

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED 1],

to Claimant [REDACTED 2]

and to Claimant [REDACTED 3]

in re Account of Desidor Zemanek and Margit Zemanek

Claim Numbers: 208362/MC; 209103/MC; 209141/MC; 720064/MC; 720065/MC¹

This Certified Denial is based upon the claims of [REDACTED 1, née [REDACTED] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the accounts of Bela Baruch Zemanek, Piroška Zemanek, Michael Banyai, Miksa Max Kassowitz, Desidor Zemanek and Margit (Margo) Zemanek. The CRT did not locate any accounts belonging to the above-named individuals in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). This Denial addresses documents submitted by Claimant [REDACTED 1] purporting to evidence the existence of an account owned by Desidor Zemanek and Margit (Margo) Zemanek (together the “Claimed Account Owners”) at the Zurich branch of [REDACTED] (“Bank 1”) or at the [REDACTED] (“Bank 2”).

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 owner, and the bank have been redacted.

¹ [REDACTED 1] (“Claimant [REDACTED 1]”) submitted two additional claims, which are registered under the Claim Numbers 209155 and 720063. [REDACTED 2] (“Claimant [REDACTED 2]”) submitted one additional claim, which is registered under the Claim Number 205425. [REDACTED 3] (“Claimant [REDACTED 3]”) submitted one additional claim, which is registered under the Claim Number 707392. In a separate decision, the Claimants were awarded the account of Dionys Ladany. See *In re Account of Dionys Ladany* (approved on 27 January 2003).

Information Provided by the Claimants

The Claimants, who are related, submitted Claim Forms and Initial Questionnaires (“IQs”) identifying the Claimed Account Owners as their maternal aunt Margit (Margo) Zemanek, née Kassowitz, and her husband, Desidor (Dezsö) Zemanek. According to the Claimants, their grandparents [REDACTED] and [REDACTED] had five children: Margit, [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. According to information provided by the Claimants, Margit and [REDACTED] married the brothers Desidor and [REDACTED] Zemanek, respectively. The Claimants explained that [REDACTED] married [REDACTED], and they had two children, [REDACTED 2] (Claimant [REDACTED 2]) and [REDACTED 3] (Claimant [REDACTED 3]). The Claimants explained that [REDACTED] and [REDACTED] had one child, [REDACTED 1] (Claimant [REDACTED 1]), who was adopted by [REDACTED] and [REDACTED] in 1946 following the death of Claimant [REDACTED 1]’s parents and brother in the Holocaust.

The Claimants stated that Desidor and Margit Zemanek, who were Jewish, resided in Zurich and Davos, Switzerland, where they undertook “treatments,” presumably for their health.

In support of their claims, the Claimants submitted documents, including:

- (1) compensation records issued by German, Yugoslavian, and Croatian authorities regarding assets looted by the Nazis;
- (2) a letter from [REDACTED] to his brother [REDACTED], dated 13 December 1939, asking him to help [REDACTED] and his family to transfer money and referencing the names “National City” and “Guaranty Trust Company,” together with copies of signatures of various family members; and
- (3) An excerpt from a birth registry, showing that [REDACTED 1] [*sic*] (Claimant [REDACTED 1]) was born on 11 July 1941, that her parents were [REDACTED] and [REDACTED], née [REDACTED], who were both Jewish, that Margit Zemanek was a witness to the birth, and that [REDACTED 1] was adopted by [REDACTED] [*sic*] and his wife [REDACTED], née [REDACTED] pursuant to an adoption contract dated 23 October 1945.

Additionally, Claimant [REDACTED 1] submitted a letter from Bank I to M. Banyai, dated 4 January 1940, which is described in detail below.

Claimant [REDACTED 1] indicated that she was born on 11 July 1941 in Novi Sad, Yugoslavia. Claimant [REDACTED 2] indicated that he was born on 2 April 1936 in Belgrade, Yugoslavia, and Claimant [REDACTED 3] indicated that she was born on 22 March 1933 in Belgrade.

Claimant [REDACTED 2] previously submitted two IQs with the Court in 1999 and ATAG Ernst & Young claim form in 1998, asserting his entitlement to Swiss bank accounts owned by Dionys Ladany, Ida Stern-Kassovitz, and Maxim (Max) Kassovitz. Claimant [REDACTED 3] previously submitted an IQ, asserting her entitlement to Swiss bank accounts owned by Miksa (Max) Kassovitz and Ida Stern-Kassovitz. Claimant [REDACTED 1] previously submitted an

ATAG Ernst & Young claim form in 1998, asserting her entitlement to Swiss bank accounts owned by Bela Zemanek and Piroska (Piri) Zemanek, née Kassovitz.

Information Available in the Bank's Record

The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) did not find any accounts belonging to Desidor Zemanek and Margit Zemanek. The document relating to the existence of an account was submitted to the CRT by Claimant [REDACTED 1].

The document consists of a letter from Bank 1, dated 4 January 1940, to Mr. M. Banyai who resided at Konradstrasse 58 in Zurich, Switzerland. The letter indicates that Mr. Banyai gave Bank 1 a check in the amount of 7,100.00 US Dollars (“US \$”), that had been issued by Bank 2 and that was made out to the Guaranty Trust Company of New York, New York. The letter states that Mr. Banyai gave the check to Bank 1 with the explicit instructions that these funds would be used to open an account at the National City Bank of New York in the names of Dr. Desidor and Margit Zemanek, and that Bank 1’s usual commission of ¼% would be applied to this transaction. Bank 1’s letter states that the transaction would be completed as soon as Bank 1 received the necessary signatures, and that Bank 1 would send confirmation of the account opening to Dr. [REDACTED], who resided at the Hotel Eisenlohr in Davos, Switzerland.

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 five claims of the Claimants in one proceeding.

Basis for the Denial

While the CRT has previously awarded accounts to claimants when the ICEP Investigation failed to locate an account belonging to their relative (an account not included in the Account History Database, the Account Dossiers, and the Total Accounts Database), the evidence submitted by these claimants falls into very limited categories. Article 17 of the Rules lists certain categories of evidence that the CRT has used to justify an award when an account is not identified in the ICEP Investigation. These categories include Austrian State Archives Records and other government records, records of the New York State Holocaust Claims Processing Office, and any other historical and factual material available to the CRT. Examples of facially reliable evidence submitted by claimants include actual bank documents evidencing the existence of an account, documents submitted to an official governmental agency, and official letterhead indicating a connection to a Swiss bank.

While the CRT bears in mind the difficulties of proving a claim after the destructive events of the Second World War, it has determined in this case that the letter from Bank 1 confirming receipt of a check to be sent to the National City Bank of New York for the purposes of opening an account there is insufficient to support the existence of a bank account and to justify an award. Although the letter submitted by the Claimant originates from Bank 1, it does not indicate the existence of an identifiable account relationship between M. Banyai, Desider Zemanek, or Margit Zemanek, but merely the execution of a transfer order. Similarly, the fact that the check was issued by Bank 2 does not demonstrate that any of the Claimants' relatives held an account there – only that a check was issued by that bank for payment to the National City Bank of New York. Thus, Desider Zemanek and Margit Zemanek could have sent money to the National City Bank of New York without owning an account at either Bank 1 or Bank 2. The CRT notes that the commission of ¼% for the cost of the transaction was deducted by Bank 1 from the check itself and not from an identifiable account with Bank 1. The CRT notes that the evidence documenting the transactions strongly supports the conclusion that the Claimants' relatives did not hold an account at either Bank 1 or Bank 2, because if they had, they could have simply effected a transfer from their account at the Swiss bank to a new account at the National City Bank of New York, which would have been a more efficient way of transferring money than having a check issued. The CRT also notes that, even if Desider and Margit Zemanek had an account at Bank 1 or Bank 2 (which the documents do not establish), it is clear that they retained dominion over it and actively managed their assets, for example, by transferring them to New York.

As no documentary evidence has been presented which would indicate the existence of an account held by Desider Zemanek or Margit Zemanek, the CRT is unable to make an award to the Claimant based upon the evidence presented.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the Claimant 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 Claimant should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, 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
17 September 2010