

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]

and to Claimant [REDACTED 3]

in re Accounts of Giovanni Brunner and Bozena Brunner

Claim Numbers: 224269/MC; 850075/MC

This Certified Denial is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) to the published accounts of Hans Brunner and Maria Brunner;¹ and upon the late claim filed as part of an appeal by [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published account of Hans Brunner. This Denial is to the unpublished accounts of Giovanni (Hans) Brunner (“Account Owner Giovanni Brunner”) and Bozena Brunner (“Account Owner Bozena Brunner”) (together the “Account Owners”) at the [REDACTED] (the “Bank”).

All denials 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 owners, and the bank have been redacted.

Procedural History

In a decision approved by the Court 14 December 2005, the Court approved an award to Claimant [REDACTED 1], represented party [REDACTED 2], and two unrelated claimants for one account of unknown type owned by Hans Brunner at a Swiss bank (the “December 2005 Award”). In the December 2005 Award, the CRT also reserved decision with regard to documents submitted by Claimant [REDACTED 1] pertaining to other accounts held by Hans Brunner at a Swiss bank.

In a letter dated 20 August 2007, Claimant [REDACTED 3] submitted an appeal to the December 2005 Award. As part of the appeal, he submitted a late claim asserting his entitlement to the account of Hans Brunner that was the subject of the December 2005 Award. With his appeal, Claimant [REDACTED 3] submitted documents that indicated he was the cousin of Claimant [REDACTED 1] and represented party [REDACTED 2]. In a letter dated 19 April

¹ Claimant [REDACTED 1]’s claim to the accounts of Maria Brunner was treated in a separate decision. See *in re Accounts of Maria Brunner* (approved on 15 July 2005).

2010, Special Master Michael Bradfield treated Claimant [REDACTED 3]'s appeal to the account awarded in the December 2005 Award.

This decision addresses the documents submitted by Claimant [REDACTED 1] which refer to Swiss bank accounts held by Giovanni (Hans) Brunner. As these accounts were not previously treated, Claimant [REDACTED 3]'s potential claim to them is considered in this decision.

Information Provided by the Claimants

The Claimants submitted substantially similar Claim Forms identifying Account Owner Giovanni Brunner as their grandfather, Giovanni (Hans or Ivan) Brunner, who was born in 1887 in Trieste, Italy, and identifying Account Owner Bozena Brunner as their grandmother, Bozena (Natalia) Hedwiga Brunner, née Grahor, who was born on 9 November 1898 or 1899 in Zagreb, Yugoslavia (today Croatia). The Claimants stated that their grandfather, who was Jewish, and their grandmother had two children: [REDACTED], née [REDACTED] (Claimant [REDACTED 1]'s mother), who was born on 22 January 1925, and Hans Brunner (Claimant [REDACTED 3]'s father), who was born on 4 April 1926. The Claimants explained that their grandfather was an attorney, as well as a manager and co-owner of the Zagreb branch of a textile company based in Trieste. The Claimants stated that during the Second World War their grandfather lived in hiding on farms and in monasteries in central Italy. Claimant [REDACTED 1] indicated that their grandfather died in 1964 in Chiopris, Italy; that [REDACTED] died in 1997 in Zurich; and that Hans Brunner died in 1992 in Trieste.

In a telephone conversation with the CRT, Claimant [REDACTED 1] stated that his grandfather lived in Trieste after the Second World War, and that his grandfather was in contact with the Bank after the War regarding an account which he owned. Claimant [REDACTED 1] stated that in 1948 his grandfather closed this account at the Bank, but that his grandfather died suddenly of a stroke and that he might possibly have held other Swiss bank accounts.

In support of his claim, Claimant [REDACTED 1] submitted copies of:

- (1) his mother's inheritance certificate, indicating that [REDACTED 1] and [REDACTED 2] are the sons of [REDACTED];
- (2) an excerpt from the marriage registry of Udine, Italy, indicating that [REDACTED] married [REDACTED], who was the daughter of Giovanni Brunner and Natalia Grahor, and that their marriage was registered in Trieste and Zurich on 23 September 1951;
- (3) his grandmother's Italian passport, indicating that Natalia Brunner, née Grahor, was born on 9 November 1898 in Zagreb, that she resided in Switzerland, and that she died on 21 August 1997 in Zurich;
- (4) his grandfather's law school diploma, dated 31 July 1910, indicating that Hans Brunner attended the University of Vienna between 1906 and 1910 and that he completed studies in law;
- (5) an excerpt from "The History of Jews in Hohenems" (*Die Geschichte der Juden in Hohenems*), which indicates that the Brunner family was a prominent Jewish family

- in Hohenems, Austria, and that members of the family were involved in the textile industry in Trieste;
- (6) correspondence between his grandfather and the Bank from May 1940, which is further described below; and
 - (7) a detailed family tree.

In response to a CRT inquiry, Claimant [REDACTED 1] later submitted additional documents pertaining to accounts owned by the Account Owners at the Bank, which are described below.

In support of his claim, Claimant [REDACTED 3] submitted copies of:

- (1) his grandmother's death notice, indicating that Natalia "Baki" Bozena Brunner, née Grahor von Mrazovich, died on 21 August 1990 in Zurich, and listing her family members as Giovanni Brunner of Trieste, [REDACTED], and [REDACTED 2];
- (2) his father's death certificate, indicating that Giovanni Brunner died on 11 February 1992 in Trieste;
- (3) a handwritten copy of his father's will, signed by Giovanni Brunner in Trieste and dated 25 October 1991;
- (4) the minutes of his father's will, indicating that Giovanni Brunner, who was born on 4 April 1926, died on 11 February 1992 in Trieste, and that his heirs were his son [REDACTED 3] and his sister [REDACTED], née [REDACTED];
- (5) his aunt's published death notice, dated April 1997 in Zurich, indicating that [REDACTED] was the mother of [REDACTED 2] and [REDACTED 1];
- (6) his own birth certificate, indicating that [REDACTED 3], who was born on 3 February 1962 in Vienna, was the son of Giovanni Brunner and [REDACTED], née [REDACTED]; and
- (7) a letter issued by the Italian consulate in Vienna, dated 12 April 1968, indicating that [REDACTED 3], who was the son of Dr. Giovanni Brunner, held Italian citizenship.

Claimant [REDACTED 1] indicated that he was born on 5 July 1960 in Zurich. Claimant [REDACTED 1] is representing his brother, [REDACTED 2], who was born on 18 June 1953 in Zurich. Claimant [REDACTED 3] indicated that he was born on 3 February 1962 in Vienna.

Information Available in the Bank's Records

The CRT notes that 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 report an account belonging to Giovanni Brunner or Bozena Brunner during their investigation of the Bank. The Bank's records were submitted to the CRT by Claimant [REDACTED 1].

These records consist of an authorization to open an account, an account card, deposit slips, account statements, correspondence between the Bank and the Account Owners, a letter from the Swiss Clearing Office (*Schweizerische Verrechnungsstelle*), and an excerpt from a list of closed

accounts. Additionally, in the US National Archive there is a list of accounts blocked in 1941 under the US Trading with the Enemy Act.² According to these records, Account Owner Bozena Brunner was Bozena Brunner, née Grahor, who originally resided at Voncinina 12 in Zagreb, Yugoslavia, and Account Owner Giovanni Brunner was Giovanni (Ivan) Brunner, who was Account Owner Bozena Brunner's husband. The Bank's records show that the Account Owners held a numbered demand deposit account with the designation 8203, which was opened on 3 May 1940 through a transfer of 21,947.87 United States dollars ("US \$"). According to the Bank's records, the funds in the account came from the sale of gold held by Account Owner Bozena Brunner at the London branch of the Bank. The Bank's records indicate that Account Owner Giovanni Brunner was authorized to dispose of the assets in the account. The Bank's records further show that the balance in the account as of 31 December 1940 was US \$21,944.00. According to the Bank's records, on 26 March 1941, the Bank informed the Account Owners that the account was frozen by the United States government as part of a freeze of all accounts owned by citizens or residents of Yugoslavia. The letter from the Swiss Clearing Office informed Account Owner Brunner that the account was unfrozen pursuant to an application filed on 10 June 1948. The records reflect that after the account was unfrozen, Account Owner Bozena Brunner had a balance on her US dollar account of \$66.50. The Bank's records indicate that Account Owner Bozena Brunner was living at Via S.S. Spiridione No. 12 in Trieste, Italy, at the time the account was unfrozen. The Bank's records show that the account was closed on 1 September 1948.

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 account opening forms, power of attorney forms, declaration of consents (*Zustimmungserklärung*), a form with signature samples, and an account management agreement. According to these records, Account Owner Bozena Brunner held two additional custody accounts, numbered 38225 and 256719.

With regard to account numbered 38225, the records show that Account Owner Bozena Brunner, who resided at Voncinina 12 in Zagreb, opened the account no later than 2 December 1934, and that she granted power of attorney over the account to her husband, Dr. Giovanni Brunner, on that same day. The records for this account contain a form for signature samples (*Unterschriftenformular*), originally dated 25 October 1949, which shows that Account Owner Bozena Brunner resided in Trieste, and that she had resided there since 15 July 1940, and that she renewed the power of attorney for her husband, Giovanni Brunner, on 25 October 1949. Subsequent entries on that form show that Giovanni Brunner had died, and that Account Owner Bozena Brunner gave power of attorney over the account to [REDACTED] on 8 April 1960 and to Giovanni Brunner (junior) on 4 June 1963.

² During the Second World War, the United States government froze certain foreign assets located in the United States, under the powers of the Trading with the Enemy Act of 1917 (50 U.S.C. App.). On 14 June 1941, President Roosevelt extended freezing controls to cover all of continental Europe (the "1941 Freeze"). Executive Order 8785 Regulating Transactions in Foreign Exchange and Foreign-Owned Property, Providing for the Reporting of all Foreign-Owned Property, and Related Matters (6 Fed. Reg. 2897). See *Plunder & Restitution: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report*, SR-44 (US Government Printing Office, 2000), available at http://www.pcha.gov/PlunderRestitution.html/html/Home_Contents.html.

With regard to account numbered 256719, the records show that Account Owner Bozena Brunner, who resided in Trieste, opened the account on 30 September 1959. According to the power of attorney forms contained in the file, she gave power of attorney over this account to [REDACTED] on 8 April 1960 and to Dr. Giovanni Brunner (junior) on 4 June 1963. The records include two account management agreements (*Verwaltungs-Auftrag*), dated 21 May 1969 and 19 September 1973, in which Account Owner Bozena Brunner authorized the Bank to manage the assets in this custody account. According to a notation on the power of attorney forms and the account management agreements, this account was closed on 19 February 1974.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of 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 two claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The Claimants' grandparents' names, city and country of residence match the names, city and country of residence of the Account Owners. The CRT notes that Claimant [REDACTED 1] submitted the documents that evidence the existence of the account 8023

In support of his claim, Claimant [REDACTED 1] submitted documents, including an excerpt from a marriage registry, indicating that [REDACTED] is the daughter of Giovanni Brunner, and Claimant [REDACTED 3] submitted his grandmother's death notice, indicating that Natalia "Baki" Bozena Brunner was survived by Giovanni Brunner of Trieste, providing independent verification that the persons who are claimed to be the Account Owners had the same names recorded in the Bank's records provided by Claimant [REDACTED 1] as the names of the Account Owners. The CRT notes that there are no other claims to these accounts.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that Giovanni Brunner was Jewish and that he was forced to live in hiding during the Second World War. The CRT notes that Bozena Brunner was married to Giovanni Brunner, who was Jewish. The Claimants did not provide any information regarding their grandmother's fate during the War.

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 their grandparents. Claimant [REDACTED 1] submitted documents, including his mother's

certificate of inheritance, identifying [REDACTED 1] and [REDACTED 2] as the sons of [REDACTED], and an excerpt from a marriage registry of Udine, indicating that Giovanni Brunner and Natalia Grahor were the parents of [REDACTED]. Claimant [REDACTED 3] submitted his grandmother's death notice, indicating that Natalia "Baki" Bozena Brunner, née Grahor von Mrazovich, died in Zurich and was survived by Giovanni Brunner of Trieste.

The Issue of Who Received the Proceeds

With regard to the demand deposit account, numbered 8023, which was denominated in US dollars, the Bank's records submitted by Claimant [REDACTED 1] indicate that this account was unfrozen and closed on 1 September 1948, while the Account Owners resided in Italy. The CRT notes that the records show that the balance of this account as of 31 December 1940 was US \$21,944.00, and that the account was subsequently frozen in March 1941 as part of the 1941 Freeze. The records do not indicate what the balance of the account was at the time it was frozen, however they do reflect that after the account was unfrozen pursuant to an application filed on 10 June 1948, Account Owner Bozena Brunner had a balance on her US dollar account of US \$66.50. Although the records do not explain the differences in the amounts, the CRT notes that the 31 December 1940 balance does not reflect the balance as of the date that the account was frozen, and that Account Owner Bozena Brunner had access to this account in the time between 31 December 1940 and March 1941, when the account was frozen, and that she could have withdrawn funds during this time. The CRT also notes that the 1948 balance of US \$66.50 reflects only the balance on Account Owner Bozena Brunner's US dollar account, and that she had other accounts (specifically, accounts 38225 and 256719, described below) that she actively managed after the War, and that it is possible that assets that were frozen in account 8023 were transferred to her other accounts after the account was unfrozen, so that only US \$66.50 was reflected in the post-Freeze US dollar account statement. In any case, the records clearly show that account numbered 8023 was released from the 1941 Freeze in 1948 and closed on 1 September 1948, when the Account Owners resided in Italy. The CRT also notes that Claimant [REDACTED 1] stated that his grandfather contacted the Bank regarding an account in 1948. There is no indication in the files that the Account Owners questioned the amount released to them after this account was released from the 1941 Freeze. Therefore, the CRT concludes that the Account Owners had access to this account, closed the account, and received the proceeds themselves.

Additionally, the Bank's records provided during the course of Voluntary Assistance indicate that Account Owner Bozena Brunner held two custody accounts, numbered 38225 and 256719. With regard to account numbered 38225, the records show that this account was opened no later than 2 December 1934, on which day she granted power of attorney over the account to her husband, Dr. Giovanni Brunner. The records for this account also contain a form for signature samples (*Unterschriftenformular*), originally dated 25 October 1949, which shows that Account Owner Bozena Brunner resided in Trieste, and that she had resided there since 15 July 1940, and that she renewed the power of attorney for her husband, Giovanni Brunner, on that date. Subsequent entries on that form show that Giovanni Brunner had died, and that Account Owner Bozena Brunner gave power of attorney over the account to [REDACTED] on 8 April 1960 and to Giovanni Brunner (junior) on 4 June 1963. Given that Account Owner Bozena Brunner was in contact with the Bank several times after the War with regard to this account, specifically to

grant power of attorney over the account to her daughter [REDACTED] on 8 April 1960 and to her son Giovanni on 4 June 1963, the CRT concludes that Account Owner Bozena Brunner maintained control over this account, actively managed it after the War, and that either she or her heirs received the proceeds of this account.

With regard to account numbered 256719, the CRT notes that the records show that this account was opened on 30 September 1959, and that Account Owner Bozena Brunner gave power of attorney over this account to her daughter [REDACTED] on 8 April 1960 and to her son Giovanni on 4 June 1963 (the same days that she gave power of attorney over to them over her account numbered 38225). The records also show that on 21 May 1969 and 19 September 1973 Account Owner Bozena Brunner authorized the Bank to manage the assets in this account, and that the account was closed on 19 February 1974. The CRT notes that, according to the Rules, the CRT has jurisdiction to treat claims to Victim accounts that were open or opened during the Relevant Period, which is defined as the period from 1933 to 1945. Given that this account was not opened until 1959, the CRT has no jurisdiction to determine its ultimate disposition. The CRT does note that there is nothing in the records to suggest that the Account Owner or her heirs did not receive the proceeds of this account.

Accordingly, no award is appropriate in this case.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, the Claimants may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimants should send appeals and/or requests for reconsideration in writing to the following address: Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimant should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal
24 March 2011