

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Gustaaf Borchardt
also acting on behalf of Hendrika Borchardt, Marijke Borchardt, Ankie Beishuizen, Saskia Smit,
and Albrecht Borchardt

in re Account of Julius Magnus

Claim Number: 223099/MBC

Award Amount: 363,360.00 Swiss Francs

This Certified Award is based upon the claim of Gustaaf Borchardt (the “Claimant”) to the accounts of Julius Magnus (the “Account Owner”) at 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 a Claim Form identifying the Account Owner as his grandfather’s sister’s husband, Julius Magnus, who was born on 6 September 1867 in Berlin, Germany, and was married to Fanny Borchardt. The Claimant indicated that Julius and Fanny Magnus had no children. According to the information provided by the Claimant, Julius Magnus was a professor of law and also practiced as a lawyer and notary in Berlin, where he lived. The Claimant indicated that Julius Magnus used the title *Justizrat*. The Claimant stated that Julius Magnus, who was Jewish, was prohibited from practicing as a notary in 1933 and as a lawyer in 1938. According to the information provided by the Claimant, in August 1939 his relative fled from Germany to The Netherlands, where he stayed with the Claimant’s family. The Claimant stated that Julius Magnus was deported to Westerbork concentration camp and later to Theresienstadt, where he perished on 15 May 1944. The Claimant stated that Julius Magnus informed his relatives that he had deposited his assets in a Swiss bank. The Claimant further stated that his father contacted the Swiss authorities in the 1950s and 1960s in search of bank accounts owned by Julius Magnus, but was unsuccessful in his attempts to locate any such accounts.

In support of his claim, the Claimant submitted a detailed family tree indicating that Julius Magnus was the brother-in-law of the Claimant’s paternal grandfather, Moritz Borchardt. The Claimant also submitted an excerpt from a book about Jewish lawyers in Berlin containing biographical information about Julius Magnus. The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Julius Magnus. The Claimant is representing his mother Hendrika Borchardt, née Streggerda,

his sisters, Marijke Borchardt, Ankie Beishuizen and Saskia Smit, and his uncle, Albrecht Borchardt.

Information Available in the Bank's Records

The Bank's records consist of two customer cards. According to these records, the Account Owner was *Justizrat* Julius Magnus from Berlin. The Bank's records indicate that the Account Owner jointly held a custody account, numbered L21832, with Dr. Richard Cale of Berlin, and that the account was closed in January 1939.

The Bank's records further indicate that the Account Owner individually held three additional accounts: two demand deposit accounts, one of which was closed on 20 September 1938, and one custody account. The records do not show when the second demand deposit account or the custody account was opened or closed, nor do these records indicate the values of any of the accounts on their closure dates. With respect to the accounts that have no closure dates, 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 find these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no indication in the Bank's records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His relative's name matches the published name of the Account Owner for the demand deposit accounts and one of the custody accounts, and his relative's name matches one of the Account Owners' names for the custody account that was jointly held by Julius Magnus and Dr. Richard Cale. The Claimant stated that Julius Magnus used the professional title *Justizrat*, and that he lived in Berlin, which matches unpublished information about the Account Owner contained in the Bank's records.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Julius Magnus, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Julius Magnus, and indicates that he was born on 6 September 1867, and lived in Berlin and The Netherlands, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. Finally, the CRT notes that the only other claim to these accounts was disconfirmed because the other claimant provided a different profession than the profession of 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 the Account Owner was Jewish, was prohibited from practicing law in Germany and was deported to the concentration camp in Theresienstadt, where he perished. As noted above, a person named Julius Magnus was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting a detailed family tree demonstrating that he and his sisters, whom he represents, are the grandchildren of the Account Owner's brother-in-law. Furthermore, the family tree provided by the Claimant indicates that the Claimant's uncle, Albrecht Borchardt, is a son of the Account Owner's brother-in-law, and the Claimant's mother, Hendrika Borchardt, née Streggerda, was married to a son of the Account Owner's brother-in-law.

The Issue of Who Received the Proceeds

Given that in 1933 the Nazis embarked on a campaign to seize the domestic and foreign assets of its Jewish nationals through the enforcement of flight taxes and other confiscatory measures, including the confiscation of assets held in Swiss banks; given that the accounts in this case were closed in 1938 and 1939, or the closing date is unknown, and that the Account Owner lived in Germany until after the accounts closed in 1938 and 1939 were closed, and thus he would not have been able to repatriate his accounts to Germany without their confiscation; 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 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 his mother and his uncle, whom he represents, are related to the Account Owner, and those relationships justify an Award. Finally, the CRT has

determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

Pursuant to Article 25 of the Rules, in cases where a joint account is claimed by relatives of only one or some of the Joint Account Owners, it shall be presumed that the Account was owned as a whole in equal shares by the Account Owners whose shares of the Account have been claimed. Consequently, as no claims have been filed to the shares owned by the Joint Account Owner, the CRT presumes that the joint account was owned in its entirety by the Account Owner.

In this case, the Account Owner held two demand deposit accounts and two custody 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 present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of a custody account was 13,000.00 Swiss Francs, producing a historical value of 30,280.00 Swiss Francs for two custody accounts and two demand deposit accounts. The current value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 363,360.00 Swiss Francs.

Division of the Award

According to Article 23(1)(g) of the Rules, if none of the persons entitled to an award under Article 23(1)(a-f) has submitted a claim, as is the case here, the CRT may make an award to any relative of the Account Owner, whether by blood or marriage, who has submitted a claim, consistent with principles of fairness and equity. In the present case, the Claimant and his sisters, whom he is representing, are the grandchildren of the Account Owner's brother-in-law. The Claimant also represents his uncle, Albrecht Borchardt, who is the son of the Account Owner's brother-in-law, and his mother, Hendrika Streggerda, who is the daughter-in-law of the Account Owner's brother-in-law. None of these individuals is related to the Account Owner by blood; they are all related to the Account Owner only by marriage. However, they are also the only individuals to have made a claim to the Account Owner's accounts. Under the principles of fairness and equity, the CRT has determined that Albrecht Borchardt shall receive one-half (1/2) of the total award amount, Hendrika Streggerda shall receive one-fourth (1/4) of the total award amount, and the Claimant and his sisters shall each receive one-sixteenth (1/16) of the total award amount.

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 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
June 3, 2003