

CLAIMS RESOLUTION TRIBUNAL

Case No. CV96-4849

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]; [REDACTED 3];
[REDACTED 4]; [REDACTED 5]; [REDACTED 6]; [REDACTED 7];
[REDACTED 8]; [REDACTED 9]; [REDACTED 10];
and [REDACTED 11]

in re Accounts of Wilhelm Auerbach

Claim Number: 650023/MW¹

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the "Claimant") to the published accounts of Wilhelm Auerbach (the "Account Owner"), over which [REDACTED] (the "Power of Attorney Holder") held power of attorney, at the Basel branch of [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 her paternal great-uncle by marriage, Wilhelm Auerbach, who was born on 20 March 1892 in Frankfurt am Main, Germany, and was married to Alice Charlotte Kohn-Speyer on 7 March 1940 in New York, New York, the United States. The Claimant explained that her great-uncle, who was Jewish, was an attorney, and worked for a Frankfurt private banking firm, *Bass & Herz*. The Claimant further explained that after the Nazis seized power, the firm was dissolved by the Nazi authorities, and her great-uncle was forced to flee Germany for the United States in 1938. The Claimant indicated that in 1938, before leaving for the United States, her great-uncle was in Switzerland. The Claimant stated that her great-uncle died on 16 October 1974 in New York, and that her great-aunt died on 15 March 2003, also in New York. The Claimant further stated that her great-uncle had a sister, [REDACTED], who never married. The Claimant explained that [REDACTED], née [REDACTED], had three

¹ The Claimant submitted a claim, numbered B-02327, on an unknown date, 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 650023.

siblings: [REDACTED], née [REDACTED], [REDACTED] and [REDACTED], who died in infancy, and four half-siblings: [REDACTED], [REDACTED], née [REDACTED], [REDACTED 7], née [REDACTED], and [REDACTED], who also died in infancy.

The Claimant submitted, *inter alia*, William Auerbach's official family book indicating that he was born in Frankfurt am Main; William Auerbach's United States naturalization certificate, dated 23 March 1944, bearing his signature; [REDACTED]'s Declaration of Intention Certificate indicating that her husband was William Auerbach, and that they were married on 7 March 1940 in New York; a certificate of loss of German citizenship which indicated that Dr. Wilhelm Auerbach was born on 20 March 1892 in Frankfurt am Main; a letter of reference for William Auerbach by Hans Weinschenk, a former senior partner of *Bass & Herz*, dated 14 October 1938, indicating that Dr. William Auerbach worked for *Bass & Herz* from 1921 until September 1938 when the firm was forced to liquidate because of Nazi laws; William Auerbach's cover letter and résumé indicating that *Bass & Herz* was forced to discontinue their active banking business because one of the partners was not of Aryan descent, and that he left the firm in September 1938; William Auerbach's death certificate indicating that he died on 16 October 1974, [REDACTED]'s death certificate, indicating that she died on 15 March 2003; and a detailed family tree.

The Claimant indicated that she was born on 26 February 1969 in Dorking, the United Kingdom. The Claimant represents the following parties:

1. Her father, [REDACTED 2], who was born on 7 April 1941 in Bletchingley, the United Kingdom;
2. Her aunt, [REDACTED 11], née [REDACTED], who was born on 10 November 1936 in London, the United Kingdom, who is the daughter of [REDACTED], née [REDACTED];
3. Her great-aunt, [REDACTED 8], née [REDACTED], who was born in 1904, and was married to [REDACTED];
4. Her father's cousin, [REDACTED 9], who was born on 17 August 1936 in London, the United Kingdom, who is the son of [REDACTED 8];
5. Her father's cousin, [REDACTED 10], who was born on 5 January 1940 in Withyham, the United Kingdom;
6. Her father's cousin, [REDACTED 5], née [REDACTED], who was born on 6 January 1935 in Wimbledon, the United Kingdom, and who is the daughter of [REDACTED];
7. Her father's cousin, [REDACTED 4], née [REDACTED], who was born on 29 November 1939 in the district of North Hampton, the United Kingdom, and who is also the daughter of [REDACTED];
8. Her aunt, [REDACTED 6], who was born on 4 January 1939 in Bletchingley, the United Kingdom, who is the daughter of [REDACTED], née [REDACTED];
9. Her aunt, [REDACTED 3], née [REDACTED], who was born on 2 June 1943 in Purley, the United Kingdom; and
10. Her great-aunt, [REDACTED 7], née [REDACTED], who was born on 29 June 1916 in Chaldon, the United Kingdom.

Information Available in the Bank's Records

The Bank's records consist of a customer card and a power of attorney form. According to these records, the Account Owner was *Dr jur.* (doctor of jurisprudence) Wilhelm Auerbach, who resided at Eschersheimer-Landstrasse in Frankfurt am Main, and the Power of Attorney Holder was *Fräulein* (Miss) [REDACTED], who resided in Frankfurt am Main. The Bank's records indicate that the Account Owner held one custody account, and one demand deposit account, both numbered 4995, both of which were opened on 25 May 1923. The Bank's records indicate that the power of attorney form was signed on 15 August 1934. 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 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 these accounts in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on these accounts after 1945.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's great-uncle's name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant's great-uncle's sister's name matches the published name of the Power of Attorney Holder. The Claimant identified her relative's title, which matches unpublished information about the Account Owner contained in the Bank's records. Additionally, the Claimant identified the fact that [REDACTED] was not married, which matches unpublished information about the Power of Attorney Holder's marital status contained in the Bank's records. In support of her claim, the Claimant submitted documents, including William Auerbach's official family book indicating that he was born in Frankfurt am Main and that he had a sister named [REDACTED]; William Auerbach's United States naturalization certificate, dated 23 March 1944 bearing his signature; a certificate of loss of German citizenship, which indicated that Dr. Wilhelm Auerbach was born on 20 March 1892 in Frankfurt am Main; and William Auerbach's death certificate indicating that he died on 16 October 1974. These documents provide independent verification that the person who is claimed to be the Account Owner had the same name, title and resided in the same city recorded in the Bank's records as the name city of residence of the Account Owner. Finally, the CRT notes that the signature sample of the Claimant's great-uncle is substantially similar to the signature sample contained in the Bank's records. The CRT notes that there are no other claims to these accounts.

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, that his firm was

dissolved by the Nazi government, and that he was forced to flee from Germany to the United States in 1938.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that the Account Owner was the Claimant's great-uncle by marriage. The CRT notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records. The CRT further notes that the Claimant submitted William Auerbach's official family book; William Auerbach's United States naturalization certificate; a certificate of loss of German citizenship which indicated that Dr. Wilhelm Auerbach was born on 20 March 1892 in Frankfurt am Main; a letter of reference for William Auerbach; a cover letter and résumé written by William Auerbach, and William Auerbach's death certificate. Finally, the CRT notes that the foregoing information and documents are of the type that only family members would possess and indicate that the Account Owner was well known to the Claimant as a family member, and all this information supports the plausibility that the Claimant 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, according to the Claimant, the Account Owner fled, via Switzerland, to the United States in 1938. The CRT further notes, however, that the Bank's records do not indicate when the account was closed, nor do they indicate to whom it was closed. Given that the Account Owner fled Nazi Germany in 1938; 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 accounts; that the Account Owner and 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 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, the Power of Attorney Holder, 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 [REDACTED 11], [REDACTED 8], [REDACTED 5], [REDACTED 4], [REDACTED 6], [REDACTED 2], [REDACTED 3] and [REDACTED 7]. 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 the uncle of [REDACTED 11], [REDACTED 5], [REDACTED 4], [REDACTED 6], [REDACTED 2] and [REDACTED 3], and the brother-in-law of [REDACTED 7], and [REDACTED 8], and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed accounts. Further, the CRT notes

that [REDACTED 8], [REDACTED 11], [REDACTED 7], [REDACTED 5], [REDACTED 4], [REDACTED 6], [REDACTED 2], and [REDACTED 3] are better entitled to share in the award amount than (1) the Claimant because her father, [REDACTED 2], is closer in relationship to the Account Owner; and (2) [REDACTED 9] and [REDACTED 10], because their mother, [REDACTED 8], is closer in relationship to the Account Owner.

Amount of the Award

In this case, the Account Owner held one custody and 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 custody account was 13,000.00 Swiss Francs (“SF”), and the average value of a demand deposit account was SF 2,140.00. Thus, the total 1945 average value of the accounts at issue is SF 15,140.00. 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 189,250.00.

Division of the Award

The CRT notes that the Claimant and the represented parties are all related to the Account Owner by marriage. According to Article 23(1)(g) of the Rules, if none of the persons entitled to an award under pursuant to Article 23(1)(a-f) has submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity. As indicated above, [REDACTED 11], [REDACTED 5], [REDACTED 4], [REDACTED 6], [REDACTED 2], [REDACTED 3] and [REDACTED 7] are better entitled to the accounts than [REDACTED 9], [REDACTED 10] and the Claimant. The CRT has determined that it is consistent with principles of fairness and equity and with the general principles of division according to Article 23(1) of the Rules to divide this award in equal shares by representation. Accordingly:

1. [REDACTED 11], as the daughter of [REDACTED], the Account Owner’s wife’s sister, is entitled to one-fifth of the total award amount;
2. [REDACTED 8], as the wife of [REDACTED], the Account Owner’s wife’s brother, is entitled to one-fifth of the total award amount;
3. [REDACTED 5] and [REDACTED 4], as the daughters of [REDACTED], the Account Owner’s wife’s brother, are each entitled to one-tenth of the total award amount;
4. [REDACTED 6], [REDACTED 2] and [REDACTED 3], as the children of [REDACTED], the Account Owner’s wife’s sister, are each entitled to one-fifteenth of the total award amount; and
5. [REDACTED 7], as the half-sister of the Account Owner’s wife, is entitled to one-fifth of the total award amount.

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 claim to determine whether there are additional Swiss bank accounts to which she 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
18 November 2004