

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Maria Lustigman

in re Account of Marie Engel

Claim Numbers: 210434/HB; 702316/HB¹

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claims of Claimant Maria Lustigman, née Engel, (the “Claimant”) to the account of Abraham (Abram) Engel.² This Award is to the account of Marie Engel (the “Account Owner”), published as M. Engel in 2005, at the Basel 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 has been redacted.

Information Provided by the Claimant

The Claimant submitted an Initial Questionnaire (“IQ”) and a Claim Form identifying the Account Owner as herself, Maria Lustigman, née Engel, who was born on 19 April 1928 in Warsaw, Poland, and who is married to Szyja Lustigman. The Claimant indicated that she is Jewish, and that she resided at 13 ul. Graniczna in Warsaw from 1934 until 1945. The Claimant further indicated that she was forced to perform slave labor in Warsaw from 1939 until 1945, and that in 1940 her family’s entire assets were confiscated by the Nazis. The Claimant stated that at that time, her family was one of the wealthiest families in Warsaw, and possessed bank accounts in Switzerland and assets and businesses in Warsaw. The Claimant further stated that her father and grandfather were both killed by the Nazis in the Warsaw Ghetto. The Claimant indicated that she and her uncle are the only survivors of the family.

¹ The CRT notes that Claimant Maria Lustigman (the “Claimant”) submitted in 1999 an Initial Questionnaire (“IQ”), numbered ENG-0086100, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 702316.

² The CRT did not locate an account belonging to Abraham (Abram) Engel in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

In support of her claim, the Claimant submitted copies of: (1) her high school report card, indicating that Maria Engel was born on 19 September 1928 in Warsaw; and (2) her own marriage certificate, indicating that Maria Engel was born in Warsaw and was married to Szyja Lustigman.

Information Available in the Bank's Records

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 of Marie Engel. The existence of an account at the Bank is evidenced by documents from the Swiss Federal Archive.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962 (the "Federal Decree"), the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution ("the 1962 Survey"). In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the assets of Marie Engel, numbered 56.

According to these records, the Account Owner was *Frl.* (Miss) Marie Engel, who was single (*ledig*). The records do not indicate the Account Owner's domicile. These records indicate that the Account Owner held one demand deposit account, which was opened in 1929, and that the account had a balance of 184.00 Swiss Francs ("SF") as of 1 September 1963. These records do not indicate the disposition of the account.

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 Owner

The Claimant's first initial and surname match the published first initial and surname of the Account Owner. The Claimant also identified the Account Owner's full name and marital status, which matches unpublished information about the Account Owner contained in the records from

the Swiss Federal Archive.³ The CRT notes that the records of the Swiss Federal Archive do not contain any specific information about the Account Owner other than her name and marital status.

In support of her claims, the Claimant submitted documents, including her own marriage certificate and her high school report card, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the records of the Swiss Federal Archive as the name of the Account Owner.

The CRT notes that the Claimant would have been a young child at the time the account was open, but considers it plausible that her parents or other family member may have opened the account on her behalf.

The CRT notes that the name M. Engel appears only once on the List of Account Owners Published in 2005 (the “2005 List”).

The CRT notes that the Claimant filed an ATAG Ernst & Young claim form in 1998, and an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Abraham Engel, prior to the publication of the 2005 List. This indicates the Claimant has based her present claim not simply on the fact that an individual identified on the 2005 List as owning a Swiss bank account bears the same name as her name, but rather on a direct family relationship that was known to her before the publication of the 2005 List. It also indicates that the Claimant had reason to believe that someone in her family owned a Swiss a Swiss bank account prior to the publication of the 2005 List. This supports the credibility of the information provided by the Claimant.

The CRT further notes that the other claims to this account were disconfirmed because these claimants provided different maiden names or titles than the maiden name and title of the Account Owner. 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 she is Jewish, that she resided in Nazi-occupied Poland during the Second World War, that she was forced to perform slave labor, and that her father and her grandfather perished in the Warsaw Ghetto.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is the Account Owner by submitting specific information and documents, demonstrating that she is the Account Owner. These documents include her marriage certificate and her high school report card.

³ The CRT notes that the Claimant’s first name is “Maria,” while the records of the Swiss Federal Archive indicate that the Account Owner’s first name is “Marie.” However, the CRT notes that “Marie” is a common variation of the name “Maria” and considers that this discrepancy does not adversely affect the Claimant’s identification of the Account Owner.

The Issue of Who Received the Proceeds

Given that the Claimant was a child during the second world war, and that any family members, who opened the account for her, perished during the war; that there is no record of the payment of the Account Owner's account to her nor any record of a date of closure of the account; that the account was registered in the 1962 Survey; that the Account Owner would not have been able to obtain information about her 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; and given the application of Presumptions (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 account 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 the Claimant. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that she is the Account Owner, and this relationship justifies an Award. Third, the CRT has determined that it is plausible that the Account Owner did not receive the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The records in the Swiss Federal Archive records indicate that the value of the demand deposit account as of 1 September 1963 was SF 184.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 285.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1963. Consequently, the adjusted balance of the account at issue is SF 469.00. 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 a total award amount of SF 26,750.00.

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 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
23 June 2008