

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED]

in re Account of Max Gutmann

Claim Number: 601074/AV¹

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to an account of [REDACTED].² This Award is to the published account of Max Gutmann (the “Account Owner”) at the Romanshorn branch of the [REDACTED] (the “Bank”).

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 Claimant

The Claimant submitted a claim to the Holocaust Claims Processing Office (“HCPO”) identifying the Account Owner as his paternal uncle, Dr. Max E. Gutmann. The Claimant stated that his uncle, who was Jewish, was a medical doctor, and that he resided in Bamberg, Germany prior to and during the Second World War. The Claimant indicated that he was born on 20 June 1916 in New York, New York, the United States.

The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by [REDACTED] and [REDACTED].³

Information Available in the Bank’s Record

The Bank’s record consists of a register of account owners. According to this record, the Account Owner was Max Gutmann, who resided in Nuremberg, Germany. The Bank’s record

¹ The Claimant submitted a claim, numbered B-00627, on 7 January 1998, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601074.

² The CRT will treat the claim to this account in a separate determination.

³ The CRT will treat the claim to these accounts in separate determinations.

indicates that the Account Owner held a demand deposit account. The Bank's record does not show when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. 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 this account in the Bank's system of open accounts, and they therefore presumed that it was closed. There is no evidence in the Bank's record that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant's uncle's name and country of residence match the published name and country of residence of the Account Owner.⁴ The Claimant indicated that his uncle resided in Bamberg, which is 50 kilometers from Nuremberg. The CRT notes that the name Max Gutmann appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the "ICEP List"). The CRT notes that the Claimant filed an HCPO claim form in 1998, asserting his entitlement to a Swiss bank account owned by Max Gutmann, prior to the publication in February 2001 of the ICEP List. This indicates that the Claimant has based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant. The CRT notes that the other claim to this account was disconfirmed because that claimant provided a different country of residence than the country of residence of the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, and that he resided in Germany before and during the Second World War.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimant's uncle. The CRT notes that the Claimant filed a claim with the HCPO in 1998, identifying the

⁴ The CRT notes that the Claimant stated that his uncle resided in Bamberg, and that the Bank's record indicates that the Account Owner resided in Nuremberg. The CRT further notes that these cities are only fifty kilometers apart. Furthermore, given that the Claimant has very little information regarding his uncle, the CRT concludes that this discrepancy does not materially affect the plausibility of the Claimant's identification of the Account Owner.

relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his Claim Form. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner resided in Germany before and during the Second World War; that there is no record of the payment of the Account Owner's account to him 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 (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 Owner or his 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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his uncle, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held 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 ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 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 a total award amount of SF 26,750.00.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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
30 November 2005