

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Marietta Lissner
also acting on behalf of Gerhard Jerry Reiss

in re Account of Max Eckstein

Claim Number: 210897/MBC

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of Marietta Lissner, née Reiss (the “Claimant”) to the account of Max Eckstein (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

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

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her maternal great-uncle, Max Eckstein. The Claimant stated that Max Eckstein, an Austrian Jew, was born in Teplice, Czechoslovakia to Simon Eckstein and Rosa Resie Eckstein. According to the Claimant, Max Eckstein and his wife Emmi had two children: Marie and Hans, who both were born in Vienna, Austria, and died in Haifa, Israel, and Sydney, Australia, respectively. The Claimant indicated that Marie Eckstein’s married name was “Pfeiffer” and that she had two children, Benjamin and Elishewa. The Claimant also indicated that she does not know whether Marie Pfeiffer’s children are still alive or not, but she did not indicate whether Hans Eckstein was married or had children. The Claimant stated that her relative owned a business selling gold watches with his brother, Guido Eckstein, in Vienna, where her relative also lived with his family. The Claimant stated further in a telephone conversation with the CRT on 3 November 2003 that her great-uncle also owned a small hotel in Vienna named *Pensionat Eckstein*. In the same telephone conversation, the Claimant stated that she and her family left Austria in 1938 for Shanghai, China, and lost contact with Max Eckstein, whom she presumes was killed in the Holocaust. The Claimant also indicated that Max Eckstein’s sister, Else Bindermann, née Eckstein, was her grandmother; and that Hertha Reiss, née Bindermann (Else Bindermann’s daughter) had two children, the Claimant and Gerhard Jerry Reiss. In support of her claim, the Claimant provided a copy of her mother’s birth certificate, which shows that Hertha Bindermann was born to Jakob Bindermann and Elma Bindermann, née Eckstein; and a detailed family tree. The Claimant stated that she was

born on 7 July 1923 in Vienna, Austria. The Claimant is representing Gerhard Jerry Reiss, her brother, who was born on 4 September 1925 in Vienna.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form and printouts from the Bank's electronic database. According to these records, the Account Owner was *Herr* (Mr.) Max Eckstein who resided at Silbergasse 45, door 5, in Vienna XIX, and that the Power of Attorney Holders were *Frau* (Mrs.) Emmy Eckstein, *Herr* (Mr.) Hans Eckstein, and *Frau* (Mrs.) Marie Pfeifer, née Eckstein. According to the Bank's records, the Account Owner held a custody account, which was opened no later than September 1929.¹

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

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner and Power of Attorney Holders. The Claimant's maternal great-uncle's name, city and country of residence match the published name, city and country of residence of the Account Owner. The Claimant stated that Emmi Eckstein was Max Eckstein's wife and that the couple had two children named Marie and Hans, which correspond to the published Power of Attorney Holders' names (Emmy Eckstein, Marie Pfeifer, and Hans Eckstein). The Claimant stated that "Pfeiffer" was Marie Pfeiffer's married name, matching unpublished information about the marital status of Power of Attorney Holder *Frau* Marie Pfeifer, née Eckstein, contained in the Bank's documents. The Claimant also stated that "Eckstein" was Emmi Eckstein's married name, matching unpublished information about the marital status of Power of Attorney Holder *Frau* Emmy Eckstein contained in the Bank's documents. The CRT also notes that there are discrepancies in spelling (1) between Max Eckstein's wife's first name (Emmi) and the spelling of Power of Attorney Holder *Frau* Emmy Eckstein's first name, and (2) between Max Eckstein's daughter's married name (Pfeiffer) and the spelling of the Power of Attorney Holder *Frau* Marie Pfeifer, née Eckstein's married name, but the CRT finds that these minor spelling differences do not

¹ The Bank's records contain a power of attorney form that references a "Titeldepot," a type of custody account.

adversely affect the Claimant's identification of Power of Attorney Holders Emmy Eckstein and Marie Pfeifer. The CRT further notes that the name Max Eckstein appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution. Finally, the CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

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 was probably killed in the Holocaust.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly shown that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was her maternal great-uncle. These documents include a copy of her mother's birth certificate, which shows that the Claimant's mother, Hertha Bindermann, was born to Jakob Bindermann and Elma Bindermann, née Eckstein. Further, the Claimant stated that "Pfeiffer" was Power of Attorney Holder Marie Pfeifer's married name, that "*Frau*" was Power of Attorney Holder Emmy Eckstein's title, matching unpublished information about two of the Power of Attorney Holders contained in the Bank's records.

The Issue of Who Received the Proceeds

Given the existence of Nazi confiscatory legislation in Austria after the March 1938 *Anschluss* (annexation by Germany); that the Account Owner remained in Austria prior to and during the Second World War and was probably killed in the Holocaust; that the Account Owner's heirs would not have been able to obtain information about the Account Owner's accounts after the Second World War from the Bank 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; that there is no record of the payment of the Account Owner's account to him; and given the application of Presumptions (h) and (j), as provided in the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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 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 Owner was her great-uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is

plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one 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 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. 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 162,500.00 Swiss Francs.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendant of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, the Claimant is representing her brother, Gerhard Jerry Reiss. Accordingly, the Claimant and Gerhard Jerry Reiss are each entitled to one-half 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 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
8 April 2004