

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]
also acting on behalf of [REDACTED 3], [REDACTED 4]
and [REDACTED 5]

in re Accounts of Edith Broch

Claim Numbers: 400697/RT;¹ 401314/RT²

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the published accounts of Edith Broch (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as 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]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as his father’s cousin, [REDACTED], née [REDACTED], who was born on 22 December 1911 in Vienna, Austria, and was married to [REDACTED] in the United States. Claimant [REDACTED 1] stated that his cousin, who was Jewish, was the daughter of [REDACTED] and [REDACTED], née [REDACTED], and that she lived on Reissnerstrasse and Rummelhartgasse in Vienna. Claimant [REDACTED 1] further stated that [REDACTED] studied to become a

¹ Claimant [REDACTED 2] (“Claimant [REDACTED 2]”) submitted one additional claim, which is registered under the Claim Number 208363. In two separate decisions, the CRT has awarded the accounts of Philipp Broch and Laura Broch to Claimant [REDACTED 2]. See *In re Accounts of Philipp Broch and Laura Broch*, (approved on 31 December 2003) and *In re Account of Laura Broch* (approved on 21 October 2004).

² Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) submitted three additional claims, which are registered under the Claim Numbers 401223, 401295, and 401311. The CRT will treat these claims in separate determinations.

primary school teacher and went on to enroll in medical school, where she met her husband, [REDACTED]. Claimant [REDACTED 1] indicated that [REDACTED] and [REDACTED] fled from Austria to the United States on 11 or 14 March 1938 via Switzerland and the United Kingdom. Claimant [REDACTED 1] indicated that [REDACTED] died on 25 January 2001 in New York.

In support of his claim Claimant [REDACTED 1] submitted the following documents: 1) the birth certificate of [REDACTED], indicating that he was born on 30 May 1872 in Prossnitz, Czechoslovakia (today Prostějov, the Czech Republic) and that his parents were [REDACTED] and [REDACTED], née [REDACTED]; 2) the birth certificate of [REDACTED], indicating that she was born on 22 December 1911 in Vienna and that her parents were [REDACTED] and [REDACTED]; 3) the marriage certificate of [REDACTED] and [REDACTED] née [REDACTED], indicating that they were married on 26 August 1894 in Prossnitz and that [REDACTED] was the daughter of [REDACTED] and [REDACTED], who resided in Prossnitz; 4) the birth certificate of [REDACTED], indicating that he was born on 27 July 1895 and his parents were [REDACTED] and [REDACTED], née [REDACTED]; 5) his own birth certificate, indicating that his parents were [REDACTED] and [REDACTED], née [REDACTED]; and 6) a letter from [REDACTED] to [REDACTED], dated 12 June 1946, which makes reference to [REDACTED] and [REDACTED]. Claimant [REDACTED 1] indicated that he was born on 19 November 1932 in Vienna.

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as [REDACTED], who was born on 22 December 1911 in Vienna, and who was the daughter of a family friend, [REDACTED]. Claimant [REDACTED 2] indicated that [REDACTED] was married to [REDACTED], née [REDACTED], that they resided at Reisnerstrasse 28 in Vienna, and that they had one other child, [REDACTED], who was born on 7 December 1904 in Linz, Austria. Claimant [REDACTED 2] explained that he is an heir of [REDACTED], who was [REDACTED]'s wife. Claimant [REDACTED 2] stated that [REDACTED] was a medical student, that she fled Austria on 12 March 1938, and that she subsequently married a [REDACTED].

In support of his claim, Claimant [REDACTED 2] submitted [REDACTED]'s Last Will, devising all her residual property in equal shares to Claimant [REDACTED 2], [REDACTED 3], [REDACTED 4], née [REDACTED], and [REDACTED 5]. Claimant [REDACTED 2] also submitted a codicil to this will, which provides for a specific bequest to [REDACTED]'s sister-in-law, [REDACTED]. In addition, Claimant [REDACTED 2] submitted the order of a court in New York, stating that the administration of the estate of [REDACTED] had been partially completed and that Claimant [REDACTED 2], [REDACTED 3], [REDACTED 4], née [REDACTED], and [REDACTED 5] were the only heirs of [REDACTED]'s residuary estate.

Claimant [REDACTED 2] indicated that he was born on 29 August 1943 in Groede, the Netherlands. He is representing his brother, [REDACTED 3], who was born on 15 March 1938 in Groede, and his cousins, [REDACTED 4], née [REDACTED], who was born on 24 May 1938

in Zaamslag, the Netherlands, and [REDACTED 5], who was born on 23 September 1934 in Zamslaag.

Information Available in the Bank's Records

The CRT notes that 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 report an account belonging to Edith Broch during their investigation of the Bank. The documents evidencing an account belonging to Edith Broch were obtained from archival sources in Austria and are further described 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 Edith Broch, numbered [REDACTED]. According to these records, Edith Broch was born on 22 December 1911 in Vienna and formerly resided at Rummelhardtgasse 3 in Vienna 9. The records also indicate that Edith Broch was a medical student in 1938, that she fled Austria for the United States no later than 14 July 1938, and that her married name was Weiss. These records indicate that Edith Broch owned assets totaling 218,776.00 Reichsmark ("RM"), and that she was assessed flight tax (*Reichsfluchtsteuer*) of RM 54,694.00 on 4 October 1939. These records indicate that Edith Broch held securities at several banks in Vienna, including the *Länderbank Wien* and the *Oesterreichische Creditanstalt-Wiener Bankverein*.

Furthermore, these records evidence account ownership at the Bank. Specifically, the records contain an account statement, dated 1 September 1938, sent from the Bank to *Fräulein* (Miss) Edith Broch. This statement indicates that Edith Broch owned a custody account, numbered 20680, which held the following securities as of 1 January 1938:

- 4% *Oblig. Königreich Serbien 1895 mit Erklärung* bonds with a nominal value of 25,000.00 Swiss Francs ("SF") and a market value of SF 2,262.50;
- 4½ % *Oblig. Bulgarische Staats-Goldanl.1907* bonds, with a nominal value of SF 25,000.00 and a market value of SF 2,350.00;
- 5% *Funding.-Oblig. Königreich Jugoslavien, 1933* bonds, with a nominal value of 1,500.00 French Francs ("FF") and a market value of SF 75.00;
- 50 units of *Prior. Oblig. Donau-Save-Adria Eisenbahn-Gesellschaft, 1923* bonds, with no specified nominal value and a market value of SF 2,262.50;
- 20 shares of *Steyermühl Papierfabriks-und Verlagsgesellschaft Wien*, with a market value of 1,880.00 Austrian Schillings ("ATS"); and
- 25 shares of *Steirische Magnesit-Industrie A.-G., Wien*, with a market value of ATS 2,056.25.

In addition, these records indicate that Edith Broch held one demand deposit account at the Bank, which had a balance of SF 207.00 as of 1 January 1938.

The records contain no further information regarding the disposition of these accounts.

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. Claimant [REDACTED 1]'s father's cousin's and Claimant [REDACTED 2]'s family friend's name matches the published name of the Account Owner. The Claimants identified Edith Broch's date of birth, city and country of residence, married name, status as a medical student, and the fact that she fled from Austria in 1938, all of which matches unpublished information about the Account Owner contained in the 1938 Census records. In support of their claims, Claimant [REDACTED 1] submitted his cousin's birth certificate and Claimant [REDACTED 2] submitted [REDACTED]'s Last Will, providing independent verification that the person claimed to be the Account Owner had the same name recorded in the 1938 Census records as the name of the Account Owner. The CRT notes that there are no other claims to these accounts.

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. The Claimants stated that the Account Owner was Jewish and that she fled from Austria to the United States via Switzerland and England on 11 or 14 March 1938. In addition, the CRT notes that the Account Owner registered her assets pursuant to the 1938 Census.

The Claimant's Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was his father's cousin. These documents include the birth certificate of [REDACTED], identifying his parents as [REDACTED] and [REDACTED]; the birth certificate of [REDACTED], identifying her father as [REDACTED]; the marriage certificate of [REDACTED 1], née [REDACTED 1], identifying her parents as [REDACTED] and [REDACTED]; the birth certificate of his father [REDACTED], identifying his mother as [REDACTED], née [REDACTED]; and Claimant [REDACTED 1]'s own birth certificate, identifying his father as [REDACTED].

The CRT notes that Claimant [REDACTED 2] is not related to the Account Owner. The CRT notes, however, that Claimant [REDACTED 2] has plausibly demonstrated that he and the parties represented by him are the only heirs of [REDACTED], the Account Owners sister-in-law, by submitting [REDACTED]'s Last Will.

There is no information to indicate that the Account Owner has other surviving heirs.

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 Jewish residents and/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 the Account Owner reported the accounts in the 1938 Census; that the Account Owner lived in Austria until she fled to the United States via Switzerland and England on 11 or 14 March 1938, and therefore could not have repatriated the accounts without losing ultimate control over their proceeds; and given the application of Presumptions (d), (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 accounts' proceeds were not paid to the Account Owner or her 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] has plausibly demonstrated that the Account Owner was his father's cousin, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts. Further, the CRT notes that Claimant [REDACTED 1], as the Account Owner's cousin, has a better entitlement to the accounts than Claimant [REDACTED 2] and the parties represented by him, who are the heirs of the Account Owner's sister-in-law.

Amount of the Award

In this case, the Account Owner held one custody account and one demand deposit account. As indicated by the letter from the Bank, that the value of the demand deposit account as of 31 December 1937 was SF 207.00. According to Article 29 of the Rules, if the amount in a demand deposit account 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 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 26,750.00.

With regard to the custody account, according to the Guidelines for the Valuation of Securities, circulated by Special Master Helen B. Junz, as a general rule, the nominal value of bonds not in default shall be awarded if the market value was below the nominal value on the date the account owner is deemed to have lost control over the account. The CRT presumes that the account owner, if able to decide freely, could have opted to hold the respective bond to maturity to avoid a capital loss. Market value shall be awarded if the market value was above the nominal value on the date the account owner is deemed to have lost control over the account. Bonds in default are awarded at market value, as are all stocks. Thus, the securities held in the custody account and listed in the Account Owner's 1938 Census declaration shall be valued as follows:

- 4% *Oblig. Königreich Serbien 1895 mit Erklärung* bonds, which were in default, had a market value of SF 2,262.50;
- 4½ % *Oblig. Bulgarische Staats-Goldanl. 1907* bonds, which were in default, had a market value of SF 2,350.00;
- 5% *Funding.-Oblig. Königreich Jugoslavien, 1933* bonds, which were in good standing, had a nominal value of SF 188.40;
- 50 units of *Prior. Oblig. Donau-Save-Adria Eisenbahn-Gesellschaft, 1923* bonds, which were in good standing, traded like preferred shares, had no nominal value, and had a market value of SF 2,262.50;
- 20 *Shares of Steyermühl Papierfabriks-und Verlagsgesellschaft Wien*, with a market value of ATS 1,880.00, or SF 1,532.58;³
- 25 *Shares of Steirische Magnesit Industrie A.-G., Wien*, with a market value of ATS 2,056.25, or SF 1,676.26.

Therefore, the value of the securities in the Account Owner's custody account is determined to be SF 10,272.24. The CRT determines that it is unable to rely on the balance amounts declared in the 1938 Census as it has no evidence regarding the circumstances of the Account Owner's declaration. The CRT notes that, as evidenced in a number of cases, the Account Owner may not have declared all of her assets, or understated their value, in the belief that this might help her safeguard some of them. According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00. In this case, the CRT does not find that the value of the account indicated in the Account Owner's 1938 Census declaration constitutes plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the value of the Account Owner's custody account shall be determined to be SF 13,000.00. 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 162,500.00.

Consequently, the total award amount is SF 189,250.00.

³ The CRT uses official exchange rates when converting the amounts in foreign currencies into Swiss Francs.

Division of the Award

According to Article 23(1)(e) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner's parents have submitted a claim, the award shall be in favor of any descendants of the Account Owners grandparents who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 1]'s father was the cousin of the Account Owner. Claimant [REDACTED 2] and the parties represented by him are the testamentary heirs of the Account Owner's sister-in-law, who predeceased the Account Owner. Accordingly, Claimant [REDACTED 1] is entitled to the total 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
October 20, 2006