

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Dr. Walter Eric Friedrich

in re Accounts of Ernst Bachrach, Hedwig Bernstein, and Cläre Falkenau

Claim Number: 501744/HB/TC

Award Amount: 238,625.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Hedwig Bernstein. This Award is to the published accounts of Ernst Bachrach (“Account Owner Bachrach”) at the Zurich branch of the [REDACTED] (“Bank I”) and to the published accounts of Hedwig Bernstein (“Account Owner Bernstein”) and Cläre Falkenau (“Account Owner Falkenau”) (together “the Account Owners”), over which Account Owner Bachrach held power of attorney, at the Zurich branch of the [REDACTED] (“Bank II”) (together the “Banks”).¹

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 Account Owner Bernstein as his maternal great-grandmother’s sister, Hedwig Bernstein, née Frank (formerly Salomon), who was born on 23 August 1868 in Prague, Austria-Hungary (later Czechoslovakia, now the Czech Republic). The Claimant indicated that his great-grandmother’s sister was married twice, first in 1889 to [REDACTED], who resided and died in Berlin, Germany, and second in 1904 to *Ing.* (Engineer) [REDACTED], who died on 30 December 1927 in Vienna, Austria. According to the Claimant, his great-grandmother’s sister, who was Jewish, resided at Schüttelstrasse 19A in Vienna from 1904 until 1926 and at Schützengasse 6 in Vienna from 1926 until her death in 1930. The Claimant further indicated that Hedwig and [REDACTED] had a son, [REDACTED], who died

¹ 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”), Cläre Falkenau is indicated as having one account. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of two accounts.

in August 1929. The Claimant indicated that his remaining maternal relatives, who were Jewish, fled Austria after Hitler came to power.

The Claimant identified Account Owner Bachrach as his great-uncle by marriage, Ernst Bacharach, who was married to the Claimant's maternal great-aunt, [REDACTED], née [REDACTED]. According to the Claimant, his great-uncle was the general secretary of the Austrian subsidiary of *Krupp Werke A.G.*, and resided in Berndorf, Austria. The Claimant indicated that Ernst and [REDACTED] had two daughters, [REDACTED] and [REDACTED], who fled to the United States after Hitler came to power.

In support of his claim, the Claimant submitted documents including: (1) his great-grandmother's sister's will, dated 9 October 1929 in Vienna, indicating that Hedwig Bernstein, née Frank, was the widow [REDACTED], and that her heirs were her siblings, [REDACTED] (the Claimant's great-grandmother), [REDACTED], and [REDACTED]. This will further indicates that [REDACTED], Hedwig Bernstein's niece, was also one of her heirs, and that Ernst Bachrach was the executor of her will; (2) a probate document relating to his great-grandmother's sister's estate, indicating that Hedwig Bernstein died 26 April 1930, that she resided at Schützengasse 6 in Vienna, and that her siblings were her heirs; (3) his great-grandmother's sister's death report, issued on 8 May 1930 by the court of Vienna, indicating that Hedwig Bernstein, who died on 26 April 1930, resided at Schützengasse 6 in Vienna, and was married twice, first to [REDACTED] and then to [REDACTED]; (4) his own birth certificate, dated 26 June 1937 in Vienna, indicating that [REDACTED]² was born on 17 May 1937 and that his parents were [REDACTED] and [REDACTED], née [REDACTED]; (5) a portion of his mother's autobiography, written in approximately 1981, indicating that Ernst Bachrach was the general secretary of the Austrian subsidiary of *Krupp Werke A.G.* and resided in Berndorf; and that her family, which was Jewish, resided in Nazi-controlled Austria. This document also indicates that the Claimant's mother was [REDACTED], née [REDACTED], that his maternal grandmother was [REDACTED], née [REDACTED], and that his great-grandmother was [REDACTED], née [REDACTED], Hedwig Bernstein's sister. This document further indicates that [REDACTED] was married to [REDACTED], and had a daughter, [REDACTED], who was married to Dr. Ernst Bachrach.

The Claimant indicated that he was born on 17 May 1937 in Vienna.

Information Available in the Banks' Records

Bank I

Bank I's record consists of a customer card. According to this record, Account Owner Bachrach was *Sektionsrat*³ Dr. Ernst Bachrach, who resided in Vienna. Bank I's record indicates that Account Owner Bachrach held a demand deposit account, which was opened on 10 June 1937 and closed on 30 June 1938, and a custody account, which was opened on 30 January 1937 and closed on 4 July 1938. Bank I's record does not indicate the value of these accounts. There is no

² The CRT notes that the name "[REDACTED]" is a German version of the name "[REDACTED]."

³ The CRT notes that the term *Sektionsrat* is an Austrian title of hierarchy in the Austrian public service (*Beamte*).

evidence in Bank I's record that Account Owner Bachrach or his heirs closed the accounts and received the proceeds themselves.

Bank II

Bank II's records consist of two power of attorney forms, a customer card, and printouts from Bank II's database. According to these records, Account Owner Bernstein was Hedwig Bernstein, who resided at Schützengasse 6 in Vienna, Austria, and Account Owner Falkenau was *Frau* (Mrs.) Cläre Falkenau, who resided at Burggasse 24, Th. 12a, in Vienna. The documents further indicate that *Herr* (Mr.) *Direktor* (Director) Dr. Ernst Bachrach, *Sektionsrat*, who resided in Berndorf, Austria, and Böcklinstrasse in Vienna, held power of attorney over these accounts.

Bank II's records indicate that Account Owner Bernstein held an account, the type of which is not indicated, which was opened on 23 January 1930. Bank II's records do not 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 Bank II's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the Bank's records that Account Owner Bernstein, Account Owner Bachrach, or their heirs closed the account and received the proceeds themselves.

Bank II's records also indicate that Account Owner Falkenau held two accounts, a savings/passbook account, numbered 9667, and a custody account, which were opened on 11 September 1930 and closed on 17 April 1931.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Dr. Ernst Bachrach, numbered 25085. These records indicate that Ernst Bachrach was born on 24 April 1874, resided at Böcklinstrasse 47 In Vienna, Austria, held a title of *Sektionsrat a.D.*, and was married to [REDACTED], née [REDACTED]. These records make no mention of assets held in a Swiss bank account.

There are also documents in the Austrian State Archive concerning the assets of Klara Falkenau, numbered 36743. These records indicate that Klara Falkenau was born on 5 June 1871, that she was the widow of a *Ministerialrat*,⁴ and that she lived at Burggasse 24 in Vienna. These records make no mention of assets held in a Swiss bank account.

⁴ The CRT notes that the term *Ministerialrat* is another Austrian title of hierarchy in the Austrian public service (*Beamte*).

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Bernstein and Account Owner Bachrach. The Claimant's maternal great-grandmother's sister's name and city and country of residence match the published name and city and country of residence of Account Owner Bernstein and Account Owner Bachrach. The Claimant identified Account Owner Bernstein's street address, which matches unpublished information about Account Owner Bernstein contained in Bank II's records.

The Claimant has also plausibly identified Account Owner Bachrach, who additionally held power of attorney over Account Owner Bernstein's account and Account Owner Klara Falkenau's accounts. The Claimant's great-aunt's husband's name and country of residence match the published name and country of residence of Account Owner Bachrach. The Claimant identified Account Owner Bachrach's professional title and his place of residence which match information about Account Owner Bachrach contained in Bank II's records and the 1938 Census records.

In support of his claim, the Claimant submitted documents, including his great-grandmother's sister's will, a probate document relating to his great-grandmother's sister's estate, his great-grandmother's sister's death report, and a portion of his mother's autobiography, providing independent verification that the persons who are claimed to be Account Owner Bernstein and Account Owner Bachrach had the same names and resided in the same town recorded in the Banks' records as the names and city of residence of Account Owner Bernstein and Account Owner Bachrach and that the person who is claimed to be Account Owner Bernstein had the same street address recorded in Bank II's records as Account Owner Bernstein's street address.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Ernst Bachrach, and indicates that his country of residence was Austria, and that he was married to [REDACTED], née [REDACTED], which matches the information about Account Owner Bachrach provided by the Claimant. The CRT further notes that this database indicates that Ernst Bachrach's date of birth was 24 April 1874, and that he resided at Böcklin 47 in Vienna, which matches the information about Account Owner Bachrach contained in the 1938 Census. Moreover, this database indicates that Ernst Bachrach held the title of *Sektionsrat a.D.*, which matches the information about Account Owner Bachrach contained in the Banks' records and the 1938 Census. This database also contains the name of Klara Falkenau, who was born on 5 June 1871, which matches information about Account Owner Falkenau contained in the 1938 Census records. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the Claimant did not identify Account Owner Falkenau. However, the CRT notes that the Claimant was a child during the Second World War, that there is no indication in the Bank's records that Account Owner Falkenau and Account Owner Bachrach were related, and therefore determines that it is plausible that the Claimant would not know the names of all of his great-uncle's acquaintances and business associates, and that the Claimant's failure to

identify Account Owner Falkenau does not adversely affect the plausibility of his identification of Account Owner Bachrach.

The CRT notes that the other claims to Account Owner Bernstein's account were disconfirmed because that claimant provided a different country of residence than the country of residence of Account Owner Bernstein. The CRT further notes that there are no other claims to Account Owner Bachrach's accounts.

Status of the Account Owners as Victims of Nazi Persecution

Account Owner Bernstein

The CRT notes that while Account Owner Bernstein died on 26 April 1930, and therefore was not a Victim of Nazi Persecution, Account Owner Bernstein's relatives and heirs, including her sister, [REDACTED], née [REDACTED], the Claimant's maternal-grandmother, were victims of Nazi Persecution. The Claimant stated that the Account Owner Bernstein's family, which was Jewish, resided in Austria and fled Austria after Hitler came to power.

Account Owner Bachrach

The Claimant has made a plausible showing that Account Owner Bachrach was a Victim of Nazi Persecution. The Claimant stated that Account Owner Bachrach's family was Jewish, and that his family resided in Austria and fled after Hitler came to power in Austria.

As noted above, a person named Ernst Bachrach was included in the CRT's database of victims. The CRT also notes that Account Owner Bachrach was required to register his assets pursuant to the 1938 Census.

Account Owner Falkenau

The CRT notes that the Claimant did not identify Account Owner Falkenau in his claim form. However, a person named Klara Falkenau was included in the CRT's database of victims. The CRT notes that Account Owner Falkenau was required to register her assets pursuant to the 1938 Census.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to Account Owner Bernstein and Account Owner Bachrach by submitting specific information and documents, demonstrating that Account Owner Bernstein was the Claimant's grandmother's aunt, and that Account Owner Bachrach was the Claimant's great-aunt's husband. These documents include his grandmother's aunt's last will, indicating that Hedwig Bernstein's sister was [REDACTED], a probate document relating to his grandmother's aunt's estate, indicating that Hedwig Bernstein's siblings were [REDACTED], [REDACTED], and [REDACTED], his own birth certificate, indicating that [REDACTED]'s mother was [REDACTED], née [REDACTED], and a portion of his mother's autobiography, indicating that the Claimant's mother was [REDACTED], née

[REDACTED], that his maternal grandmother was [REDACTED], née [REDACTED], and that his great-grandmother was [REDACTED], née [REDACTED], who had a daughter named [REDACTED], née [REDACTED], who was married to Ernst Bachrach. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

With regard to the account of unknown type owned by Account Owner Bernstein, which was closed on an unknown date, and the demand deposit and custody accounts owned by Account Owner Bachrach, which were closed on 30 June 1938 and 4 July 1938, respectively, given that Account Owner Bernstein died on 26 April 1930, that Account Owner Bachrach resided in Nazi-controlled Austria; that there is no record of the payment of Account Owner Bernstein's and Account Owner Bachrach's accounts to them; that there is no record of a date of closure of Account Owner Bernstein's account at Bank II; that the Account Owners and their heirs would not have been able to obtain information about their accounts after the Second World War from the Banks 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 Owners, or their 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.

With regard to the accounts owned by Account Owner Falkenau at Bank II, the CRT notes that Bank II's records indicate that the accounts were closed on 17 April 1931. According to Article 14 of the Rules, the CRT has jurisdiction to resolve claims to accounts of Victims open or opened in Swiss banks during the Relevant Period, which is defined as the period from 1933 to 1945. As these accounts were not open or opened during the Relevant Period, the CRT has no jurisdiction over them, and therefore makes no determination as to their disposition.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant for the accounts of Account Owner Bernstein and Account Owner Bachrach. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner Bernstein was his great-grandmother's sister, and that Account Owner Bachrach is his great-aunt's husband, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, Account Owner Bernstein held one account of unknown type, and Account Owner Bachrach held one custody account 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”), the average value of a demand deposit account was SF 2,140.00, and the average value of an unknown account was SF 3,950.00. Thus, the combined 1945 average value of the three accounts was SF 19,090.00. 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 238,625.00.

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 May 2007