

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Victoria Elaine Murphy
also acting on behalf of Elizabeth Marie Hamilton, Francesca Sophie von Zimmerman,
Anthony Bion Dolman, and Patricia Anne Dolman

in re Accounts of Hans Boschan and Elisabeth Boschan

Claim Numbers: 501507/MW; 501514/MW

Award Amount: 3,566,075.00 Swiss Francs

This Certified Award is based upon the claims of Victoria Elaine Murphy, née Boschan, (the “Claimant”) to the published accounts of Elisabeth Boschan (“Account Owner Elisabeth Boschan”) at the Zurich branch of the [REDACTED] (“Bank I”), to the published accounts of Hans Boschan (“Account Owner Hans Boschan”) (together the “Account Owners”) at the [REDACTED] (“Bank II”), and to the unpublished account of Account Owner Hans Boschan at an unspecified Swiss bank (“Bank III”) (together the “Banks”).¹

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the banks have been redacted.

Information Provided by the Claimant

The Claimant submitted two Claim Forms identifying Account Owner Elisabeth Boschan as her maternal grandmother, Elisabeth Boschan, née Penzig-Franz, who was born on 18 May 1903 in Vienna, Austria, and Account Owner Hans Boschan as her maternal grandfather, Dr. Hans Boschan, who was born on 13 November 1898 in Vienna. The Claimant indicated that her grandparents married on 8 September 1921 in Austria, and had one child, Vera Marie Elisabeth Boschan, the Claimant’s mother. The Claimant explained that her grandfather, who was Jewish, was a businessman in Vienna and resided with her grandmother at Vordere Zollamtsstrasse 11 in Vienna III. The Claimant further explained that her grandmother, who was Roman Catholic, was considered Jewish by the Nazis because she was married to a Jewish man. The Claimant stated that her grandparents resided in Austria until 1938, when they fled to Switzerland, where they resided at Renes sur Roche in Renes, Switzerland until 1939, when they emigrated to Canada.

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”), Hans Boschan is indicated as having one account. Upon careful review, the CRT concludes that Bank II’s records indicate the existence of two accounts.

The Claimant indicated that when her grandfather arrived in Canada he changed his family name from his birth name of von Boschan to de Boschan and his given birth name of Hans Victor to Jean, and that he was also known as John or Jon. The Claimant explained that after the death of her grandmother on 31 August 1940 in Vancouver, British Columbia, Canada, her grandfather remarried twice: first to Mildred Dietrich, whom he divorced, and subsequently to Hester Boschan. The Claimant stated that her grandfather died on 15 May 1983 in White Rock, British Columbia, and that her mother died on 12 February 1979 in Lytton, British Columbia. The Claimant stated further that Hester Boschan died in 1997 in Ottawa, Canada.

In support of her claim, the Claimant submitted her grandfather's birth certificate indicating that Hans Victor von Boschan was born on 13 November 1898 in Vienna; her grandparents' marriage certificate indicating that Dr. Johann Victor Boschan married Elisabeth Penzig-Franz on 8 September 1922 in Vienna; the minutes of the reading of her grandmother's will indicating that Elizabeth de Boschan was married to Jean de Boschan, that they had one daughter named Vera, and that she bequeathed her estate to her husband; her mother's will and order of probate indicating that Vera Maria Elisabeth Dolman died on 12 February 1979 in Lytton, British Columbia, Canada, and that she bequeathed her estate to her five children: Elizabeth, Francisco, Victoria, Anthony, and Patricia, in equal shares; the order of probate and will of her grandfather indicating that John de Boschan died on 15 May 1983, and that he bequeathed 70 percent of the residue of his estate to his wife, Hester, and the remaining 30% to Vera's five children, in equal shares.

The Claimant indicated that she was born on 8 September 1957 in Maple Ridge, British Columbia, Canada. The Claimant is representing her sister, Elizabeth Marie Hamilton, who was born on 8 July 1957 in Vancouver; her sister, Francesca Sophie von Zimmerman, who was born on 20 March 1960 in Haney, British Columbia; her brother, Anthony Bion Dolman, who was born on 18 August 1968 in Lillooet, British Columbia, and her sister, Patricia Anne Dolman, who was born on 6 November 1970 in Lytton.

Information Available in the Banks' Records

Bank I

Bank I's record consists of a customer card. According to this record, Account Owner Elisabeth Boschan was *Frau* (Mrs.) Elisabeth Boschan who resided in Vienna, Austria. Bank I's record indicates that Account Owner Elisabeth Boschan held one custody account, numbered L 47214, which was opened on 1 April 1932, and one demand deposit account. According to Bank I's record, the custody account was closed on 26 September 1938, and the demand deposit account was closed on 31 August 1938. The amounts in these accounts on their dates of closure are unknown. There is no evidence in Bank I's record that Account Owner Elisabeth Boschan or her heirs closed the accounts and received the proceeds themselves.

Bank II

Bank II's records consist of three customer cards. According to these records, Account Owner

Hans Boschan was Dr. Hans Boschan who resided at Vordere Zollamtsstrasse 11 in Vienna III, Austria. Bank II's records indicate that Account Owner Hans Boschan held two accounts, one demand deposit account, numbered 16104, and one demand deposit account, numbered KL 35979, which was opened on 26 February 1938. According to Bank II's record, both accounts were closed on 23 August 1938. Bank II's records indicate that the amount in the demand deposit account numbered 16104 on 31 December 1937 was 923.00 Swiss Francs ("SF"). Bank II's records do not indicate the value of the demand deposit account numbered KL 35979. There is no evidence in Bank II's records that Account Owner Hans Boschan or his heirs closed the accounts and received the proceeds themselves.

Bank III

The CRT notes that the auditors who carried out the investigation of Swiss banks 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 report the account at issue belonging to Dr. Hans Boschan during their investigation. The existence of the account is evidenced in the documents obtained from the Austrian State Archive, which are detailed below.

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. Hans von Boschan, numbered 66249. The information in the file consists of a letter, dated 19 March 1940, from the tax authorities in Berlin (*Finanzamt Moabit*) to the Property Control Office (*Vermögensverkehrsstelle*), which states that Dr. Hans von Boschan is not liable for atonement tax (*Judenvermögensabgabe*) because he acquired Dominican nationality on 12 September 1938. The letter includes a copy of Dr. Hans von Boschan's asset declaration, dated 25 July 1938, at which time he resided in Renens sur Roche, Renens near Lausanne, Switzerland. This asset declaration indicates that Dr. Hans von Boschan resided at Vordere Zollamtsstrasse 11 in Vienna III with his wife, Elisabeth Boschan, née Penzig-Franz. It further indicates that Dr. Hans von Boschan, who was Jewish, was born on 13 November 1898 and, at the time he made his declaration, held German citizenship, and that Elisabeth Boschan was not of Jewish origin and was Catholic. In his asset declaration, Dr. Hans von Boschan lists, in addition to real estate worth 95,216.00 Reichsmark ("RM"), a large number of securities with a total value of RM 323,605.70, and liquid assets worth RM 59,190.00, including an account at Bank II, the type of which is not specified, with a cash balance of SF 97.00 as of 27 April 1938.

According to these records, Dr. Hans von Boschan sold part of the securities he held in late April – early May 1938 pursuant to an agreement he reached with the Vienna Foreign Exchange authorities (*Devisenstelle Wien*). The proceeds of this sale were used to cover the flight tax in the amount of RM 375,000.00, of which RM 325,800.00 was paid in cash on 6 May 1938 and the remaining RM 50,000.00 secured by securities. The records indicate that Dr. Boschan left Austria on 20 May 1938. The records further indicate that Dr. Boschan held securities in an

unspecified bank Switzerland, which he sold for SF 265,866.00, equivalent to RM 151,543.60. The Swiss franc proceeds, in turn, were sold to the Reichsbank. According to the records, Dr. Boschan, after relinquishing his foreign-held securities and according to the agreement with the *Devisenstelle*, was allowed to retain - for his free use abroad after his leaving Austria – an additional 18 specified parcels of foreign currency denominated securities, worth RM 69,578.00, equivalent to SF 122,066.71.

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 Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's grandparents' names and country of residence match the published names and country of residence of the Account Owners. The Claimant also identified Account Owner Elisabeth Boschan's city of residence, which matches unpublished information about Account Owner Elisabeth Boschan contained in Bank I's record. The Claimant identified Account Owner Hans Boschan's specific address in Vienna III, and his title, which match unpublished information about Account Owner Hans Boschan contained in Bank II's record.

In support of her claim, the Claimant submitted documents, including her grandfather's birth certificate indicating that Hans Victor von Boschan was born on 13 November 1898 in Vienna; her grandparents' marriage certificate indicating that Dr. Johann Victor Boschan married Elisabeth Penzig-Franz on 8 September 1922 in Austria; and the minutes of her grandmother's will indicating that Elizabeth de Boschan was married to Jean de Boschan, providing independent verification that the persons who are claimed to be the Account Owners had the same names and resided in the same city recorded in the Banks' records as the names and city of residence of the Account Owners.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owners Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that Account Owner Hans Boschan was Jewish, and that Account Owner Elizabeth Boschan was considered to be Jewish under the Nuremberg laws because she was married to a Jewish man. The Claimant further stated that the Account Owners fled from Austria to Switzerland in 1938, and then left for Canada.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were the Claimant's maternal grandparents. These documents include the minutes of her grandmother's will indicating that Elizabeth de Boschan was married to Jean de Boschan, that they had one daughter named Vera; and the will of her grandfather indicating that John de Boschan's daughter, Vera, had five children: Elizabeth, Francisco, Victoria (the Claimant), Anthony, and Patricia. There is no information to indicate that the Account Owners have surviving heirs other than the parties whom the Claimant is representing.

The Issue of Who Received the Proceeds

The CRT notes that the Banks' records indicate that Account Owner Elizabeth Boschan's two accounts were closed on 31 August 1938 and 26 September 1938, and that Account Owner Hans Boschan's accounts were closed on 23 August 1938, at which time, according to information in the 1938 Census records and information provided by the Claimant, the Account Owners were outside Nazi-dominated territory. However, given that the Banks' records do not indicate to whom the accounts were closed; that the Account Owners fled Austria due to Nazi persecution in 1938; that the Account Owners may have had relatives remaining in Austria and that they may therefore have yielded to Nazi pressure to turn over their accounts to ensure their safety; that Account Owner Hans Boschan reported the existence of one account in his 1938 Census; that Account Owner Hans Boschan and his heirs would not have been able to obtain information about his accounts or the late Account Owner Elizabeth Boschan's accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 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 account belonging to Account Owner Hans Boschan that contained securities, the facts of this case are similar to other cases that have come before the CRT in which Jewish residents or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that Account Owner Hans Boschan reported the account in the 1938 Census; that Account Owner Hans Boschan entered into an agreement with the *Devisenstelle Wien* that allowed him to leave the Reich in exchange for turning over the greater part of his assets, including most of his foreign-held securities, and given the application of Presumptions (a)(ii), (d), (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 Account Owner Hans Boschan or his heirs.

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 Owners were her maternal grandparents, and that relationship justifies 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

With respect to the one custody account and one demand deposit account owned by Account Owner Elisabeth Boschan, and the demand deposit account numbered KL 35979 owned by Account Owner Hans Boschan, 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, 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 an award amount of SF 216,000.00

With respect to the demand deposit account numbered 16104 owned by Account Owner Hans Boschan, Bank II's records indicate that the value of this account as of 31 December 1937 was SF 923.00. According to Article 29 of the Rules, if the amount in a demand deposit was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 26,750.00 for this account.

With respect to the account containing securities held at Bank III, Account Owner Hans Boschan's 1938 Census declaration indicates that he held securities in Switzerland valued at SF 265,866.00, which, pursuant to an agreement with the *Devisenstelle Wien*, he was required to transfer to the *Reichsbank*. The current value of this amount is determined by multiplying the historic balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 3,323,325.00 for this account.

Therefore, the total award amount is SF 3,566,075.00.

Division of the Award

With respect to the accounts held by Account Owner Hans Boschan, according to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. In

this case, the Claimant submitted Account Owner Hans Boschan's will, in which he bequeathed 30 percent of the residue of his estate to the Claimant and her siblings, in equal shares.

With respect to the accounts held by Account Owner Elisabeth Boschan, according to Article 23(2)(b) of the Rules, if none of the named beneficiaries has filed a claim, the CRT shall make an award to any claimant who has submitted an unbroken chain of wills or other inheritance documents, starting with the will of, or other inheritance documents pertaining to, the Account Owner. The Claimant submitted the minutes of Elisabeth Boschan's will, in which she bequeathed her entire estate to her husband, Jean de Boschan, as well as John de Boschan's will, in which, as indicated above, he bequeathed 30 percent of his estate to the Claimant and her siblings, in equal shares. The Claimant is representing her siblings: Elizabeth Marie Hamilton, Francesca Sophie von Zimmermann, Anthony Bion Dolman and Patricia Anne Dolman.

Consequently, the Claimant and her siblings are each 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 claims 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
10 August 2005