

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Simon Juan Lichtig

in re Account of S. Lichtig

Claim Number: 741033/AC¹

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of Simon (Szymon) Juan (Jan) Lichtig (the “Claimant”) to the account of Simon Lichtig.² This Award is to the unpublished account of S. Lichtig (the “Account Owner”) at the Geneva branch of the [REDACTED] (“Bank 1”), which was acquired by the [REDACTED] (“Bank 2”) (together the “Banks”) on 31 October 1945.

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 an Initial Questionnaire (“IQ”) with the Court in 1999, identifying the Account Owner as himself, Simon Juan Lichtig. The Claimant indicated that he is Jewish, and that he was born on 25 August 1922 in Tarnow, Poland. The Claimant indicated that he resided at Pracy street No. 4 in Tarnow, until he was transferred to the Tarnow Ghetto. The Claimant stated that in July 1942 he escaped from the Ghetto by using false documents indicating his name was Jan Mizera and that he was Roman Catholic. The Claimant indicated that he stayed in Lwow, Poland (now Lvov, Ukraine) until December 1942, when he was forced into the labor

¹ Simon Juan Lichtig (the “Claimant”) did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered 0003 105, 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 741033.

² The CRT did not locate an account belonging to the Claimant, Simon (Szymon) Lichtig, 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”). The Claimant should be aware that the CRT will carry out further research on his claim to determine whether an award may be made upon the information provided by the Claimant or upon information from other sources.

battalions of the *Organisation Todt*³ and first performed slave labor in Schmerinka, occupied Russia, and later in Saarbruecken and Saargemuend, Germany until his liberation in December 1944.

The Claimant submitted numerous documents, including his birth certificate, indicating he was born Szymon Jan Lichtig, his false identity card, indicating he used the name Jan Mizera and claimed to be Roman Catholic, his false baptismal certificate, a certificate confirming that Johann Mizera performed slave labor in Saarbruecken in 1944, and a certified testimony confirming that Jan Mizera is Simon Juan Lichtig.

Information Available in the Bank's Records

Bank 1's records consist of a list of dormant accounts held in a suspense account, a list of customers whose whereabouts were unknown and whose accounts were to be closed to fees, and internal correspondence. According to these records, the Account Owner was S. Lichtig, whose domicile is unknown. Bank 1's records indicate that the Account Owner held a demand deposit account. Bank 1's records further indicate that the account was considered dormant by Bank 1 and was transferred to a suspense account on 30 June 1938. The amount in the account on the date of its transfer was 13.00 Swiss Francs ("SF"). Bank 1's records indicate that the account was closed to fees on 12 July 1946.

Internal correspondence concerning the takeover of Bank 1, dated 26 June 1946 and addressed to the Basel directorate-general of Bank 2, explains that the Basel and Geneva branches of Bank 1 had followed a directive from Bank 1's headquarters, supported by an opinion of the Bank's legal department, that dealt with "uncashed check withdrawals" ("*nicht eingelöste Checkentnahmen*") and "creditors with unknown whereabouts" ("*Kreditoren unbekanntes Aufenthaltes*"), whose accounts had been inactive for several years. Accordingly, these two branches had deleted such assets from the liability side of their balance sheets and had booked them to a suspense account (*compte d'attente*) in their internal reserves.

The Zurich branch of Bank 1 did not follow the directive, taking the position that, as a matter of principle, "a bank could not act in this way with impunity, because creditors, even after lengthy periods of non-communication, still had to be considered creditors, and their claims be considered genuine liabilities, though they could perhaps legally be written off pursuant to OR 127 [the statute of limitations]; morally, however, a bank seeking to maintain its impeccable standing was required to continue to consider itself liable and to pay these liabilities on demand. It was therefore not proper to transfer these creditors' assets to internal reserves." (*Es wurde der Standpunkt vertreten, dass ein Bankinstitut solche Handlungen nicht ungestraft vornehmen könne, die Kreditoren seien auch bei andauerndem Verkehrsunterbruch als Gläubiger, ihre Forderungen als echte Passiven zu betrachten, die man vielleicht rechtlich unter Anrufung von OR 127 ausbuchen könne, moralisch müsse sich aber ein Bankunternehmen, das sein Standing makellos erhalten wolle, auch weiterhin als Schuldner bekennen und auf Anforderung zahlen.*)

³ The *Organisation Todt*, which was headed by Fritz Todt until his death in 1942, when he was succeeded by Albert Speer, was in charge of construction projects for the *Reich* and used a vast army of slave laborers from all occupied territories.

Es sei deshalb nicht zu verantworten, wenn derartige Kreditorengelder auf interne Reserven übertragen werden.)

The letter states further that these funds, after balancing credit and debit entries, totaled SF 59,553.75 and consisted of items that could be closed to expenses, items that according to Art. 127 OR could be considered to have passed the statute of limitations and items that could still be claimed, with the latter accounting for SF 51,054.45 of the total. The letter continues that the entire entry should have been categorized as a potential liability, rather than as a reserve asset, since it represented actual accounts held by Bank 1 customers, and that this “unfortunate error” was due to questionable accounting practices and an inability to differentiate between “real” and “unreal” liabilities on the part of Bank 1’s accountant. The writer had corrected this lapse by ordering that the amount in the suspense account be shown as a liability on Bank 1’s balance sheet at the end of 1945, and it would be available to the account owners if they were to resurface, until their accounts lapsed under the applicable statute of limitations, after which Bank 1 could refuse to pay the accounts. The letter then posits that it appeared likely that repayment of these funds would never be demanded and that all of them would become subject to the statute of limitations, or could be prematurely canceled based on the imposition of expenses. However, the letter also notes that closing accounts based on these grounds “conflicts with [Bank 2’s] opinion, which I share, and practice, according to which banks seeking to maintain their good reputation cannot turn to the statute of limitations when dealing with their creditors.” (*Dieses Vorgehen steht aber im Gegensatz zu Ihrer von mir geteilten Auffassung und Usanz, wonach Bankinstitute, soll ihr Ansehen nicht leiden, die Verjährungseinrede gegenüber ihren Kreditoren nicht geltend machen können.*)⁴

The CRT’s Analysis

Identification of the Account Owner

The Claimant’s first initial and last name match the unpublished first initial and last name of the Account Owner. The CRT notes that Bank 1’s records do not contain any specific information about the Account Owner other than his or her first initial and last name.

In support of his claim, the Claimant submitted numerous documents, including his birth certificate, indicating he was born Szymon Jan Lichtig, providing independent verification that he had the same first initial and last name recorded in Bank 1’s records as the first initial and last name of the Account Owner.

The CRT notes that the other claim to this account was disconfirmed because that claimant was unable to provide plausible evidence of a familial relationship to anyone bearing the Account Owner’s last name. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

⁴ This letter is also cited in the Swiss Experts (Bergier) Commission’s study on bank accounts: Barbara Bonhage, Hanspeter Lussy, Marc Perrenoud, *Nachrichtenlose Vermögen bei Schweizer Banken*, Unabhängige Expertenkommission Schweiz – Zweiter Weltkrieg, Volume 15, Zurich: Chronos Verlag, 2001, pp. 404 – 405.

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 Claimants stated that the Account Owner was Jewish. The Claimant stated that he is the Account Owner and that he was transferred to the Tarnow Ghetto, from where he escaped using false identity papers, and that he performed slave labor in Russia and Germany. The Claimant submitted his false identity card, indicating he used the name Jan Mizera and claimed to be Roman Catholic, a certificate confirming that Johann Mizera performed slave labor in Saarbruecken in 1944, and a certified testimonial confirming that Jan Mizera is Simon Juan Lichtig.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is the Account Owner by submitting his birth certificate, indicating he was born Szymon Jan Lichtig.

The Issue of Who Received the Proceeds

Bank 1's records indicate that the account, which was held at Bank 1's Geneva branch, was closed to fees on 12 July 1946. The CRT notes that the account was closed shortly after Bank 1's memorandum regarding the transfer of certain accounts at Bank 1's Geneva and Basel branches to Bank 1's internal reserves, even though the Zurich branch of Bank 1 acted differently on the grounds that such transfers of creditors' assets to internal reserves was to be considered neither moral nor in accordance with the behavior of a bank seeking to maintain its good standing. These records thus provide an example of certain banks' attempts to minimize the volume of assets in dormant accounts by both booking them to internal reserves and burdening them with a maximum of expenses.

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 Governing the Claims Resolution Process, as amended (the "Rules"). Second, the Claimant has plausibly demonstrated that he himself is the Account Owner, and that justifies an Award. Finally, the CRT has determined 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. Bank 1's records indicate that the value of the demand deposit account as of 30 June 1938 was SF 13.00. 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 the amount of the award is determined by multiplying the balance as determined by Article 29 of the Rules by a factor of 12.5, in

accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is 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 his claim 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
10 August 2005