

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award upon Request for Reconsideration

to Claimant [REDACTED 1]¹
also acting on behalf of [REDACTED 2], [REDACTED 3],
[REDACTED 4], [REDACTED 5], [REDACTED 6], and [REDACTED 7]
all represented by Stephen Harnik

in re Accounts of Josef Mandl

Claim Number: 401794/WT; 401800/WT
Appeal Number: 3327

Award Amount: 223,068.75 Swiss Francs

This Certified Award upon Request for Reconsideration is based upon the claim of [REDACTED 1] (the “Claimant”) to the unpublished accounts of Josef Mandl (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).²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.

Procedural History

In a decision approved by the Court on 8 August 2006, the Claimant was issued a Certified Denial to the accounts of Josef Mandl (the “August 2006 Denial”), whose name appeared on the List of Account Owners Published in 2005 (the “2005 List”). In that decision, the CRT concluded that although the Claimant’s relative’s name matched the published name of the account owner, the actual account owner was a different person, who had a different spouse and

¹ [REDACTED 1] (the “Claimant”) submitted four additional claims, which are registered under the claim numbers 402120, 501830, 501831, and 850037. The Claimant’s claims to the accounts of Alfred Mayer, Josef Mandl, Heinrich Mayer, and Adolf Mandl were treated in separate decisions. See *In re Account of Alfred Mayer* (approved on 23 June 2006); *In re Account of Josef Mandl* (approved on 8 August 2006) (the “August 2006 Denial”); *In re Account of Heinrich Mayer* (approved on 29 May 2007); and *In re Account of Adolf Mandl* (approved on 29 May 2007). In a separate decision, the Claimant was awarded the accounts of Charlotte Mandl and Rosa Mandl. See *In re Accounts of Charlotte Mandl and Rosa Mandl* (approved on 18 December 2008).

² The CRT notes that the name Josef Mandl appears on the List of Account Owners Published in 2005 (the “2005 List”). As detailed in the August 2006 Denial, the CRT has determined that the account owner named Josef Mandl appearing on the 2005 List is not the same person as the Claimant’s relative.

a different country of residence than the spouse and country of residence of the Claimant's relative.

In a letter dated 14 January 2009, the Claimant requested reconsideration of the August 2006 Denial. The Claimant asserted that, although her relative was not the same person as the account owner on the 2005 List, her relative also held accounts at a Swiss bank. In support of the Request for Reconsideration, the Claimant stated that her relative's accounts are evidenced in records pertaining to Josef Mandl available from the Austrian State Archive. This Award upon Request for Reconsideration addresses the accounts held by Josef Mandl identified in the records available from the Austrian State Archive.

Information Provided by the Claimant

The Claimant submitted Claim Forms identifying the Account Owner as her late husband's great-uncle, Josef Mandl (Mandel), who was born on 17 December 1858 and was married to [REDACTED], née [REDACTED]. The Claimant stated that Josef Mandl was the son of [REDACTED] and [REDACTED], and that his siblings were [REDACTED], [REDACTED], née [REDACTED], and [REDACTED] (the paternal grandfather of the Claimant's late husband [REDACTED]).

The Claimant stated that her husband's great-uncle, who was Jewish, was a retired industrial plant manager who lived at Veronikagasse 31 in Vienna XVII, Austria. The Claimant also stated that Josef Mandl's sister [REDACTED] lived in Zurich, Switzerland.

In support of her claim, the Claimant submitted copies of:

- (1) a birth certificate that indicates that [REDACTED] was born in Vienna on 3 January 1851 to Wilhelm and [REDACTED], both of whom were Jewish;
- (2) a birth certificate that indicates that [REDACTED] was born in Vienna on 26 May 1857 to [REDACTED] and [REDACTED];
- (3) a marriage certificate which indicates that [REDACTED], the son of [REDACTED] and [REDACTED], née [REDACTED], who was born on 16 July 1909 in Vienna, married the Claimant, [REDACTED 1], who was born on 19 April 1917, in a Jewish ceremony in Vienna on 31 May 1936;
- (4) a death certificate which indicates that [REDACTED], who was born in Austria on 16 July 1909, was the son of [REDACTED] and [REDACTED], née [REDACTED], and was the husband of [REDACTED 1], née [REDACTED], died on 26 May 1994; and
- (5) excerpts from records available at the Austrian State Archive regarding the assets of Josef Mandl, which are more fully described below.

The Claimant indicated that she was born on 19 April 1917 in Vienna. The Claimant is representing her late husband's cousin's widow, [REDACTED 2], née [REDACTED], who was born in June 1930, and her late husband's other cousin's widow, [REDACTED 3], née [REDACTED], who was born on 31 March 1922 in Ohio, the United States. Although the Claimant did not identify the names of her late husband's cousins or their parents, it is clear from

their names that [REDACTED] was the maternal grandfather of [REDACTED 2]’s husband, and that [REDACTED] was the paternal grandfather of [REDACTED 3]’s husband, and that the late husbands of [REDACTED 2] and [REDACTED 3] were not brothers. The Claimant is also representing the four sons of [REDACTED 2]: [REDACTED 4], [REDACTED 5], [REDACTED 6], and [REDACTED 7].

Information Available in the Bank’s Records

The CRT notes that 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 report an account belonging to Josef Mandl during their investigation of the Bank. The documents evidencing accounts belonging to Josef Mandl were obtained from the Austrian State Archive and are further described below.³

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, 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 Josef Mandl, numbered 35899. These records include his asset declaration, signed by Josef Mandl on 6 July 1938 in Vienna, an update to his declaration, signed by him on 13 December 1938 in Vienna, and various correspondence. According to these records, Josef Mandl, who was retired (“*Altersrentner*”) was born on 17 December 1858 in Vienna, and lived with his wife [REDACTED], née Liebner, at Veronikagasse 31, Tür 12 in Vienna XVII.

According to his asset declaration, Josef Mandl held a custody account and a demand deposit account at the Bank. These records indicate that, as of 6 July 1938, the custody account held 4% *Schweizerische Bankgesellschaft* medium term notes (*Kassaobligationen*) with a total nominal value of 5,000.00 Swiss Francs (“SF”), and the demand deposit account contained SF 4,845.50. In an annex (“*Anlage*”) to his declaration, Josef Mandl wrote that the accounts were established as a gift for him from his sister, *Frau* (Mrs.) [REDACTED], who lived in Zurich, that she maintained the right to administer the accounts, and that he could only access them with her consent.⁴ The records do not contain information about the disposition of these accounts.

³ The CRT notes that the records relating to the accounts treated in the August 2006 Denial were obtained from the Swiss Federal Archive in Bern, Switzerland.

⁴ The German original reads: “*Obiges Guthaben bei der [Bank] stammt aus einer Widmung, die mir meine Schwester, Frau Rosa von Escher, Zürich gemacht hat. Frau von Escher hat sich jedoch anlässlich der Schenkung das Verwaltungsrecht über das Konto sowie über die mir gleichzeitig geschenkten Wertpapiere: 5.000 sfrcs. 4% Kassa-Obligationen der Schweizerischen Bankgesellschaft... vorbehalten; so dass ich sowohl das Konto als auch über obige Wertpapiere nur mit Zustimmung der Frau von Escher verfügen kann..*” [Emphasis in the original.]

Additionally, as detailed in an award previously issued to the Claimant for the accounts of Charlotte Mandl and Rosa Mandl, née Schlegl, the Austrian State Archive also contains documents and correspondence concerning the assets of Rosa Mandl, née Schlegl, numbered 37714. According to these records, Rosa Mandl was the daughter of the late [REDACTED] of Vienna. These records refer to a custody account and a demand deposit account at the Bank, both of which were held initially by Charlotte Mandl, and after her death, by Rosa Mandl.⁵

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of 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 join the two claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's husband's great-uncle's name and city and country of residence match the unpublished name and city and country of residence of the Account Owner. The Claimant identified the Account Owner's spouse's name, which matches unpublished information about the Account Owner contained in the records of the Austrian State Archive. Additionally, the CRT has previously determined that the Claimant identified the Account Owner's sister, Charlotte Mandl.

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, and that he lived in Austria after the *Anschluss*. The CRT notes that Josef Mandl was required to register his assets pursuant to the 1938 Census.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's late husband's great-uncle. These documents include a birth certificate that indicates that [REDACTED] was born in Vienna to Wilhelm and [REDACTED]; a birth certificate that indicates that [REDACTED] was born in Vienna to [REDACTED] and [REDACTED]; and a marriage certificate that indicates that [REDACTED], the son of [REDACTED] and [REDACTED], née [REDACTED], was born on 16 July 1909 in Vienna, and was married to the

⁵ As noted above, the accounts of Charlotte Mandl and Rosa Mandl were awarded to the Claimant in a decision approved on 18 December 2008. As detailed in that decision, Charlotte Mandl was born on 3 January 1851 in Vienna, and Rosa Mandl, née Schlegl, was born on 13 September 1869 in Vienna. Neither Rosa Mandl nor Charlotte Mandl was married, and neither had any biological children. Charlotte Mandl adopted Rosa Mandl on 23 February 1935. The CRT notes that Rosa Mandl, née Schlegl, was not the same individual as Rosa von Escher, née Mandl.

Claimant, on 31 May 1936 in Vienna. The Claimant also submitted a family tree indicating that [REDACTED] was the son of [REDACTED], and that Josef Mandl was the brother of [REDACTED], [REDACTED], and [REDACTED], née [REDACTED].

The CRT notes that the Claimant indicated that she may have other surviving relatives, but that because they are not represented in the Claimant's claims, the CRT will not treat their potential entitlement to the Account Owner's accounts in this decision.

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

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. In this case, the 1938 Census records do not indicate the ultimate fate of the Account Owner's accounts. However, given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that the Account Owner reported the accounts in the 1938 Census; that the Account Owner lived in Austria after the *Anschluss*, and therefore could not have repatriated the accounts without losing ultimate control over its proceeds; and given the application of Presumptions (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 account proceeds were not paid to the Account Owner or his 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 and represented parties [REDACTED 2], and [REDACTED 3]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her late husband's great-uncle, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

The CRT notes that the Claimant, [REDACTED 2], and [REDACTED 3] are more entitled to the account than [REDACTED 2]'s four sons, whom the Claimant also represents.

Amount of the Award

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

With regard to the custody account, the Account Owner's 1938 Census declaration indicates that the total nominal value of the securities contained in the custody account as of April 1938 was SF 5,000.00. 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 CRT presumes that the account owner, if able to decide freely, could have opted to hold the respective bond to maturity to avoid a capital loss. In this case, as medium term notes, the 4% [REDACTED] notes were not publicly traded, and, therefore, are valued at their nominal value of SF 5,000.00. With regard to this amount, the CRT determines that it is unable to rely on the balance amount declared in the 1938 Census as it has no evidence regarding the circumstances of the Account Owner's declaration. The CRT notes that, as evidenced in a number of cases, the Account Owner may not have declared all of his assets, or understated their value, in the belief that this might help him safeguard some of them. Accordingly, pursuant 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 13,000.00.⁶

The Account Owner's 1938 Census declaration indicates that as of 6 July 1938, the value of the demand deposit account was SF 4,845.50. The CRT notes that this amount is higher than the Article 29 presumptive value for demand deposit accounts. Accordingly, the value of the demand deposit account is determined to be its known historic value, or SF 4,845.50.

Thus, the combined value for both accounts is SF 17,845.50. The current value of the amount of the award is determined by multiplying this value 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 223,068.75.

Division of the Award

According to Article 23(1)(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23(1)(a-f) has submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity. In this case, the Claimant is representing the [REDACTED 2], née [REDACTED], who is the widow of [REDACTED]'s maternal grandson, and [REDACTED 3], née [REDACTED], who is the widow of [REDACTED]'s paternal grandson. As the Claimant, [REDACTED 2], and [REDACTED 3] are all related to the Account Owner by marriage, the CRT determines that it is fair and equitable to divide the award amount among them equally. Accordingly, the Claimant, [REDACTED 2], and [REDACTED 3] are each entitled to a one-third share of the total award amount.

As noted above, [REDACTED 4], [REDACTED 5], [REDACTED 6], and [REDACTED 7], as sons of [REDACTED 2], are one generation further removed from the Account Owner than their mother, [REDACTED 2], and are therefore not entitled to share in the award amount.

⁶ The CRT notes that, in an Order dated 16 June 2010, the Court amended Article 29 of the Rules, which establishes value presumptions for accounts with unknown or low values. Full information regarding the methodology and procedure used to determine the revised Article 29 presumptive values is available at www.swissbankclaims.com. The CRT notes that any adjustment for accounts awarded at the previous presumptive value amounts, such as those described herein, will be addressed to the Claimant separately.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
17 September 2010