

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED], [REDACTED], and [REDACTED]

and

to Claimant [REDACTED 2]
also acting on behalf of [REDACTED], [REDACTED],
[REDACTED], [REDACTED], and [REDACTED]
all represented by [REDACTED]

in re Accounts of Anna Marcus and Susanne Marcus

Claim Numbers: 202033/MD; 208179/MD; 219678/MD; 219679/MD¹

Award Amount: 5,305,314.60 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Susanne Marcus and Anna Marcus (the “Account Owners”) at the Zurich branches of [REDACTED I] (“Bank I”) and [REDACTED II] (“Bank II”).

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 Claimants

Information Provided by Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted two Claim Forms identifying Account Owners Anna and Susanne Marcus as his father’s aunt and cousin, respectively. Claimant [REDACTED 1] stated that his paternal grandfather, [REDACTED], had three sisters, [REDACTED], [REDACTED], and [REDACTED], and three brothers, [REDACTED], [REDACTED], and [REDACTED]. According to the Claimant, [REDACTED] married [REDACTED], who was born in 1865, and together they had three children: [REDACTED], [REDACTED], and [REDACTED]. Claimant [REDACTED 1] indicated that [REDACTED] died in 1937.

¹ Claimant [REDACTED 2] submitted an additional claim to the account of [REDACTED], which is registered under the claim number 220039. The CRT will treat the claim to this account in a separate decision.

Claimant [REDACTED]. stated that Anna and Susanne Marcus, who were Jewish, lived at Josefstädterstrasse in Vienna, Austria. Claimant [REDACTED 1] stated that Anna and Susanne Marcus owned real estate, including that located at Bahnhofstrasse 55 held under the corporate name of *Merkon A.G.*, in Zurich. Claimant [REDACTED 1] stated further that Anna and Susanne Marcus were deported to concentration camps, and that Anna Marcus perished in Theresienstadt and Susanne Marcus perished in Auschwitz. According to the information in the Claim Form, Susanne Marcus' two brothers were also killed in the Holocaust.

Claimant [REDACTED 1] stated that, after the Second World War, his father, [REDACTED], represented himself, his brother, and five surviving cousins in various attempts to seek restitution for family property that had been confiscated by the Nazis. In support of his claim, Claimant [REDACTED 1] submitted copies of letters written by his father to the United States Secretary of State and to the Office of Military Government for Germany, dated 16 August 1946 and 10 May 1949, respectively, in which his father stated his claim to the property of his mother, [REDACTED], and of his aunt and cousin, Anna and Susanne Marcus. Claimant [REDACTED 1] also submitted his father's sworn affidavit, dated 2 December 1946, regarding the confiscated property. In that affidavit, [REDACTED] stated that a large portion of the estate of Anna and Susanne Marcus consisted of the entire shares of the company known as *Merkon A.G.*, of Bahnhofstrasse 55 in Zurich. [REDACTED] also stated in the affidavit that *Merkon A.G.* was the owner of real estate in Zurich, including a house at Mutschellenstrasse 47, Wollishofen-Zurich. According to [REDACTED]' affidavit, the shares of *Merkon A.G.* were originally deposited at the [REDACTED I] in Zurich, and were transferred to the Austrian *Creditanstalt-Bankverein* by order of the German *Reichsbank*, and were subsequently confiscated by Nazi authorities.² The correspondence submitted by Claimant [REDACTED 1] indicates that *Merkon A.G.* was liquidated after 1945 and that the proceeds from the liquidation were paid out to the heirs of Anna and Susanne Marcus.

Claimant [REDACTED 1] indicated that he is the grandson of [REDACTED] and that he was born on 1 May 1947 in Boston, Massachusetts. Claimant [REDACTED 1] is representing his brothers: [REDACTED], who was born on 13 February 1943 in Boston; and [REDACTED], who was born on 30 May 1953 in Boston. Claimant [REDACTED 1] is also representing his cousin [REDACTED], who is the granddaughter of [REDACTED], née [REDACTED], and who was born on 11 April 1910 in New York.

Information Provided by Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted two Claim Forms identifying Account Owners Anna and Susanne Marcus as her husband's maternal grandmother's aunt and cousin, respectively. Claimant [REDACTED 2] stated that Anna Marcus was married to [REDACTED], and that they had two children: Susanne and [REDACTED]. Claimant [REDACTED 2] indicated that [REDACTED] was the brother of [REDACTED], née [REDACTED]. Claimant [REDACTED

² The accounts referred to in [REDACTED]' affidavit have not been identified by the ICEP Investigation and no verification of such deposit has been made available to the CRT.

2] stated that [REDACTED] died in 1937, and that Anna and Susanne Marcus, who were Jewish, perished in the Holocaust.

According to Claimant [REDACTED 1], [REDACTED] had one child, [REDACTED], who was married to [REDACTED]. [REDACTED] and [REDACTED] had two children: [REDACTED], who was born on 20 November 1914 and who died on 7 July 1971; and [REDACTED], who was born on 7 February 1917 and who died on 6 March 1972. Claimant [REDACTED 1] indicated that she is the widow of [REDACTED] and that she was born on 26 March 1917 in Magdeburg, Germany. Claimant [REDACTED 2] is representing her children, [REDACTED], who was born on 15 March 1956, [REDACTED], who was born on 22 June 1951 and [REDACTED], who was born on 9 March 1943. Claimant [REDACTED 2] is also representing the two children of [REDACTED] née [REDACTED]: [REDACTED], who was born on 2 November 1939; and [REDACTED], who was born on 13 June 1957.

In support of her claim, Claimant [REDACTED 2] submitted testamentary documents regarding the estate of [REDACTED], which indicate that her heirs were [REDACTED], née [REDACTED], and [REDACTED].

Information Available in the Bank Record

The bank record at Bank I consists of a bank customer card. According to this record, the joint Account Owners were Mrs. Anna Marcus and Miss Susanne Marcus from Vienna. The record indicates that the Account Owners held a custody account that was closed on 23 December 1938. Further, the bank record indicates that the Account Owners held four demand deposits accounts. Two of these demand deposit accounts were closed on 20 April 1938 and 28 December 1938 respectively. The record does not indicate the value of the accounts as of the date of closure.

The date of closure of the other two demand deposit accounts is not available. 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 two demand deposit 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 evidence that the Account Owners closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archive

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. The records of the Austrian State Archives (Archive of the Republic, Finance) contain documents concerning the assets of Anna Marcus, Susanne Marcus and the estate of [REDACTED] represented by Susanne Marcus.

These documents indicate that Susanne Marcus was the daughter of Anna Marcus and [REDACTED], that [REDACTED], who was a bank president, died in 1937, and that Anna and Susanne Marcus were his sole heirs. Susanne and Anna Marcus lived in Vienna and used addresses at Opolzergasse 6 and Josefstädterstrasse 21.

The Austrian census documents indicate that Anna and Susanne Marcus held jointly a custody account and a demand deposit account at Bank I. The market value of the securities held in the custody account at Bank I amounted to 50,295.68 Reichsmarks (equivalent of 88,258.86 Swiss Francs³) as of 27 April 1938. Further, the records indicate that most of the securities were sold in November 1938, that the sale proceeds of 46,672.38 Reichsmarks (equivalent of 81,900.69 Swiss Francs) were sent to Austria, and that the remaining securities were valued at 30,498.00 Swiss Francs. Thus, the cumulative value of the securities deposited in the custody account as of November 1938 was 112,398.69 Swiss Francs. The Austrian census records indicate that the balance of a demand deposit account held by Anna and Susanne Marcus at Bank I was 233.02 US Dollars (equivalent of 1,018.30 Swiss Francs).

Further, the Austrian census documents indicate that Anna Marcus, Susanne Marcus, and the estate of [REDACTED] held a custody account and a demand deposit account at Bank II. The market value of the securities held in this custody account amounted to 77,140.20 Reichsmarks (equivalent of 135,365.62 Swiss Francs) and 177,000.00 Swiss Francs as of 27 April 1938. According to these records, part of the securities was sold in November 1938. The proceeds from the sale, which amounted to 109,473.77 Reichsmarks (equivalent of 192,104.57 Swiss Franc), were sent to Austria. The remaining securities were valued at 126,500.00 Swiss Francs. Thus, the cumulative value of the securities held at Bank II as of November 1938 was 318,604.57 Swiss Francs. The balance of the demand deposit account as of November 1938 was 3,668.00 Swiss Francs.

The Austrian census records also indicate that Anna and Susanne Marcus owned various securities, held numerous accounts at various banks in Austria, Germany and Czechoslovakia and owned real estate in Vienna, and that their total assets were valued at approximately 1,900,000.00 Reichsmarks in April 1938. Further, the Austrian census records indicate that Anna and Susanne Marcus owned real estate at Mutschellenstrasse 47 in Zurich.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the discretion of the CRT. In this case, the CRT determines it appropriate to join the claims of Claimant [REDACTED 1] and Claimant [REDACTED 2] in one proceeding.

³ The CRT uses official exchange rates to calculate the account values in Swiss Francs.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The information provided by the Claimants about the family status of Anna and Susanne Marcus matches the unpublished information about the Account Owners contained in the bank documents. Furthermore, the information provided by the Claimants, including the name of Anna Marcus' husband and his date of death, the street address of Anna and Susanne Marcus, and the information about the real estate owned by their relatives in Zurich, all matches information about the Account Owners contained in the Austrian census documents.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes two persons named Anna Marcus and Susanne Marcus, and indicates that they lived in Vienna, Austria. This 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.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners were Jewish, that Anna Marcus perished in Theresienstadt and that Susanne Marcus perished in Auschwitz. As noted above, persons named Anna Marcus and Susanne Marcus are listed in the CRT database of victims of Nazi persecution.

The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting detailed family trees that indicate that the paternal grandfather of Claimant [REDACTED 1] and the maternal grandmother of Claimant [REDACTED 2]'s late husband were the siblings of [REDACTED], who was Account Owner Anna Marcus' husband and Account Owner Susanne Marcus' father. Claimant [REDACTED 1] also submitted correspondence indicating that his father and the mother of Claimant [REDACTED 2]'s late husband were the heirs of Anna Marcus.

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, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. The CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis. With respect to the custody account closed 23 December 1938, the demand deposit account closed 20 April 1938, and the demand deposit account closed 28 December 1938, given the application of Presumptions (a), (d), (h) and (j) as provided in Article

28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs.

With respect to the two demand deposit accounts closed at an unknown date, given the death of the Account Owners in concentration camps and the application of Presumptions (d), (h) and (j) as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs.

With respect to the Bank II custody account and demand deposit account identified in the Austrian State Archives, the Archives indicate that these accounts were sent to Austria in November 1938, and given the application of Presumptions (a), (d), (h) and (j) as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that Claimant [REDACTED 1], his relatives, whom he represents, as well as the individuals represented by Claimant [REDACTED 2] are related to the Account Owners and that these relationships justify an Award. Finally, the CRT has determined that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

Bank I

At Bank I, the Account Owners held one custody account and four demand deposit accounts. Values for the custody account and one of the demand deposit accounts are available from the Austrian State Archives. The Austrian census documents indicate that the value of the custody account held jointly by Anna and Susanne Marcus as of 12 November 1938 was 112,398.69 Swiss Francs, and that the value of one of the demand deposit accounts was 1,018.30 Swiss Francs. Thus, the total 1945 value of the custody account and demand deposit account identified on the Austrian census form was 113,416.99 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an award amount of 1,361,003.80 Swiss Francs.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case with the three remaining demand deposit accounts, 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. The total for the three additional demand deposit accounts identified in the bank records is 6,420.00 Swiss Francs. 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 an award amount of 77,040.00 Swiss Francs for these three accounts.

Bank II

The Austrian census documents indicate that the value of the custody account held by Anna Marcus, Susanne Marcus, and the estate of [REDACTED] at Bank II as of 12 November 1938 was 318,604.57 Swiss Francs. The value of the demand deposit account held at the same bank was 3,668.00 Swiss Francs. The total 1945 value of the accounts at Bank II was thus 322,272.57 Swiss Francs. The current value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an amount of 3,867,270.80 for the accounts at Bank II, and the total award amount is 5,305,314.60 Swiss Francs.

Division of the Award

According to Article 23(e) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owners have submitted a claim, the Award shall be in favor of any descendants of the Account Owner's grandparents who have submitted a claim, in equal shares by representation. Furthermore, Article 23(g) of the Rules provides for the an award in favor of claimants that are not related to the Account Owner by blood but by marriage, consistent with principles of fairness and equity, if none of the persons entitled to an award under pursuant to Article 23 (1) (a-f) has submitted a claim. Article 23(g) applies here because Account Owner Anna Marcus, née [REDACTED], was related by marriage to her husband's sisters [REDACTED] and [REDACTED] and his brother [REDACTED], and because none of her relatives have submitted a claim to her accounts. Accordingly, Claimant [REDACTED 1], [REDACTED] and [REDACTED], [REDACTED], Claimant [REDACTED 2]'s daughters, [REDACTED], [REDACTED], and [REDACTED], as well as Claimant [REDACTED 2]'s nephew, [REDACTED], and her niece, [REDACTED], is entitled to an award, as they are the descendants of [REDACTED], who was the father of [REDACTED] and the grandfather of Susanne Marcus.

The CRT notes further, that pursuant to Article 23 of the Rules, the children of Claimant [REDACTED 2] as well as her nephew and niece, who are the blood relatives of [REDACTED] and Suzanne Marcus, have a better entitlement to the accounts than Claimant [REDACTED 2], who is related to the Account Owners by marriage.

Claimant [REDACTED 1] is representing his two brothers, [REDACTED] and [REDACTED], and his cousin, [REDACTED], in these proceedings. According to Article 23 of the Rules, Claimant [REDACTED 1], [REDACTED], and [REDACTED] are each entitled to receive one-ninth (1/9) of any award payment, and [REDACTED] would be entitled to receive one-third (1/3) of any award payment. Claimant [REDACTED 2] is representing her sister's children, [REDACTED] and [REDACTED]. Pursuant to Article 23 of the Rules, Claimant [REDACTED 2]'s daughters, [REDACTED], [REDACTED], and [REDACTED], are each entitled to one-eighteenth (1/18) of any award payment, and [REDACTED] and [REDACTED] are each entitled to one-twelfth (1/12) of any award payment.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims 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
April 24, 2003