

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Josef Mesk

Claim Numbers: 207196/CU; 708046/CU¹

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the unpublished accounts of Josef Mesk (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).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 owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form and an Initial Questionnaire (“IQ”) identifying the Account Owner as his maternal great-uncle, Josef Mesk, who was born on 31 May 1869 in Alexandria, Egypt. The Claimant indicated that his great-uncle, who was Jewish, grew up in Vienna, Austria, where he earned his doctorate, and that he subsequently taught Latin and Greek at a grammar school in Brünn (Brno), Czechoslovakia (today Czech Republic). The Claimant explained that his great-uncle received a position as a professor of Egyptology and ancient Greek at the *Carl-Franzens-University* in Graz, Austria, where he resided at Ruckerlberggürtel 18. The Claimant stated that his great-uncle never married or had children. According to the Claimant, his great-uncle was a professor emeritus by the time Austria was incorporated into Reich (the “*Anschluss*”) in March 1938. The Claimant stated that his great-uncle was able to obtain false documents to disguise his Jewish heritage with the help of the archbishops of Smyrna (Izmir, Turkey) and Aleppo, Syria.

The Claimant indicated that his great-uncle passed away on 4 November 1946 in Graz.

¹ In addition to his CRT Claim Form, Claim Number 207196, in 1999 Claimant [REDACTED] (the “Claimant”) submitted an Initial Questionnaire (“IQ”), numbered GER-0001086, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those IQs which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 708046.

The Claimant explained that his maternal grandmother, [REDACTED], née [REDACTED], who was born on 21 August 1882 in Vienna, was Josef Mesk's sister, and that she resided at the same address as Josef Mesk. The Claimant stated that his grandmother had one child, [REDACTED], née [REDACTED] (the Claimant's mother), who was born on 2 May 1910 in Brussels, Belgium, and who died on 8 September 1995 in Graz. The Claimant indicated that he was born on 11 May 1941 in Graz, and that he has a brother, [REDACTED], who was born on 29 June 1940 in Dusseldorf, Germany.

In support of his claim, the Claimant submitted two inheritance certificates (*Einantwortungsurkunde*) issued by the district court in Graz. The first certificate, dated 10 February 1948, indicates that university professor Dr. Josef Mesk of Ruckerlberggürtel 18 in Graz, who died on 4 November 1946, left two identical wills, dated 3 January 1942, naming as sole heir his sister, [REDACTED], who resided at the same address. The second certificate, dated 1 March 1962, indicates that pensioner [REDACTED], residing at Ruckerlberggürtel 18 in Graz, died without a will on 3 October 1956, leaving her daughter, [REDACTED], as her sole heir.

The Claimant also submitted four deposit receipts (*Depotschein*) from the Bank, dated between 1929 and 1931, and five letters between himself and the Bank and between the Bank and the Bank of European Credit Unions (*Bank Europäischer Genossenschaftsbanken*), dated in 1981. These documents are described in more detail below.

The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting his entitlement to Swiss bank accounts owned by Josef Mesk.

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 any accounts belonging to the Account Owner during their investigation of the Bank.

As mentioned above, the documents evidencing accounts belonging to the Account Owner were submitted to the CRT by the Claimant, and consist of deposit receipts and correspondence between the Bank and the Claimant and between the Bank and the Bank of European Credit Unions. According to these records, the Account Owner was Prof. Dr. Josef Mesk who resided at Graz, Austria. These records indicate that the Account Owner held a custody account, numbered 27740, and a demand deposit account.

These records indicate that the custody account contained *4½% Obligationen Eidgenössische Anleihe von 1926* bonds, maturing on 15 June 1941, with a total face value of 10,000.00 Swiss Francs ("SF"), which were deposited on four separate occasions:

- Bond certificates (*Titel*) 42662 and 50239, each with a nominal value of SF 1,000.00, deposited on 4 November 1929;
- Bond certificate 25392, with a nominal value of SF 1,000.00, deposited on 18 March 1930;

- Bond certificates 25394 and 53396, with nominal values of SF 1,000.00 and SF 5,000.00, respectively, deposited on 14 November 1930; and
- Bond certificate 31050, with a nominal value of SF 1,000.00, deposited on 21 May 1931.

The correspondence submitted by the Claimant includes a letter from the Bank to the Bank of European Credit Unions, dated 20 March 1981, regarding the latter's inquiry about the fate of the Account Owner's accounts. In the letter, the Bank informed the Bank of European Credit Unions that under normal circumstances the Bank would not undertake a search for assets without inheritance documents from the Account Owner's heir and a fee of SF 500.00. However, the Bank stated, it was prepared to make an exception in this case, in order to prevent unnecessary effort and expense, by informing the Bank of European Credit Unions that there were no assets in the Account Owner's name at either the Bank's head office or its branch offices. In the letter, the Bank also noted that it was legally obliged to keep records for only ten years.

In another letter, undated, the Claimant wrote to the Bank on behalf of his mother, *Frau* (Mrs.) [REDACTED], née [REDACTED], inquiring about the Account Owner's accounts, and enclosed with the letter copies of the certificates of inheritance and the certificates of deposit described above. The Bank responded on 16 June 1981, remarking that there were no assets currently deposited at its head office in the name of the Account Owner, although noting that the Account Owner formerly held assets there. The Bank again cited the law obliging it to keep records for only ten years.

In his response to the Bank, dated 21 June 1981, the Claimant noted that the certificates of deposit for the bonds described above served as evidence that the Account Owner never received the bonds from the Bank; furthermore, the Claimant's letter continues, the bonds did not mature until 15 June 1941, by which time the Account Owner was already ill (he died in 1946), and Nazi laws during this period prohibited ownership of foreign accounts.

In the Bank's response to the Claimant, dated 25 June 1981, it stated that certificates of deposit do not serve as evidence that the Bank continued to possess the bonds, that the Bank long ago ceased using such certificates, and the Account Owner would have been able to withdraw the bonds from the Bank without surrendering the certificates. The Bank went on to state that it had searched further in its archives and discovered that both of the Account Owner's accounts had been closed: the custody account on 9 July 1938 and the demand deposit account on 20 June 1941. Finally, the Bank stated, given that it was not obliged to keep records beyond ten years, there were no further details available regarding the Account Owner's accounts.

The amounts in the accounts on the dates of their closure are unknown. There is no evidence in the Bank's records submitted by the Claimant that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 has submitted documents, which establish his great-uncle's name, profession, and city of residence, and that his great-uncle held two accounts at the Bank.

In support of his claim, the Claimant submitted a certificate of inheritance pertaining to the estate of university professor Dr. Josef Mesk, providing independent verification that the person who is claimed to be the Account Owner had the same name, profession, and city of residence as those recorded in the Bank's records as the name, profession, and city of residence of the Account Owner.

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

Status of the Account Owner as a Victim or Target of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim or Target of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, and that he resided in Austria after the *Anschluss* by obtaining false documents to disguise his Jewish heritage.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, including two inheritance certificates and correspondence between himself and the Bank, demonstrating that the Account Owner was the Claimant's great-uncle. The CRT notes that the information provided by the Claimant indicates that the Account Owner 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 Issue of Who Received the Proceeds

In its correspondence with the Claimant, the Bank indicated that the custody account was closed on 9 July 1938 and that the demand deposit account was closed on 20 June 1941. The CRT notes that the Account Owner could have closed the custody account without surrendering the deposit receipts described above. However, with regard to both accounts, given that the Account Owner resided in Austria after the *Anschluss* when the accounts were closed; that there is no record of the payment of the Account Owner's accounts to him or his heirs; and given the application of Presumptions (a) 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. 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 his 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.

Amount of the Award

In this case, the Account Owner held one custody account and one demand deposit account. The Bank’s records contain information about certain bonds held in the custody account. However, because these records date from 1929 to 1931, whereas the custody account was not closed until 1938, the CRT determines that the amount in the custody account on the date of its closure is unknown. As for the balance of the demand deposit account, this is also unknown, since the Bank informed the Claimant that it possessed no further information about either of the accounts aside from their closure dates.

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 ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00 and the average value of a demand deposit account was SF 2,140.00. Thus, the combined 1945 average value for the two accounts at issue is SF 15,140.00. 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 a total award amount of SF 189,250.00.

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 claims 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
30 September 2008