

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Simon Benesch and Irma Benesch

Claim Number: 221561/ME¹

Award Amount: 581,845.80 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED] (the “Claimant”) to the accounts of Simon Benesch (“Account Owner Benesch”) and Irma Benesch, née Taussig (“Account Owner Taussig”) (together the “Account Owners”) at the [REDACTED I] (“Bank I”), the Zurich branch of the [REDACTED] (“Bank II”), and the Zurich branch of the [REDACTED II] (“Bank III”) (together the “Banks”).

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 great-uncle, Simon Benesch, who was born in the late 1800s in Vienna, Austria. According to the information provided by the Claimant, her great-uncle was an umbrella manufacturer and owned an umbrella factory in Vienna, which he managed along with his nephew, [REDACTED]. The Claimant stated that her great-uncle was deported and perished in a concentration camp in 1942. According to the Claimant, her great-uncle had seven siblings: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] (the Claimant’s grandmother). The Claimant stated that all of her great-aunts and great-uncles perished in concentration camps, except for [REDACTED] and [REDACTED]. The Claimant submitted her great-uncle [REDACTED]’s marriage certificate, as well as a family tree written by her late parents. The Claimant indicated that she was born on 6 November 1945 in Haifa, Israel.

¹ The Claimant submitted four additional claims to the accounts of [REDACTED], [REDACTED], [REDACTED] and [REDACTED], which are registered under the Claim Numbers 223004, 216941, 216991 and 217256, respectively. The CRT will treat the claims to these accounts in a separate decision.

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

Information Available in the Bank's Records

The Bank's records of Bank I consist of a bank statement and an account registry card. According to these records, the joint Account Owners were Simon Benesch and Irma Benesch, née Taussig, who resided at Rögergasse 16 in Vienna IX. The Bank's records indicate that the Account Owners held a custody account with an unknown number and a corresponding demand deposit account, numbered 21433. According to the Bank's records, the demand deposit account had a balance of 4,388.00 Swiss Francs on 30 June 1942. The demand deposit account was closed on 14 July 1942, unknown to whom. 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 was potentially paid to an unauthorized party. The Bank's records do not show when the custody account was closed, or to whom it was paid, nor do these records indicate the value of this account. The ICEP auditors did not find the custody account 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 the custody account after 1945.

The Bank's records of Bank II consist of a list of dormant accounts and their corresponding account owners, a registry card, account statements, a printout from the Bank's custody account database, an internal bank memorandum dated 28 February 1989 concerning the dormant accounts, and a letter dated 12 November 1923 written by the Account Owner requesting the bank to hold all mail. According to these records, the Account Owner was Simon Benesch *Erben* (heirs), an umbrella manufacturer with a place of residence at Kohlmessergasse 3, Vienna I. The Bank's records indicate that the Account Owner held a custody account, numbered 11545, and a corresponding demand deposit account. According to the Bank's records, the custody account was opened on 11 August 1931 and contained 4% Serbian Kingdom Bonds (4% *Königreich Serbien Anleihe*) with a nominal face value of 17,500.00 Swiss Francs on 31 December 1972. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the ICEP did not find this custody account 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 this custody account after 1945.

According to the Bank's records of Bank II, the Bank was contacted regarding the demand deposit account by a person named "[REDACTED]" on 27 June 1938, and by a person named "[REDACTED]" on 11 October 1948. The Bank's records indicate that the demand deposit account had a balance of 35.00 Swiss Francs on 30 June 1972. The Bank's records show that the account was closed in November 1973 but do not show to whom it was paid. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the ICEP did not find this demand deposit account 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 this demand deposit account after 1945.

There is no evidence in the Bank's records that the Account Owners or their heirs closed the accounts at Bank I or Bank II and received the proceeds themselves.

The Bank's records of Bank III consist of two account opening cards. According to these records, the Account Owner was Simon Benesch, who resided in Vienna. The Bank's records indicate that the Account Owner held a custody account, numbered L1057, a savings account, numbered 1071, and a demand deposit account. The Bank's records indicate that the custody account was opened on 15 November 1923, but they do not indicate when the remaining accounts were opened. The demand deposit account was closed on 20 August 1938. The amount in the account on the date of its closure was 2,129.00 Swiss Francs. The custody account and the savings account were closed on 7 December 1940. The amount in these accounts on the date of their closures is unknown. The auditors who carried out the ICEP Investigation determined that the amount in the accounts had been paid to the Nazi authorities.

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 Simon Benesch and Irma Benesch. These records include an Austrian census form for Simon Benesch, numbered 47022 and dated 15 July 1938, and an Austrian census form for Irma Benesch, née Taussig, numbered 05916 and dated 16 August 1938. These records indicate that Simon and Irma Benesch were Jewish, that they were born on 14 February 1870 and 10 August 1882, respectively, and that they were married. The records show that Simon and Irma Benesch resided at Rögergasse 16, Vienna IX, and that Simon Benesch was an umbrella manufacturer and the owner of an umbrella factory known by the name of *Simon Benesch*, which was located at Kohlmessergasse 3, Vienna I. The records indicate that Simon Benesch was forced to sell his factory, valued at 117,788.55 Reichsmarks (1938 value), and that Simon and Irma Benesch's total assets were valued at 179,916.00 Reichsmarks (1938 value), of which they were forced to pay a "flight tax" of 44,979.00 Reichsmarks (1938 value) on 25 April 1939. The records indicate that Simon Benesch and Irma Benesch were reported to have fled to Holland on 10 February 1939 and 11 March 1939, respectively. The records also indicate that Simon Benesch transferred his life insurance policy on 28 October 1938 to his sister [REDACTED], née Benesch, who was born on 25 February 1875, and resided at Schönburgstrasse 46, Vienna IV. Moreover, the records show that Simon Benesch owned a considerable number of domestic and international securities. Finally, the records indicate that Simon Benesch maintained a considerable number of bank accounts in Austria and other countries, including an account of unknown type at Bank III with a balance of 2,129.15 Swiss Francs in 1938.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Benesch. Her great-uncle's name matches the published name of Account Owner Benesch. The Claimant identified her great-uncle's profession, which matches unpublished information about the Account Owner contained in the Bank's records and the Austrian census records. Moreover, the signature samples contained in the Austrian census records match the signature sample contained in the Bank's records. The Claimant also identified her grandmother's name, which matches information contained in the Austrian census records. Finally, the CRT notes that the other claims to these accounts were disconfirmed due to different names and different cities of residence.

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 perished in a concentration camp.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to Account Owner Benesch by submitting documents including a family tree demonstrating that Account Owner Benesch was her great-uncle.

The Issue of Who Received the Proceeds

With regard to the demand deposit account at Bank I, given the existence of Nazi confiscatory legislation in Austria at that time,² that the ICEP auditors determined that the account was possibly paid to an unauthorized party, and the application of Presumptions (a), (f), (h) and (j), as provided in 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.

With regard to the custody account at Bank I and the accounts at Bank II, given the existence of Nazi confiscatory legislation in Austria at that time,³ that one of the accounts at Bank II was closed in 1973, thirty-one years after Account Owner Benesch perished in a concentration camp, and the application of Presumptions (b), (f), (h) and (j), as provided in 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 Governing the Claims Resolution Process, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

^{2,3} As described in the expanded version of Appendix A (see II. A. 2), which appears on the CRT II website -- www.crt-ii.org.

With regard to the accounts at Bank III, the ICEP auditors determined that the accounts were paid to Nazi authorities.

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 Account Owner Benesch was her great-uncle, and that relationship justifies an Award. Finally, 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, the Account Owners held seven accounts: one demand deposit account and one custody account at Bank I, one demand deposit account and one custody account at Bank II, and one demand deposit account, one custody account and one savings account at Bank III. With regard to the demand deposit account at Bank I, the Bank's records indicate that the value of the account as of 30 June 1942 was 4,388.00 Swiss Francs. The current value of this amount is determined by multiplying the historic value by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total demand deposit value of 52,656.00 Swiss Francs.

With regard to the custody account at Bank I, 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 current 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 custody account value of 156,000.00 Swiss Francs.

With regard to the custody account at Bank II, the Bank's records indicate that the Account Owner held Serbian Kingdom Bonds in the account with a nominal face value of 17,500.00 Swiss Francs. The CRT notes that in 1939 the Yugoslavian government stopped making payments of principal and interest on Kingdom dollar bonds.³ Since the CRT has concluded that the accounts at Bank II were confiscated, as noted above, possibly before payments ceased on the Serbian Kingdom Bonds, the CRT has determined to use average values to calculate the value of the account being awarded rather than the nominal face value of the bonds. Since the 1945 value of this custody account cannot be determined based on bank record information, pursuant to Article 29 of the Rules, the average value of the same or a similar type of account in 1945 is used to calculate the 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 current 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 custody account value of 156,000.00 Swiss Francs.

³ See Foreign Bondholders Protective Council, Inc., Report for Years 1941 Through 1944, at 796 (1945).

With regard to the demand deposit account at Bank II, the Bank's records indicate that the value of the account as of 1972 was 35.00 Swiss Francs. According to Article 29 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The current value of this amount is determined by multiplying the balance as determined by Article 29 by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total demand deposit account value of 25,680.00 Swiss Francs.

With regard to the demand deposit account at Bank III, the Austrian State Archives records indicate that the value of the account was 2,129.15 Swiss Francs. In this case, because Account Owner Benesch himself declared the value of the account to be 2,129.15 Swiss Francs, the amount in the account shall be determined to be 2,129.15 Swiss Francs. The current value of this amount is determined by multiplying the balance as determined by Article 29 by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total demand deposit account value of 25,549.80 Swiss Francs.

Regarding the remaining accounts at Bank III, pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case with respect to the custody account and the savings account, 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 and the average value of a savings account was 830.00 Swiss Francs. The current 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 amount of 165,960.00 Swiss Francs.

Consequently, the total award amount for the above accounts in this case is 581,845.80 Swiss Francs.

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
June 3, 2003