

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Bernhard Lewin

Claim Numbers: 200989/ES; 789055/ES¹

Award Amount: 216,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED], née [REDACTED] (the "Claimant") to the published accounts of Bernhard Lewin (the "Account Owner") at the [REDACTED] (the "Bank").²

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 Form identifying the Account Owner as her paternal uncle, Bernhard Lewin. The Claimant stated that her uncle, who was Jewish, was born in Torn, Poland, on 3 March 1886, and resided in Magdeburg, Germany. The Claimant stated that her uncle was not married and did not have children. The Claimant stated that her uncle, together with her father, [REDACTED], owned a tobacco firm named *Achmed* in Berlin, Germany. The Claimant stated that both her father and uncle were arrested on 10 November 1938 after *Kristallnacht* (the "Night of Broken Glass" pogrom). The Claimant indicated that her father sold the tobacco business before they fled to the United States and that he asked his brother Bernhard, who was in Switzerland, to deposit the money in a Swiss bank. The Claimant stated that her uncle deposited the money in a Swiss bank for her father. The Claimant stated that in 1940, her uncle helped the Claimant's family emigrate to California, the United States, where he had already been residing. The Claimant stated that after April 1943, she never heard from her uncle again. The Claimant

¹ In 1999, the Claimant submitted an Initial Questionnaire ("IQ"), numbered ENG 0779 144, to the Court in the United States. Although this IQ was not a Claim Form, 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 IQ was forwarded to the CRT and has been assigned claim number 789055.

² The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of Victims of Nazi Persecution (the "ICEP list"), Bernhard Lewin is indicated as having only one account. Upon careful review, the CRT has concluded that the Bank's records evidence the existence of three accounts.

stated that she knew no further details, and that she did not have any documents, since she was very young at the time and since she was not informed about their family's finances. The Claimant indicated that all her relatives who might have had more information perished in the Holocaust. The Claimant indicated that she was born in Hamburg, Germany, on 15 September 1919.

The Claimant previously submitted an Initial Questionnaire (IQ) with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Bernhard Lewin.

Information Available in the Bank's Records

The Bank's records consist of account-registry cards. According to these records, the Account Owner was Bernhard Lewin. 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") determined that the Account Owner resided in Germany. The Bank's records indicate that the Account Owner used the number 58.706 in his contact with the Bank.

The Bank's records indicate that the Account Owner held a custody account, number 3998, and two demand deposit accounts: one denominated in Swiss Francs (SF) and the other denominated in United States Dollars (US\$).

The Bank's records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts. The auditors who carried out the ICEP Investigation did not find these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the Bank's records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process (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 Claimant in one proceeding.

Identification of the Account Owner

The Claimant's uncle's name matches the published name of the Account Owner. The Claimant stated that her uncle resided in Germany, which matches published information about the Account Owner contained in the Bank's records.

The CRT notes the Claimant filed an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Bernhard Lewin, prior to the publication of the ICEP list. This indicates that the Claimant has based her 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 her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her 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 these accounts was disconfirmed because that Claimant asserted in his claim form that he was the owner of the accounts at issue, but had not previously asserted in his IQ that he held a Swiss bank account, prior to the publication of the ICEP List, and was unable to provide any information about the account, such as the name or location of the bank at which it was opened, or the circumstances under which it was opened, even though he would be an adult at the time the account was opened. Taking all 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 Calm stated that her uncle was Jewish, that he resided in Nazi Germany, and that he was arrested after *Kristallnacht*.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information demonstrating the Account Owner was her paternal uncle. The CRT further notes that the Claimant Calm filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List, which supports the plausibility that she is related to the Account Owner, as she has asserted in her Claim Form.

The Issue of Who Received the Proceeds

The Bank's records do not show when the accounts at issue were closed, or to whom they were paid.

Given that the Account Owner was arrested after *Kristallnacht*; that there is no record of the payment of the Account Owner's accounts to him or his heirs; that the Account Owner or his heirs would not have been able to obtain information about his accounts 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 (see Appendix A), the CRT concludes that it is plausible that the proceeds of the accounts 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 her uncle, and that relationship justifies an award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held a custody account and two demand deposit accounts. 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 custody account was SF 13,000.00 and the average value of a demand deposit account was SF 2,140.00. Therefore, the total 1945 average value of the accounts at issue is SF 17,280.00. 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 216,000.00.

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 her 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

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

Claims Resolution Tribunal
10 December 2004