDACTED], née [REDACTED], [REDACTED], née [REDACTED], and [REDACTED] after the sudden death of the Amsterdam attorney, and further indicating that each of the heirs were contributing DM 1,000.00 to [REDACTED] as restitution for the amount he paid to [REDACTED] for his

² The CRT notes that Claimant [REDACTED 1] did not specifically identify the Account Owner as his great-uncle. His relationship to Karl Weinberg is inferred from his relationship to Claimant [REDACTED 2], who is Claimant [REDACTED 1]'s cousin.

half of the business furnishings and warehouse of the family firm in Herne, Germany, which was taken in 1938 and had yet to be compensated;

- (7) a letter dated 8 February 1967 from Dr. Graefinghof regarding the settlement of the estates of [REDACTED], née [REDACTED], and [REDACTED], which indicates their heirs were [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED];
- (8) a letter dated 5 October 1999 from the Swiss Department of Foreign Affairs (*Eidgenössisches Departement für Auswärtige Angelegenheiten*) which indicates [REDACTED 2] was contacted concerning her entitlement to assets belonging to Carl [*sic*] Weinberg, whose name was published in 1999 with regard to a list of asset holders compiled according to the 1962 Federal Decree on Assets in Switzerland belonging to Foreign Nationals and Stateless Persons persecuted for racial, religious or political reasons (the “1962 Federal Decree”).

Additionally, Claimant [REDACTED 1] submitted a letter dated 7 October 1999 from the Swiss Department of Foreign Affairs, which indicates that he was contacted concerning his entitlement to assets of a person whose name was published in 1999 on a list of asset holders compiled according to the 1962 Federal Decree.

Claimant [REDACTED 2] indicated that she was born on 23 June 1945 in Hammersmith and Claimant [REDACTED 1] indicated he was born on 26 June 1951 in Verviers.

Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted a Claim Form identifying the Account Owner as her maternal aunt’s husband, Karl Weinberg, who was born on 29 June 1897 in Herne, Germany and who was married to [REDACTED], née [REDACTED], who was born on 2 August 1903 in Kalkar, Germany. Claimant [REDACTED 3] stated that her uncle, who was Jewish, had two children, [REDACTED], who was born in 1928, and [REDACTED], who was born in 1930, and that he was a manufacturer who lived in Düsseldorf, Germany until he fled Nazi Germany with his family to the Netherlands. Claimant [REDACTED 3] further stated that [REDACTED] died in the Netherlands in 1942 and that Karl Weinberg and his two children were deported from the Netherlands to Auschwitz, where they perished in 1944. Claimant [REDACTED 3] explained that her mother, [REDACTED], née [REDACTED], was the sister of the Karl Weinberg’s [REDACTED], née [REDACTED]. Claimant [REDACTED 3] stated that her mother was married to [REDACTED]. Claimant [REDACTED 3] indicated that she has a brother, [REDACTED], who was born in 1923. According to Claimant [REDACTED 3], her father died in 1972 in Flushing, New York; her mother died on 28 September 1975 in New York, New York; her brother [REDACTED] died in 1973; and the two children of her brother Ernst are also deceased.

In support of her claim, Claimant [REDACTED 3] submitted a detailed family tree which indicates her relationship to the Account Owner.

Information Available in the Bank's Records

The CRT notes that the auditors who carried out the investigation 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 report an account belonging to Karl Weinberg during their investigation. Documents concerning the account were obtained from the Swiss Federal Archive, and are further described below.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962, the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution ("the 1962 Survey"). In the records of the Swiss Federal Archive in Bern, Switzerland, E 4111 (A) 1980/13, *Spezial-Kartei "registrierte Vermögenswerte,"* there is a file concerning the assets of Karl Weinberg, numbered 1153.

The documents in this file indicate that the Account Owner was Karl Weinberg, who was born on 29 June 1897 in Herne. These records further indicate that the Account Owner was German, that he resided at Speldorferstrasse 23 in Düsseldorf and later at Heerengracht 208 in Amsterdam, and that he was the Director of the *N.V. Dassenfabriek "Derby"* in Amsterdam.

According to the registration form dated 26 June 1964 contained in the file, the Custodian registered assets belonging to the Account Owner pursuant to the 1962 Survey. This registration form shows that the Account Owner held a 25-year term life insurance policy numbered 201194 at the Winterthur branch of the Custodian, which was established on 1 March 1929 and matured on 1 March 1954. These records further indicate that Karl Weinberg was both the policy holder ("*Versicherungsnehmer*") and the insured ("*Versicherter*"), that the face amount of the policy ("*ursprüngliche Versicherungssumme*") was 25,000.00 Swiss Francs ("SF"), and that the beneficiary of the policy was Karl Weinberg, or in the event of his death, his wife. According to these records, the premium for the policy was last paid on 1 March 1935 and as of 1 September 1963 the value of the policy was SF 4,055.00. These records indicate that the last contact from the Account Owner with the Custodian was a letter sent by the Account Owner on 17 November 1936.

According to a document dated 7 January 1966, the Registration Office for Assets of Missing Foreigners (the "Registration Office") ("*Meldestelle für Vermögen verschwundener Ausländer*") requested that the Guardianship Office of the city of Winterthur (the "Guardianship Office") ("*Vormundschaftsbehörde der Stadt Winterthur*") appoint a guardian, as prescribed by the Federal Decree, and that such a guardian was appointed in 1966 (the "Guardian"). Additionally, correspondence contained in these records between the Guardian and the Guardianship Office in 1970 indicate that the Guardian informed the Guardianship Office that he had contacted an attorney in Germany and was attempting to find the heirs of the Account Owner, and that a Missing Persons Proceeding ("*Verschollenheitsverfahren*") regarding the Account Owner's

assets should be postponed. In a subsequent letter dated 12 January 1971, the Guardianship Office inquired as to the status of the Guardian's search and informed him that if the heirs could not be located, the Missing Persons Proceeding should be scheduled, as the time period allotted according to the Federal Decree relating to the 1962 Survey was expiring and would not be extended.

Finally, these records contain an extract of proceedings of the Guardianship Office dated 28 October 1973, which indicates that although the Guardian had contacted the lawyer representing the family of the Account Owner, because the assets of the Account Owner had yet to be claimed and the Federal Decree regarding the 1962 Survey had expired, the Guardian was released from his responsibility and directed to transfer the assets of the Account Owner to the Heirless Assets ("*Erblose Vermögen*") account at the Federal Accounting Office ("*Eidg. Kassen- und Rechnungswesen*"). This document further indicates that the Guardianship Office directed the Guardian to inform the lawyer of the Weinberg family, Dr. Gräffinghof of Düsseldorf, that the assets would be deposited in the Heirless Assets account, and that the assets could be claimed by any entitled party within the next five years.

The CRT notes that in 1999, Swiss authorities published names of owners of accounts that had been reported in the 1962 Survey and that the Account Owner's name was among those published. According to confidential information received by the CRT from Swiss authorities, a claim was received for the above account, and after research by those authorities, an amount of SF 11,980.00, representing the 1 September 1963 value of the account adjusted for interest, was paid out to the persons who filed the claim. The CRT notes that the Swiss authorities did not identify the name of the persons who filed the claim in 1999 and who subsequently received the funds. However, given that Claimant [REDACTED 1] and Claimant [REDACTED 2] both indicated in their Initial Questionnaires that they had been contacted in 1999 by the Swiss authorities regarding assets reported in the 1962 Survey, the CRT considers that the claim was made by Claimant [REDACTED 1] and Claimant [REDACTED 2], and that the sums paid in 1999 were received by Claimant [REDACTED 1] and Claimant [REDACTED 2].

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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant [REDACTED 1] and Claimant [REDACTED 2]

Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly identified the Account Owner. The name of the great uncle of Claimant [REDACTED 1] and Claimant [REDACTED 2] matches the published name of the Account Owner. Claimant [REDACTED 1] and Claimant

[REDACTED 2] identified the Account Owner's occupation, his original country of residence and his subsequent city and country of residence, as well as the name and city where his factory was located, which matches unpublished information about the Account Owner contained in the Custodian's records.

In support of her claim, Claimant [REDACTED 2] submitted documents, including correspondence with a number of attorneys in Amsterdam and Düsseldorf over the last decades regarding the settlement of the Account Owner's estate, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same cities and countries of residence recorded in the Custodian's records as the name and cities and countries 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 Karl Weinberg, and indicates that his place of birth was Germany, and that he also resided in the Netherlands, which matches the information about the Account Owner provided by Claimant [REDACTED 1] and Claimant [REDACTED 2]. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

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

The CRT notes that Claimant [REDACTED 1] and Claimant [REDACTED 2] filed Initial Questionnaires with the Court in 1999 asserting their respective entitlement to a Swiss bank account owned by Karl Weinberg prior to the publication of the 2005 List. This indicates that Claimant [REDACTED 1] and Claimant [REDACTED 2] have based their present claims not simply on the fact that an individual identified on the 2005 List as owning a Swiss bank account bears the same name as their relative, but rather on a direct family relationship that was known to them before the publication of the 2005 List. It also indicates that Claimant [REDACTED 1] and Claimant [REDACTED 2] had reason to believe that their relative owned a Swiss bank account prior to the publication of the 2005 List. This supports the credibility of the information provided by Claimant [REDACTED 1] and Claimant [REDACTED 2].

Claimant [REDACTED 3]

Claimant [REDACTED 3] has plausibly identified the Account Owner. The name of Claimant [REDACTED 3]'s aunt's husband matches the published name of the Account Owner. Claimant [REDACTED 3] also identified the Account Owner's date and place of birth, and his original and subsequent city and country of residence, which matches unpublished information about the Account Owner contained in the Custodian's records. In support of her claim, Claimant [REDACTED 3] submitted a detailed family tree which indicates the relationship between herself and the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a page of testimony submitted by Claimant [REDACTED 3] in 2000, which indicates that Karl Weinberg was born in Herne, and resided in Düsseldorf and later Amsterdam, 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 other claims to this account were disconfirmed because those claimants provided a different year of birth and city of residence than the year of birth and city of residence of the Account Owner.

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 Claimants stated that the Account Owner was Jewish, that he fled Germany, his country of origin, for the Netherlands, and that he was deported from Amsterdam to Auschwitz, where he perished. As noted above, a person named Karl Weinberg was included in the CRT's database of victims.

The Claimants' Relationship to the Account Owner

Claimant [REDACTED 1] and Claimant [REDACTED 2]

Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimants' great uncle. These documents include multiple correspondences from the settlors of the various estates of members of the Weinberg family, including the estate of the Account Owner, which indicate that Claimant [REDACTED 2]'s mother and Claimant [REDACTED 1]'s father were both heirs of the Account Owner.

The CRT notes that information contained in documents submitted with Claimant [REDACTED 2]'s claim indicates that she might have other surviving relatives, however as they are not represented in Claimant [REDACTED 2]'s claim, the CRT will not treat their potential entitlement to the Account Owner's account in this decision.

Claimant [REDACTED 3]

Claimant [REDACTED 3] has plausibly demonstrated that she is related to the Account Owner by submitting specific information demonstrating that the Account Owner was the Claimant [REDACTED 3]'s uncle. The CRT notes that Claimant [REDACTED 3] did not indicate whether she has other surviving relatives; however should others exist, Claimant [REDACTED 2] and Claimant [REDACTED 1] notwithstanding, because they are not represented in Claimant [REDACTED 3]'s claim, the CRT will not treat their potential entitlement to the Account Owner's account in this decision.

The CRT further notes that Claimant [REDACTED 3] identified unpublished information about the Account Owner as contained in the Custodian's records; and that Claimant [REDACTED 3] also identified information which matches information contained in the Yad Vashem records. The CRT further notes that Claimant [REDACTED 3] submitted a detailed family tree, which

most likely only a family member would possess, and that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to Claimant [REDACTED 3] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 3] is related to the Account Owner, as she has asserted in her Claim Form.

The Issue of Who Received the Proceeds

The CRT notes that the assets involved in this case stem from an insurance policy, rather than a bank account opened in the name of the Account Owner. The CRT also notes that the Settlement Agreement in the *In re Holocaust Victim Assets Litigation* includes provisions to address restitution for insurance policies held by Holocaust victims, and that names of policy holders have been published in connection with the Insurance Claims Process established for claiming these policies. In this case, however, the insurance carrier who issued the policy for the Account Owner is not among the Participating Insurance Carriers that participate in the Settlement Agreement. Further, the name of the Account Owner was not included in any list of policies published in connection with the Insurance Claims Process associated with the *In re Holocaust Victim Assets Litigation*.

Based upon the information made available to the CRT from the Swiss Federal Archive, it appears that the treatment of the insurance policy at issue in this case differs from those policies treated in the Insurance Claims Process under the Settlement Agreement. While no records have been made available to the CRT regarding the ultimate disposition of the policy proceeds for the majority of the cases in the Insurance Claims Process, in this case the records show that, upon maturity in 1954, the assets remained with the issuing insurance carrier, and that the carrier then registered the assets pursuant to the 1962 Survey. Subsequently, in accordance with the procedures established in the 1962 Survey, these assets were deposited into the Swiss Heirless Asset Fund. As detailed above, a list of names of persons whose assets were so treated was published in 1999, and that list contained the name of Karl Weinberg, the Account Owner at issue here. The CRT notes that the Account Owner's name was also published in 2005 in connection with the Claims Resolution Process as an owner of a bank account, not of an insurance policy.

Based upon the facts outlined above, and upon the fact that the proceeds of the policy were treated upon maturity as assets deposited with the Custodian and subsequently registered pursuant to the 1962 Survey, just as assets held in bank accounts, the CRT concludes it appropriate to treat the claim to the assets at issue here as a Deposited Assets claim, rather than as a claim under the Insurance Claims Process established by the Settlement Agreement. For the purposes of this decision, the assets will be considered to have been held in an account of "other" type, as set forth in Article 29 of the Rules.

With regard to the ultimate fate of these assets, as noted above, in 1999 Swiss authorities published names of owners of accounts that had been reported in the 1962 Survey, and the Account Owner's name was among those published. According to confidential information received by the CRT from Swiss authorities, a claim was received for the above accounts, and after research by those authorities, an amount of SF 11,980.00, representing the 1 September

1963 value of the account adjusted for interest, was paid out to the persons who filed the claim. The CRT notes that the Swiss authorities did not identify the name of the persons who filed the claim in 1999 and who consequently received the funds. However, given that Claimant [REDACTED 1] and Claimant [REDACTED 2] both indicated in their claim submissions that they had been contacted in 1999 by the Swiss authorities regarding assets reported in the 1962 Survey, the CRT considers that the claim was made by Claimant [REDACTED 1] and Claimant [REDACTED 2], and that the sums paid in 1999 were received by Claimant [REDACTED 1] and Claimant [REDACTED 2].

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1] and Claimant [REDACTED 2]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly demonstrated that the Account Owner was their great uncle, and that relationship justifies an Award. Third, although the Swiss authorities made a payment, presumably to Claimant [REDACTED 1] and Claimant [REDACTED 2], for this account, the amount of that payment is considerably less than that provided for by the Rules.

Further, the CRT notes that Claimant [REDACTED 1] and Claimant [REDACTED 2], as descendants of the Account Owner's parents, have a better entitlement to the account than Claimant [REDACTED 3], who was the niece of the Account Owner by marriage.

Amount of the Award

In this case, the Account Owner held one account of other type. The Custodian's records indicate that the value of the account as of 1 September 1963 was SF 4,055.00.

The CRT notes that payment of SF 11,980.00, representing the value of the account adjusted for interest, was made by Swiss authorities for this account following its publication in 1999. It is not clear when this payment was made, or how exactly the adjustment for interest was calculated. However, on 12 November 2001, when the first set of Deposited Assets awards were made under the Settlement Agreement in *In re Holocaust Victim Assets Litigation*, 1945 values were adjusted to current values by using an adjustment factor of 11.5. Accordingly, the CRT uses that factor to determine the 1945 value that corresponds to the payment of SF 11,980.00 to reach an amount of SF 1,041.74. That amount is subtracted from the 1945 balance of the account for a total amount of SF 3,013.26 that has yet to be restituted. The current value of this amount is determined by multiplying the adjusted balance by a factor of 12.5 in accordance with Article 31(1) of the Rules, to produce an award amount of SF 37,665.75.

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, Claimant [REDACTED 1] and Claimant [REDACTED 2] are the grandchildren of the Account Owner's sister. Accordingly, Claimant [REDACTED 1] and

Claimant [REDACTED 2] are each entitled to a one-half share of the total award amount. As noted above, Claimant [REDACTED 3] is not entitled to a share in the award.

Certification of the Award

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

Claims Resolution Tribunal
28 May 2010