

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Dr. Walter Friedrich

in re Accounts of Helene Grosner and Ernst Grosner

Claim Numbers: 501462/KG; 501467/KG

Award Amount: 190,740.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the published account of Ernst Grosner (“Account Owner Ernst Grosner”), over which Oskar Schwoner (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (“Bank 1”), and to the published accounts of Helene Grosner (“Account Owner Helene Grosner”) (together the “Account Owners”) at the Glarus branch of the [REDACTED] (“Bank 2”) (together the “Banks”).

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 Claim Forms identifying Account Owner Helene Grosner as the benefactor of his wife, Helene Grosner, née Bestandig, and identifying Account Owner Ernst Grosner as Helene Grosner's husband. The Claimant stated that Helene Grosner was born on 11 September 1882 in Vienna, Austria, and that Ernst Grosner was born on 9 May 1883 in Neutitschein, Austria. The Claimant further stated that the Account Owners, who were Jewish, were married on 25 March 1919 in Vienna. According to the Claimant, Helene Grosner was a sales clerk and Ernst Grosner was a bookkeeper. The Claimant stated that, from 1919 until 1939, Ernst and Helene Grosner lived at Czerningasse 9/34 in Vienna, and that in 1939 the couple fled to Brussels, Belgium. According to the Claimant, Ernst Grosner was later sent from Brussels to camps in Gurs and Drancy in France before being deported to Auschwitz, where he perished in 1942. The Claimant stated that Helene Grosner survived the Second World War and returned to her home in Czerningasse in Vienna in 1949. The Claimant indicated that Helene Grosner passed away on 18 November 1956 in Vienna.

The Claimant submitted the following documents in support of his claim:

- Ernst Grosner's 1938 Census of Jewish-owned assets, which indicates that he lived at Czerningasse 9, Vienna II, and was married to Helene Grosner, née Beständig;
- Helene Grosner's 1938 Census of Jewish-owned assets, which indicates that she lived at Czerningasse 9, Vienna II, and was married to Ernst Grosner;
- a certificate of inheritance (*Einantwortungsurkunde*) relating to the estate of Ernst Grosner, dated 13 September 1950, which names his widow Helene Grosner as the sole heir to his estate;
- a certificate of inheritance relating to the estate of Helene Grosner dated 30 July 1958, which names [REDACTED], the Claimant's late wife, as the sole heir to her estate;
- the Claimant's marriage certificate indicating that he married [REDACTED], née [REDACTED], on 7 May 1960 in Vienna;
- Helene Grosner's death certificate which indicates that she died on 18 November 1956, and that she was the widow of Ernst Grosner;
- [REDACTED]'s handwritten will dated 2 January 1979, in which she named her husband, [REDACTED], the Claimant, as her sole heir;
- a record of death (*Todfallsaufnahme*) dated 24 March 1994, relating to the death of [REDACTED], which indicates that her second husband was [REDACTED], and that he was the heir to her estate; and
- a certificate of inheritance dated 21 April 1994, relating to the estate of [REDACTED], which names [REDACTED] as the sole heir to her estate.

The Claimant indicated that he was born on 7 December 1919 in Korneuburg, Austria.

Information Available in the Banks' Records

Bank 1

Bank 1's records consist of a safe deposit rental contract dated 24 July 1934; a power of attorney form dated 24 July 1934; a safe deposit box registry card; protocols dated 4 March 1946 and 28 February 1951 evidencing the forced opening of the safe deposit box and listing the contents thereof; documents from the Swiss Clearing Office relating to the 1945 freeze of assets held in Switzerland by citizens of the Germany and the territories incorporated into the Third Reich (the "1945 Freeze"), correspondence with the Account Owner, internal memoranda, and printouts from Bank 1's database.

According to these records, the Account Owner was Ernst Grosner who lived at Czerningasse 9, Vienna, Austria, and the Power of Attorney Holder was Oskar Schwoner who resided at Gentzgasse 158 in Vienna. These records indicate that the Account Owner held a safe deposit box, numbered 1850. The records further indicate that, on 4 March 1946, the Swiss Compensation Office authorized the forced opening of the safe deposit box so that an inventory of its contents could be made. The protocol written on the occasion of the forced opening, dated 4 March 1946, lists the contents as various lists and letters, the safe deposit box rental contract, a receipt for safe deposit rental fees paid in July 1934, and a proof of identity card. The protocol further indicates that there were no assets of value in the safe deposit box (*keine*

Vermögenswerte), and that the contents were placed in a sealed envelope and deposited in another safe deposit box, numbered 2028, at the Bank.

Bank 1's records further indicate that, following attempts to contact the Account Owner Ernst Grosner, who, according to the records, had not paid the rental on the safe deposit box for some years, it sought permission from the Swiss Compensation Office to annul the rental agreement. By its letter to Bank 1 on 30 January 1951 the Swiss Compensation Office granted the permission sought, noting that the contents of the safe deposit box consisted of "valueless records" (*wertlose Akten*).

Accordingly, as Bank 1's records indicate, Account Owner Ernst Grosner's safe deposit box was forcibly opened for the second time on 28 February 1951 and was found to contain various lists, records and writs. Bank 1's records indicate that the contents of the safe deposit box were put in a sealed envelope and deposited with Bank 1's safe deposit box department under the Account Owner's name. The final document in Bank 1's records - a file note dated 7 June 1951 - notes that the Account Owner Ernst Grosner owed 58.50 Swiss Francs ("SF") arising from the outstanding rental fees relating to the safe and closure expenses. After again listing the contents of the safe deposit box, the file note concludes that, because it was not anticipated that the debtor would meet this debt, the above-mentioned sum would be written off for accounting purposes to the accrual account for dubious debtors. (*"Da mit der Abdeckung seitens des Schuldners nicht gerechnet werden kann, wird obiger Betrag aus buchhalterischen Gründen über das Rückstellungskonto für dubiose Debitoren ausgebucht."*)

Bank 2

Bank 2's record consists of a customer card. According to this record, the Account Owner was *Frau* (Mrs.) Helene Grosner who resided in Vienna, Austria. Bank 2's record indicates that Account Owner Helene Grosner held a custody account, numbered L2043, opened on 31 January 1935 and a savings/passbook account, the opening date of which is unspecified. Bank 2's record indicates that the savings/passbook account was closed on 31 December 1938 and that the custody account was closed some time thereafter, but the date of closure is not legible. Bank 2's record does not indicate the amount in these accounts on the dates of their closure.

There is no evidence in Bank 2's record that the Account Owner Helene Grosner or her heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/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 Ernst Grosner, numbered 8381, and the assets of Helene Grosner, numbered 28315.

The file concerning the assets of Ernst Grosner, numbered 08381, indicates that he was born on 9 May 1883 in Neutitschein, Austria, resided at Czerningasse 9, Vienna II, was an auditor and a salaried employee, and was married to Helene Grosner, née Beständig. The file contains , in addition to the Census form, signed 15 July 1938, correspondence between Ernst Grosner and the authorities. In a letter dated 10 December 1938, Ernst Grosner amended his Census declaration to reduce it by the capitalized value of his salary, amounting to 127,049.00 Reichsmark (“RM”), because he lost his employment for reasons of being Jewish. The records further indicate that he deducted claims on two Swiss-based companies as being uncollectible and a further RM 3,000.00 in tax liabilities for 1937, leaving his total assets at 34,817.00 RM. In a letter of the same date, Ernst Grosner advised the Tax Office, Vienna, that with his total assets amounting to RM 34,817.00, he calculated his atonement tax (*Sühneabgabe* or *Judenvermögensabgabe*) liability to be RM 6,963.40. The records further contain a notification from the emigration tax authorities (*Fluchtsteuerstelle*), putting the family’s combined assets at RM 56,643.00 and assessing flight tax (*Reichsfluchtsteuer*) at RM 14,160.00. The calculation of assessable assets excludes the capitalized value of Ernst Grosner’s salary and that of his wife’s pension, as discussed below. These records make no mention of assets held in a Swiss bank account.

The file concerning the assets of Helene Grosner, numbered 28315, indicates that she was born on 11 September 1882, resided at Czerningasse 9, Vienna II, was a retiree and was married to Ernst Grosner. The records also include a letter, dated 10 December 1938, in which Helene Grosner amended her Census declaration to exclude the capitalized value of her pension, which reduced the value of her total assets to RM 4,898.00. In a letter of the same date to the Tax Office, Vienna, Helene Grosner stated that, because her assets fell below the RM 5,000.00 reporting limit, she was not liable to atonement tax. On her Census form, signed 15 July 1938, she declared holding a savings account at the Glarus branch of Bank 2 with a balance of SF 1,019.20, equivalent to RM 583.00. In her letter of 10 December 1938, the total of her liquid assets, which included the Swiss account, remained unchanged.

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 joint the two claims of the Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The name, city and country of residence of the husband of the Claimant’s wife’s benefactor match the published name, city and country of residence of Account Owner Ernst Grosner. The name and country of residence of the Claimant’s wife’s benefactor match the published name and country of residence of Account Owner Helene Grosner. The Claimant identified his wife’s benefactor’s city of residence as Vienna, which matches unpublished information about Account Owner Helene Grosner

contained in Bank 2's records. The Claimant further identified the Account Owners' exact street address in Vienna, which matches unpublished information about Account Owner Ernst Grosner contained in Bank 1's records.

In support of his claim, the Claimant submitted documents, including the respective Austrian Census Records of Ernst and Helene Grosner, which indicate that they lived in Vienna at the same street address and were husband and wife, and Account Owner Helene Grosner's death certificate, which indicates that she died on 18 November 1956 and that she was the widow of Ernst Grosner. These documents provide independent verification that the persons who are claimed to be the Account Owners had the same names and city of residence recorded in the Banks' records as the names and city of residence of the Account Owners.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Ernst Grosner, and indicates that his date of birth was 9 May 1883 and place of birth was Neutitschein, which matches the information about the Account Owner Ernst Grosner provided by the Claimant. The database also includes a person named Helene Grosner, and indicates that her date of birth was 11 September 1882 and her country of domicile was Austria, which also matches information about Account Owner Helene Grosner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

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

Status of the Account Owners as Victims or Targets of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, that the Account Owners fled Vienna to Brussels in 1939, and that Account Owner Ernst Grosner perished in Auschwitz in 1942. As noted above, persons named Ernst Grosner and Helene Grosner were included in the CRT's database of victims.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is the husband of Account Owner Helene Grosner's legal heir by submitting specific information and documents, demonstrating that he was the husband and sole heir of the now deceased heir to Account Owner Helene Grosner, who in turn was the sole heir to the estate of her husband, Account Owner Ernst Grosner. These documents include:

- a certificate of inheritance (*Einantwortungsurkunde*) relating to the estate of Ernst Grosner, dated 13 September 1950, which names his widow, Helene Grosner, as the sole heir to his estate;
- a certificate of inheritance relating to the estate of Helene Grosner, dated 30 July 1958, which names [REDACTED] as the sole heir to her estate;
- the Claimant's marriage certificate indicating that he married [REDACTED], née [REDACTED], on 7 May 1960 in Vienna;

- Helene Grosner's death certificate which indicates that she died on 18 November 1956 and that she was the widow of Ernst Grosner;
- [REDACTED]'s handwritten will dated 2 January 1979, in which she named her husband, [REDACTED], as her sole heir;
- a record of death (*Todfallsaufnahme*) relating to the death of [REDACTED], dated 24 March 1994, which indicates that her second husband was [REDACTED], and that he was the heir to her estate; and
- a certificate of inheritance, dated 21 April 1994, relating to the estate of [REDACTED], which names [REDACTED] as the sole heir to her estate.

There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

With respect to the safe deposit box held at Bank 1 by Account Owner Ernst Grosner, the CRT notes that Bank 1's records indicate that the safe deposit box was closed on 28 February 1951.

With respect to the accounts held at Bank 2 by Account Owner Helene Grosner, given that Account Owner Helene Grosner fled Vienna in 1939; that there is no record of the payment of Account Owner Helene Grosner's accounts to her; that Account Owner Helene Grosner and her heirs would not have been able to obtain information about their 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; and given the application of Presumptions (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 Helene Grosner 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 claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that he is the husband and sole heir of the sole heir to the estate of Account Owner Helene Grosner, who was in turn the sole heir to Account Owner Ernst Grosner's estate, and those relationships justify an Award. Third, with respect to the safe deposit box owned by Account Owner Ernst Grosner, the CRT has determined that neither Account Owner Ernst Grosner, the Power of Attorney Holder or their heirs received the proceeds of this account, and that with respect to Account Owner Helene Grosner's accounts, that it is plausible that neither Account Owner Helene Grosner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, Account Owner Ernst Grosner rented one safe deposit box from Bank 1 and Account Owner Helene Grosner held one custody account and one savings/passbook account at Bank 2.

With respect to the safe deposit box, Bank 1's records indicate that it contained no assets of value at the time of its forced opening in 1946. According to Article 29 of the Rules, if the amount in a safe deposit box was less than SF 1,240.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 1,240.00. The current value of this amount 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 amount of SF 15,500.00.

The CRT notes that Helene Grosner's 1938 Census record indicates that she held a savings account at the Glarus branch of Bank 2 with a balance of SF 1,019.20 as of 10 December 1938. The current value of the amount in this account is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an amount of SF 12,740.00.

With respect to the custody account held by Account Owner Helene Grosner at Bank 2, 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a custody account was SF 13,000.00. The current value of this amount is calculated by multiplying them by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an amount of SF 162,500.00.

Consequently, the total award amount is SF 190,740.00.

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 his claims to determine whether there are additional Swiss bank accounts to which he 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
31 March 2005