

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED], and [REDACTED]

and

to Claimant [REDACTED 2]
also acting on behalf of [REDACTED]

in re Account of Erwin Basch

Claim Numbers: 216019/HM;¹ 217675/HM

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the account of Erwin Basch and upon the claim of [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) to the account of Helene Flesch. This award is to the account of Erwin Basch (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).² In this award, Claimant [REDACTED 1] and Claimant [REDACTED 2] are referred to collectively as “the Claimants.”

All awards are published, but where a claimant has requested confidentiality, as the Claimants have in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1] submitted two Claim Forms identifying the Account Owner as his maternal grandfather, Erwin Basch, who was born on 23 March 1883 in Vienna, Austria, was first married to [REDACTED], née [REDACTED], in Vienna, and after her death married

¹ Claimant [REDACTED 1] submitted two Claim Forms to the account of Erwin Basch, which were registered under the Claim Numbers 216019 and 220024. The CRT has determined that these claims are duplicate claims and is treating them under the Consolidated Claim Number 216019. Furthermore, Claimant [REDACTED 1] submitted three additional claims to the accounts of [REDACTED], [REDACTED] and [REDACTED] that are registered under the Claim Numbers 220023, 220025, and 220026, respectively. The CRT will treat these claims in separate decisions.

² In a previous decision based upon these claims, the CRT awarded the account of Helene Flesch (Erwin Basch’s sister) to Claimant [REDACTED 2], who, as a direct descendent of Account Owner Helene Flesch, was determined to be better entitled to the proceeds of that account.

[REDACTED]. Claimant [REDACTED 1] indicated that his mother was Erwin Basch's only child. The Claimant identified his grandfather's sister as Helene Flesch, née [REDACTED], and indicated that she had two children, [REDACTED] and [REDACTED]. Claimant [REDACTED 1] stated that his grandfather, who was Jewish, owned an automobile parts supply business and resided at Dorotheastrasse 5 in Vienna. Claimant [REDACTED 1] stated that his grandfather was arrested and sent to the Dachau concentration camp at the time of *Kristallnacht* (the "Night of Broken Glass" pogrom), and that he died in Nantes, France, in May 1940, shortly after his release from Dachau. In support of his claim, Claimant [REDACTED 1] submitted documents, including Erwin Basch's birth certificate. Claimant [REDACTED 1] further stated that he was born in New York, New York, on 19 June 1957, and that he is representing his sister, [REDACTED], née [REDACTED], who was born in New York on 12 August 1954, and his father [REDACTED], who was born in New York on 6 November 1923.

Claimant [REDACTED 2] submitted a Claim Form identifying her paternal grandmother, Helene Sara Flesch, née [REDACTED], as the owner of a Swiss bank account. She identified Erwin Basch as her paternal grandmother's brother (her great-uncle). Claimant [REDACTED 2] stated that her grandmother was born on 5 December 1884 in Vienna, was married to [REDACTED] on 10 October 1905 in Vienna, and had two children, [REDACTED], née [REDACTED], and [REDACTED]. Claimant [REDACTED 2] indicated that her great-uncle was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 2] stated that her grandmother, who was Jewish, worked as a designer of crochet patterns and resided on Vorlaufsstrasse 45 in Vienna I. Claimant [REDACTED 2] further stated that her grandmother fled Austria for the United States in 1938 or 1939, with the help of her son [REDACTED], and that she died in New York on 7 November 1967. In support of her claim, Claimant [REDACTED 2] submitted documents, including Helene Flesch's marriage certificate and a departure document, dated 21 July 1939 and valid for three months, which was issued by the Nazis for Helene Flesch and which indicated that she was required to pay "flight taxes" in order to leave Germany. Claimant [REDACTED 2] further stated that she was born in New York on 23 July 1951, and that she is representing her sister, [REDACTED], née [REDACTED], who was born in New York on 7 March 1957.

Information Available in the Bank Records

The bank records consist of printouts from the Bank's database and a power of attorney form, dated 23 May 1931 in Vienna, Austria. According to these records, the Account Owner was Erwin Basch, who lived at Dorotheagasse 10, in Vienna I, Austria. The bank records indicate that the Account Owner used the title *Ingenieur* (engineer) and that *Frau* (Mrs.) Helene Flesch, who lived at Vorlaufstrasse 4, in Vienna I, held a power of attorney to the account at issue.

The bank records indicate that the Account Owner held a custody account.³ The bank records do not show if or 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. These

³ The bank records contain a power of attorney form that references a "*Titeldepot*," a type of custody account.

auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Erwin Basch, numbered 25996. These records show that Erwin Basch was born on 23 March 1883, that in 1938 he resided at Dorotheagasse 10 in Vienna I, that he was an engineer, that he was married to [REDACTED], née [REDACTED], who was born on 29 June 1913 in Vienna, that he had one child, [REDACTED], who was born on 20 August 1924, and that they were all Jewish. These records show that Erwin Basch owned an automobile parts supply business on Bartensteingasse 4 in Vienna I. These records further show that he was assessed a “Jewish Assets Tax” (*Judenvermögensabgabe*) of 13,209.00 Reichsmarks, and that he was also forced to declare his insurance policies. These records make no mention of a Swiss bank account.

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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner and the Power of Attorney Holder. Their relatives’ names match the published names of the Account Owner and the Power of Attorney Holder. The Claimants provided their relatives’ street addresses in Vienna before the Second World War, which match the unpublished addresses contained in the bank records. Additionally, Claimant [REDACTED 1] indicated his grandfather’s profession, which is consistent with the Account Owner’s unpublished title contained in the bank records. In support of her claim, Claimant [REDACTED 2] submitted documents, including the Power of Attorney Holder’s marriage certificate and a departure document issued by the Nazis. In support of his claim, Claimant [REDACTED 1] submitted documents, including the birth certificate of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish, was sent to the Dachau concentration camp at the time of *Kristallnacht* and fled to Nantes in 1940 after his

release. In addition, Claimant [REDACTED 2] stated that her grandmother, who was the Power of Attorney Holder, was Jewish and fled Austria for the United States in 1938 or 1939. Documents submitted by Claimant [REDACTED 2] indicate that the Nazis required the Power of Attorney Holder to pay flight taxes before she was permitted to leave Austria in 1939.

The Claimants' Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that Erwin Basch was his maternal grandfather. Claimant [REDACTED 2] has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that Erwin Basch was her great-uncle and that Helene Flesch, the Power of Attorney Holder, was her grandmother.

According to the principles of distribution set forth in Article 23 of the Rules, direct descendants of the Account Owner who have submitted claims to the account have priority over the other descendants of the Account Owner's parents. Therefore, Claimant [REDACTED 1], who is the grandchild of the Account Owner and thus his direct descendant, has a better entitlement to the account than Claimant [REDACTED 2], who is the great-niece of the Account Owner.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which account owners are interned in the Dachau concentration camp for a relatively short time, and then, near the time of their release, Swiss accounts held by the account owners are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and 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 account proceeds were not paid to the Account Owners, the Power of Attorney Holder, 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.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] plausibly demonstrated that the Account Owner was his grandfather, and that relationship justifies an Award. Finally, 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 account.

Amount of the Award

In this case, the Account Owner held a custody 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 present 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. The present value of this amount is calculated by multiplying it by a

factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

Division of the Award

As noted above, according to Article 23 of the Rules, Claimant [REDACTED 1], who is the direct descendent of the Account Owner, is better entitled to the proceeds of the account than Claimant [REDACTED 2], who is a descendent of the Account Owner's parents.

Claimant [REDACTED 1] is representing his sister and their father in these proceedings. According to Article 23 of the Rules, Claimant [REDACTED 1] and his sister, who are direct descendants of the Account Owner, have a better entitlement to the account than their father, who is related to the Account Owner by marriage. Accordingly, Claimant [REDACTED 1] and his sister are each entitled to 50% of the entire award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their 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
May 15, 2003