

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Wilhelm Lustig and Margarete Lustig

Claim Number: 209348/AG

Award Amount: 107,149.75 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Wilhelm Lustig. This Award is to the accounts of Wilhelm Lustig (“Account Owner Wilhelm Lustig”) at the [REDACTED] (the “Bank”) and the accounts of Margarete Lustig (“Account Owner Margarete Lustig”) (together the “Account Owners”) at the Zurich branch of 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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owners as her late husband’s parents, Wilhelm Lustig, who was born on 19 September 1882 in Nitra, Slovakia, and Margarete Lustig, née Siederer, who was born on 7 November 1895. The Claimant stated that Wilhelm Lustig and Margarete Lustig, who were both Jewish, were married on 26 October 1914 in Vienna, Austria. The Claimant indicated that Wilhelm and Margarete Lustig had two children, [REDACTED], who was born on 1 January 1922 in Vienna, and [REDACTED] (the Claimant’s late husband), who was born on 8 January 1924 in Vienna. The Claimant stated that Wilhelm Lustig was a businessman and the owner of a shop, which manufactured and sold handmade goods, namely for export to several countries including Switzerland. The Claimant stated that Wilhelm Lustig’s business and place of residence were located at Tuchlauben 21 in Vienna. The Claimant further stated that following the Nazi annexation of Austria in March 1938 (the *Anschluss*), Wilhelm Lustig was sent to a concentration camp, and after his release on an unknown date, his family fled Vienna for France, and eventually immigrated to Australia.

According to the Claimant, Margarete Lustig died in Melbourne on 20 February 1946; Wilhelm Lustig died in Melbourne, Australia, in May 1979; [REDACTED] died on 29 March 1980 in the United States; and [REDACTED] died in Israel on 15 October 1991. The Claimant indicated that she was married to [REDACTED] on 26 May 1948, and that

they had four children, and she and her four children are the only living heirs of Wilhelm and Margarete Lustig.

In support of her claim, the Claimant submitted Wilhelm Lustig's birth certificate; Wilhelm and Margarete Lustig's marriage certificate indicating their place of marriage as Vienna; a photograph of Wilhelm Lustig's store named *Lustig*; the Claimant's late husband's will, birth certificate, indicating Wilhelm and Margarete Lustig were his parents, and death certificate; and the Claimant's marriage certificate, indicating [REDACTED] was her husband, and birth certificate. The Claimant stated that she was born on 12 October 1924 in Hamburg, Germany.

Information Available in the Bank's Records

Account Owner Wilhelm Lustig

The Bank's record consists of a customer card. According to this record, the Account Owner was Wilhelm Lustig, who resided in Vienna, Austria. Account Owner Wilhelm Lustig held four demand deposit accounts: one held in Swiss Francs, one held in Pounds Sterling, and two others held in currencies other than Swiss Francs. The Bank's record indicates that two of the accounts were closed in 1938, but the exact date is illegible. The Bank's record further indicates that the other two accounts were closed no later than 1938, but exact closure dates are not available. The Bank's record does not indicate the value of these accounts. There is no evidence in the Bank's record that Account Owner Wilhelm Lustig or his heirs closed the accounts and received the proceeds themselves.

Account Owner Margarete Lustig

The Bank's record consists of a customer card. The Bank's record indicates that the Account Owner was *Frau* (Mrs.) Margarete Lustig, who resided in Vienna, Austria. Account Owner Margarete Lustig held two accounts which were opened on 31 May 1931: one demand deposit account held in Swiss Francs, which was closed on 31 March 1938, and one demand deposit account held in Pounds Sterling, which was closed on 31 March 1938. The Bank's record does not indicate the value of these accounts. There is no evidence in the Bank's records that Account Owner Margarete Lustig or her heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives, there are documents concerning the assets of Wilhelm Lustig, born on 19 September 1882, numbered 32680 and 08586, and his wife Margarete Lustig, née Siederer, born on 7 November 1895, numbered 29472. These

records demonstrate that Wilhelm Lustig and Margarete Lustig resided at Tuchlauben 21, Vienna I, Austria.

The documents concerning Wilhelm Lustig indicate that he owned real estate at Tuchlauben 21 worth 204,000.00 Reichsmarks (1938 value), which he was forced to sell, an insurance policy at *Assecurazione Generali*, several bank accounts in Austria, Croatia, and London, the United Kingdom, foreign securities and several other assets, in total valued at 233,791.00 Reichsmarks (1938 value). These records show that Wilhelm Lustig was assessed a flight tax (*Reichsfluchtsteuer*) of approximately 50,000.00 Reichsmarks. According to these documents, Wilhelm Lustig owned assets at the Zurich branch of the Bank that he declared to be worth 29.50 Pounds Sterling, 3,621.01 Swiss Francs, and 9.28 United States Dollars as of 27 April 1938.

The documents concerning Margarete Lustig, née Siederer, indicate that she owned assets worth approximately 3,772.93 Reichsmarks. These records do not mention Swiss bank accounts.

The CRT's Analysis

Identification of the Account Owners

The Claimant's father-in-law's name matches the published name of Account Owner Wilhelm Lustig and her mother-in-law's name matches the unpublished name of Account Owner Margarete Lustig. The Claimant identified the city of residence of the Account Owners as Vienna which also matches unpublished information contained in the Bank's records. The other information provided by the Claimant, including the Account Owners' street address and Account Owner Wilhelm Lustig's birth date, also matches unpublished information contained in the Austrian State Archives.

In support of her claim, the Claimant submitted Wilhelm Lustig's birth certificate; Wilhelm and Margarete Lustig's marriage certificate indicating their place of marriage as Vienna; a photograph of Wilhelm Lustig's store named *Lustig*; the Claimant's late husband's will, his birth certificate, indicating Wilhelm and Margarete Lustig were his parents, and his death certificate; and the Claimant's marriage certificate, which indicates [REDACTED] as her husband, and her birth certificate. Wilhelm Lustig's birth certificate; Wilhelm and Margarete Lustig's marriage certificate; the Claimant's late husband's birth certificate, which indicates Wilhelm and Margarete Lustig were his parents, provide independent verification that the persons who are claimed to be the Account Owners have the same names as the persons recorded in the Bank's records. Moreover, Wilhelm and Margarete Lustig's marriage certificate provides independent verification that the persons who are claimed to be the Account Owners resided in the same town as the Account Owner's residence recorded in the Bank's records. 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, and that following the *Anschluss*, Wilhelm Lustig was sent to a concentration camp, and after his release on an unknown date, he and his family fled Vienna for France, and eventually immigrated to Australia.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting specific information and documents indicating that the Account Owners were her late husband's parents. These documents include her late husband's, [REDACTED], birth certificate which indicates Wilhelm and Margarete Lustig were his parents, and the Claimant's marriage certificate which indicates [REDACTED] as her husband.

The Issue of Who Received the Proceeds

Regarding the accounts held by Account Owner Wilhelm Lustig which were all closed in 1938 on unknown dates, the facts of this case are similar to the other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who were Jewish reported their assets in the 1938 census, and, subsequently, their accounts were closed unknown by whom or were transferred to Nazi-controlled banks. Given this information and that Account Owner Wilhelm Lustig was imprisoned in a concentration camp and was subsequently forced to flee Austria; that it is plausible that the accounts were closed during or after the imprisonment of Account Owner Wilhelm Lustig; that there is no record of the payment of the Account Owner's accounts to him; that the Account Owner and his heirs would not have been able to obtain information about his 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 (a), (d), (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 accounts proceeds were not paid to Account Owner Wilhelm Lustig 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.

Regarding the two demand deposit accounts held by Account Owner Margarete Lustig, which were both closed on March 31 1938, given that Account Owner Margarete Lustig's accounts were closed after the *Anschluss*; that Nazi confiscatory legislation was in effect at the time the accounts were closed; that the Nazis had, at the time of the *Anschluss*, immediately begun a major effort to confiscate the assets of the Jewish residents of Austria, and the CRT has found numerous such confiscations of Swiss bank accounts occurred at this time; that Account Owner Margarete Lustig remained in Austria during the time that her accounts were closed as evidenced by the Austrian State Archive

records which she had to submit sometime after 26 April 1938; that Account Owner Margarete Lustig was forced to flee Austria after the *Anschluss*; that there is no record of the payment of Account Owner Margarete Lustig's accounts to her; that Account Owner Margarete Lustig and her heirs would not have been able to obtain information about her closed 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 (a), (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 Account Owner Margarete Lustig 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 the Account Owners were her mother-in-law and father-in-law, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

Account Owner Wilhelm Lustig

Account Owner Wilhelm Lustig held four demand deposit accounts. The Austrian State Archives records indicate that Account Owner Wilhelm Lustig's assets at the Bank, as of 27 April 1938, were valued at 3,621.01 Swiss Francs, 29.50 Pounds Sterling, which was the equivalent of 630.42 Swiss Francs, and 9.28 United States Dollars, which was the equivalent of 40.55 Swiss Francs.¹ Thus, the total value of the assets held by Account Owner Wilhelm Lustig at the Bank amounted to 4,291.98 Swiss Francs. According to Article 29 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. In the present case, Account Owner Wilhelm Lustig reported the assets himself to the Nazi authorities in the Austrian census. Thus, the CRT determines that there is plausible evidence that the total value of the four accounts held by Account Owner Wilhelm Lustig was 4,291.98 Swiss Francs. The current value of this amount is determined by multiplying the historic balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of 53,649.75 Swiss Francs.

¹ In converting the amounts into Swiss Francs, the CRT uses official exchange rates.

Account Owner Margarete Lustig

In this case, Account Owner Margarete Lustig held two demand deposit accounts. 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 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 demand deposit account was 2,140.00 Swiss Francs, resulting in a total 1945 average value of 4,280.00 Swiss Francs for the two demand deposit accounts. The current value of this amount is calculated by multiplying it by 12.5, in accordance with Article 31(1) of the Rules to produce an award amount of 53,500.00 Swiss Francs.

Consequently, the total award amount for Wilhelm Lustig’s and Margarete Lustig’s accounts is 107,149.75 Swiss Francs.

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
6 February 2004