

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED]¹
represented by [REDACTED]

in re Account of Max Elsner

Claim Number: 209599/AC²

Award Amount: 10,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the "Claimant") to the published account of Max Elsner (the "Account Owner"), over which [REDACTED] (the "Power of Attorney Holder") held power of attorney, at the Basel 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 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 paternal great-uncle, [REDACTED], who was born in Poland. The Claimant stated that her great-uncle, who was Jewish, belonged to a family of businessmen, and that the Nazis confiscated his family's businesses. The Claimant stated that her great-uncle resided in Germany during the Second World War and she believed that he was killed by the Nazis in Hamburg, Germany. The Claimant indicated that [REDACTED] was the brother of her paternal grandfather [REDACTED], and that she and her brother, [REDACTED], who died as a child, were the

¹ The Claimant's daughter, [REDACTED], who represents her in this claim, informed the CRT in a letter dated 25 August 2005 that the Claimant died on 14 August 2005, and forwarded a copy of the Claimant's death certificate.

² The Claimant submitted nine additional claims to the accounts of [REDACTED] and [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], which are registered under the Claim Numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], respectively. In a separate decision, the CRT awarded the account of [REDACTED] to the Claimant. See *In re Account of [REDACTED]* (approved 17 March 2003). The CRT also treated the claim to the accounts of [REDACTED] and [REDACTED] in a separate decision. See *In re Accounts of [REDACTED] and Account of [REDACTED]* (approved 18 August 2004). The CRT will treat the claims to the accounts of [REDACTED], [REDACTED] and [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] in separate determinations.

children of [REDACTED]'s son, [REDACTED]. The Claimant, who was too young to have known her great-uncle well, indicated that most of her relatives were killed in the Holocaust, and that she and her family were forced to flee from Nazi Germany to Shanghai, China in 1939, before eventually emigrating to the United States.

The Claimant submitted documents in support of her claim, including: (1) a copy of an application for identification papers, indicating that [REDACTED] was born on 22 December 1944 in Brzeznicza, Poland, that he was married in 1920 in Essen an der Ruhr, Germany, that he resided in Germany until 27 March 1939, and that his last German residence was in Frankfurt am Main; (2) a copy of her mother's American certificate of naturalization, indicating that E [REDACTED] was previously a German national; (3) a copy of her own birth certificate, indicating that she was born on 22 June 1922 in Frankfurt am Main, Germany, and that her parents were [REDACTED] and [REDACTED], née [REDACTED]; and (4) a copy of her father's will, dated 16 March 1968, indicating that [REDACTED] bequeathed his entire estate to his daughter, [REDACTED].

The Claimant indicated that she was born on 22 June 1922 in Frankfurt am Main, Germany.

The Claimant previously submitted an Initial Questionnaire to the Court in 1999, asserting her entitlement to Swiss bank accounts owned by herself, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].³

Information Available in the Bank's Records

The Bank's record provided by 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") consists of a printout from the Bank's database. Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). On 21 July 2004, the Bank provided the CRT with additional documents. These documents consist of a power of attorney form and a savings/passbook account registry card. According to the Bank's records, the Account Owner was Max Elsner, and the Power of Attorney Holder was [REDACTED], née [REDACTED], who both resided in Harburg-Wilhelmsburg 1, Germany.⁴ The Bank's records indicate that the Account Owner held a savings/passbook account. These records include signature samples for both the Account Owner and the Power of Attorney Holder, and indicate that the account was closed on 8 November 1933. The amount in the account on the date of its closure is unknown. There is no evidence in the Bank's records

³ The CRT will treat the claims to accounts belonging to [REDACTED] or [REDACTED] in separate determinations. As noted above, the CRT will treat the claim to the accounts of [REDACTED] and [REDACTED] in separate determinations.

⁴ The account at issue was published on the February 2001 published list of accounts determined by the ICEP to be probably or possibly those of victims of Nazi persecution, under the city of residence of Hamburg, Germany. After careful review of the Bank's records for this account, the CRT has determined that the Account Owner resided instead in Harburg-Wilhelmsburg, Germany.

that the Account Owner, the Power of Attorney Holder or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant's great-uncle's name and country of residence match the published name and country of residence of the Account Owner. The Claimant identified the Account Owner's city of residence as Hamburg; the CRT notes that the city of Harburg-Wilhelmsburg, which was identified in the Bank's records as the Account Owner's city of residence, was incorporated into Hamburg in 1937.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by [REDACTED], the Account Owner's nephew, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

The CRT also notes that the name Max Elsner appears only once on the February 2001 published list of accounts determined by ICEP to be probably those of victims of Nazi persecution.

The CRT notes that there are no other claims to this account. Taking all 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, that he resided in Nazi Germany, and that he was most likely killed by the Nazis in Hamburg.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information demonstrating that the Account Owner was the Claimant's great-uncle. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT notes that the Claimant submitted: (1) a copy of an application for identification papers, indicating that [REDACTED] was married in [REDACTED], Germany, that he resided in Germany, and that his last German residence was in Frankfurt am Main; (2) a copy of her

mother's American certificate of naturalization, indicating that [REDACTED] was previously a German national; and (3) a copy of her own birth certificate, indicating that she was born in Frankfurt am Main, Germany, and that her parents were [REDACTED] and [REDACTED], née [REDACTED]; which provide independent verification that the Claimant's relatives bore the same family name as the Account Owner and that they resided in Germany. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Form.

The Issue of Who Received the Proceeds

The Bank's records indicate that the account was closed on 8 November 1933.

Given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax and other confiscatory measures, including confiscation of assets held in Swiss banks; that there is no evidence that the Account Owner fled Germany prior to his death, and would not have been able to repatriate his account to Germany without losing ultimate control over its proceeds; that there is no record of the payment of the Account Owner's account to him; that the Account Owner and his heirs would not have been able to obtain information about his account 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; given the application of Presumptions (a), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendices A and C),⁵ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, 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 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. Third, the CRT has determined that it is plausible that neither the Account Owner nor 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 one savings/passbook 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

⁵ Appendix C appears on the CRT II website -- www.crt-ii.org.

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 savings/passbook account was 830.00 Swiss Francs ("SF"). 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 SF 10,375.00.

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
29 December 2005