

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Ilse Sara Schwed

in re Accounts of Albert Mendel

Claim Number: 000980/AY

Award Amount: 15,500.00 Swiss Francs

This Certified Award is based upon the claim of Ilse Sara Schwed, née Mendel, (the “Claimant”) to the accounts of Albert Mendel (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”). On 27 January 2002, the Court approved the Award of the Account Owner’s account of unknown type closed on 27 July 1939.¹ The CRT did not reach a decision regarding the Account Owner’s safe deposit box account closed in 1936, pending further consideration as to whether or not the Account Owner or his heirs received the proceeds of that account. This Award is the result of the further consideration on whether the Account Owner received the proceeds of the safe deposit box.

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 and Initial Questionnaire identifying the Account Owner as her father, Albert Mendel, who was born on 4 October 1875, in Jüchen, Germany, was married to Dora (Dorothea) Aronstein on 26 November 1907, and had two daughters: Ruth and the Claimant. The Claimant indicated that her family resided in Kitschburgerstrasse in Cologne, Germany, and then moved to Uhlandstrasse 74 in Cologne prior to the Second World War. The Claimant indicated that her father was a businessman and a silk and fabrics wholesaler who owned a large business by the name of *Albert Mendel - Seide und Samt*, located at Palatium House, Hohestrasse 61, and later in Schildergasse, Cologne. The Claimant indicated that her father had major customers such as *Bally* in Switzerland, and others from France and Germany. The Claimant added that she believed her father owned accounts in the Zurich branch of the Bank. The Claimant explained that her father, who was Jewish, was deported in 1941 to Theresienstadt, where he perished, that her mother perished in Auschwitz in 1944, and

¹ See In re Accounts of Albert Mendel (approved on 27 January 2002), hereinafter the “January 2002 Award.”

that her sister Ruth died in 1995 in the United States. In support of her Claim, the Claimant submitted various documents, including the obituary for her parents, letters bearing the letterhead of her father's business and indicating his various bank accounts, and a letter written by her father to her on 25 February 1935, indicating his name and address at Uhlandstrasse 74. The letter has a stamp on the letterhead, indicating Albert Mendel's account at the Bank. The Claimant also submitted a letter from another Swiss bank in Zurich, dated 19 September 1935, indicating that Albert Mendel had an additional address at Hotel Gotthard, Zurich, Switzerland. The Claimant indicated that she was born on 8 November 1911 in Cologne.

The Claimant submitted an Initial Questionnaire to the Court in 1999, asserting her entitlement to a Swiss bank account owned by her father, Albert Mendel, from Cologne, Germany.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form signed by the Account Owner, inquiries sent by the Claimant to the Bank regarding her father's accounts and the Bank's reply, and printouts from the Bank's database. According to the Bank's records, the Account Owner was Albert Mendel, who resided at Uhlandstrasse 74, Cologne, Germany. The Power of Attorney Holder was *Fräulein* (Miss) Ruth Mendel, who resided at the same address. The Bank's records indicate that the Account Owner held an account, of unknown type, which was opened in 1929 and closed on 27 July 1939, and a safe deposit box, which was opened in 1930 and was closed in 1936. The amounts in the accounts on the dates of their closures are unknown. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

The Bank's records contain a letter from the Claimant, dated 13 November 1956, in which she asked the Bank for information about her father's account, including its connection with her father's business and its turnover. In its response, dated 27 November 1956, the Bank stated that due to Swiss law, which did not require banks to keep business records for more than ten years, such information was not available. In fact, in an internal handwritten report at the bottom of the Claimant's letter, the Bank confirmed that a safe deposit box account and another account had existed, but the Bank failed to provide the Claimant with that information.

The CRT's Analysis

Identification of the Account Owner

In the January 2002 Award, it was determined that the Claimant identified the Account Owner. Her father's and sister's names and country of residence, as evidenced in the Claimant's documents, all match the published name and domicile of the Account Owner

and the published name and unpublished domicile of the Power of Attorney Holder. The Claimant identified her father's exact address in Cologne, which matches unpublished information about the Account Owner's address contained in the Bank's records. Additionally, the Claimant identified the bank and branch in which her father kept his accounts. The Bank's file also contains a letter written by the Claimant in 1956 asking the Bank for information about her father's accounts. In support of her claim, the Claimant submitted various documents, including a letter written by her father to her on 25 February 1935, indicating his name and address in Uhlandstrasse 74, and his account at the Bank. The Claimant also submitted a letter from another Bank in Zurich, dated 19 September 1935, indicating that Albert Mendel had an additional address at Hotel Gotthard, Zurich, Switzerland. Finally, the Claimant submitted a sample of her father's signature, which matches the signature sample contained in the Bank's records. Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Albert Mendel, and indicates that his date of birth was 4 October 1875 and place of birth was Jüchen, Germany, 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.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Albert Mendel from Cologne, Germany, 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 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 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. As noted in the January 2002 Award, there are no other claims to the accounts of this Account Owner. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

In the January 2002 Award, it was determined that the Claimant made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and was deported to Theresienstadt, where he perished. As noted above, a person named Albert Mendel was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

In the January 2002 Award, it was determined that the Claimant had plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information verified by other independently available information and numerous documents demonstrating that the Account Owner was her father. These

documents include the obituary for her father, letters bearing the letterhead of her father's business and indicting his various bank accounts, and a letter written by her father to her on 25 February 1935, indicating his name and address at Uhlandstrasse 74. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

In evaluating whether the Account Owner or his heirs received the proceeds of the safe deposit box account, the CRT took into account the closing of the Account Owner's safe deposit box account in 1936, and considered that: the Nazis embarked on a campaign in 1933 to seize the domestic and foreign assets of Jewish nationals in Germany through the enforcement of flight taxes and other confiscatory measures including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until 1941 and would not have been able to repatriate his account to Germany without its confiscation; the deportation in 1941 and death of the Account Owner in a concentration camp as a result of Nazi persecution; that there is no record of the payment of the Account Owner's account to him; and the Account Owner and his heirs would not have been able to obtain information about his account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquires by account owners because of the Banks' concern regarding double liability.² Based on these factors, indicating a practical inability to receive the proceeds of his safe deposit box account at the time it was closed in 1936, at which time the Account Owner lived in Germany; and given the application of relevant Presumptions (a), (h) and (j),³ which establish a presumption of such a result in this context, 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. 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 Owner was her father, and that relationship justifies an Award. Finally, the CRT has determined that it is

² The CRT notes that in this case, the Bank's responsibility for restitution also derives from the action by the Bank in 1956, as described above in the Information Available in the Bank's Records, to intentionally mislead the Claimant, who was seeking information about her father's account, including its connection with her father's business and its turnover. The Bank deprived the Claimant of the documentation that it had in its possession concerning her father's account and in an internal handwritten report at the bottom of the Claimant's letter, the Bank confirmed that a safe deposit box account and another account had existed. This misrepresentation by the Bank denied the Claimant the opportunity to seek restitution for the account at that time. Therefore, the CRT concludes that the Bank is responsible for the loss by the Claimant of her father's deposits at the Bank.

³ These presumptions are provided for in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), as set forth in the attached Appendix A and in Appendix C to the Rules. Appendix C appears on the CRT II website -- www.crt-ii.org.

plausible that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Claimant held one safe deposit box.⁴ 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 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 safe deposit box account was 1,240.00 Swiss Francs. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of 15,500.00 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
31 December 2003

⁴ As noted above, on 27 January 2002, the Court approved the Award of the Account Owner’s account of unknown type closed on 27 July 1939.