

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Malvine Löwy and Sigmund Löwy

Claim Number: 752128/GO¹

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published accounts of Malvine Löwy (“Account Owner Malvine Löwy”) and Sigmund Löwy (“Account Owner Sigmund Löwy”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).²

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 ATAG Ernst & Young claim form (“ATAG Form”) identifying the Account Owners as her aunt and uncle, Malvine and Sigmund Löwy. In a telephone conversation with the CRT, the Claimant indicated that her aunt and uncle were Jewish, that they resided in Vienna, Austria, and that they were not heard from again after the Second World War.

¹ Claimant [REDACTED](the “Claimant”) did not submit a CRT Claim Form. However, in 1998 she submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-W-80-401-090-92-5, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 752128.

² The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Malvine Löwy is indicated as an account owner. Upon careful review, the CRT has concluded that the Bank’s records evidence that Sigmund Löwy was a joint account owner for these accounts.

In support of her claim, the Claimant submitted copies of: (1) an affidavit taken from [REDACTED], dated 5 February 1998, indicating that Sigmund Löwy was [REDACTED]'s uncle; and (2) her relatives' deposit receipt (*Depotschein*), issued by the Bank on 18 November 1938, indicating that Sigmund and Malvine Löwy held a custody account, numbered 44354, at the Bank and that it contained securities identified as *4½% Oblig. Eidgenössische Anleihe von 1930* bonds with a nominal value of 10,000.00 Swiss Francs ("SF").

The Claimant indicated that she was born on 18 February 1936.

Information Available in the Bank's Records

The Bank's record consists of a customer card. According to this record, the Account Owners were *Frau* (Mrs.) Malvine Löwy and Sigmund Löwy, both of whom resided in Kleingrün bei Zwickau, Germany (today Drnovec, the Czech Republic).

The Bank's record indicates that the Account Owners held one custody account, numbered L 44354, which was opened on 31 July 1931 and closed on 5 April 1939, and one demand deposit account, which was opened on 10 January 1931 and closed on 31 March 1939.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about the accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of two account ledgers and indicate that as of 31 March 1939 the custody account, numbered L 44354, contained securities identified as *4½% Eidg. Staatsanleihe von 1930* bonds with a nominal value of SF 10,000.00. These records also indicate that this custody account was closed on 5 April 1939.

The amount in the accounts on the dates of their closure is unknown. There is no evidence in the Bank's record that the Account Owners or their heirs closed the accounts at issue and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant's aunt's name matches the published name of the Account Owner. The Claimant submitted a copy of a deposit slip, which identifies both Account Owners, the name of the Bank, and the contents and the number of the account, which matches unpublished information about the Account Owners contained in the Bank's records. This document provides independent verification that the persons who are claimed to be the Account Owners had the same names recorded in the Bank's records as the names of the Account Owners.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes persons named Malvine and Sigmund Löwy, and indicates that they were married and that they resided in Zwickau and Vienna, which matches the information about the Account

Owners 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 the Claimant filed an ATAG form in 1998, asserting her entitlement to a Swiss bank account owned by Malvine Löwy and Sigmund Löwy, prior to the publication in February 2001 of 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 relatives 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 notes that there are no other claims to these accounts. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owners.

Status of the Account Owners as Victims 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 they resided in Nazi-controlled Austria and that they were not heard from again after the Second World War.

As noted above, persons named Malvine Löwy and Sigmund Löwy were included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting specific biographical information demonstrating that the Account Owners were the Claimant's aunt and uncle. There is no information to indicate that the Account Owners has surviving heirs.

The CRT further notes that the Claimant identified unpublished information about the Account Owners as contained in the Bank's records; that the Claimant filed an ATAG form in 1998, identifying the relationship between the Account Owners and the Claimant, prior to the publication in February 2001 of the ICEP List; and that the Claimant also identified information which matches information contained in the Yad Vashem records. The CRT further notes that the Claimant submitted a copy of her relatives' deposit receipt. The CRT notes that it is plausible that this document is a document which most likely only a family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owners were well known to the Claimant as family members, and all of this information supports the plausibility that the Claimant is related to the Account Owners, as she has asserted in her Claim Form.

The Issue of Who Received the Proceeds

Given that the accounts were closed after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”); that the Account Owners remained in Austria and presumably perished during the War; that there is no record of the payment of the Account Owner’s accounts to them; that the Account Owners’ 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 (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 Owners 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 Owners were her aunt and uncle, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one demand deposit account and one custody account.

With respect to the demand deposit 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 demand deposit account was SF 2,140.00.

With respect to the custody account, the Bank’s records indicate that, as of 31 March 1939, the account contained *4½% Eidg. Staatsanleihe von 1930* bonds with a nominal value of SF 10,000.00 and a market value of SF 10,120.00.³ According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the nominal value of bonds not in default shall be awarded if the market value was below the nominal value on the date the account owner is deemed to have lost control over the account. The market value of bonds shall be awarded if that value was above the nominal value on the date the account owner is deemed to have lost control over the account. Accordingly, these bonds are valued at SF 10,120.00. According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00 and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00.

³ The market value of these bonds is taken from the 30 December 1939 issue of the *Kursblatt der Zürcher Effektenbörse*.

The total 1945 value of the two accounts is therefore SF 15,140.00. The current value of these amounts is calculated by multiplying them by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 189,250.00.

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
17 March 2008