

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 2],
[REDACTED 3], and [REDACTED 4]

in re Account of Samuel Messinger, *Selig*

Claim Numbers: 201330/MBC; 201331/MBC

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED] (the “Claimant”) to the published accounts of Samuel Messinger, *Selig* and Georg Messinger. This Award is to the published accounts of Samuel Messinger, *Selig* (the “Account Owner”), over which Malvine Messinger (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).¹

On 14 May 2002, the Court approved an award to the Claimant for a custody account jointly belonging to Samuel and Georg Messinger (the “May 2002 Award”). In the May 2002 Award, the CRT also reserved decision with regard to a demand deposit account. This Award addresses the demand deposit account.

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 two Claim Forms identifying the Account Owner as her paternal grandfather, Samuel Messinger, who was born on 8 March 1875 in Bratislava, Czechoslovakia, and was married to Malvine Reisz in approximately 1905 in Bratislava. According to the Claimant, her grandparents, who were both Jewish, had one child, the Claimant’s father, Georg

¹ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Georg Messinger is indicated as having three accounts and Samuel Messinger, *Selig*, is indicated as having two accounts. Upon careful review, the CRT determines that Georg Messinger was not in fact an account owner; that Samuel Messinger owned one custody account and one demand deposit account, and that those accounts were then transferred to the Estate of Samuel Messinger, the only beneficiary of which was Georg Messinger. The CRT previously awarded the custody account to the Claimant. See *In re Accounts of Georg and Samuel Messinger*, which was approved by the Court on 14 May 2002.

Messinger, who was born on 6 February 1918 in Budapest, Hungary. The Claimant indicated that Samuel and Malvine Messinger moved to Vienna, Austria, where they resided at Salesianergasse 8. According to the Claimant, Samuel Messinger, who was a factory owner, died in 1937. The Claimant stated that Georg Messinger fled Vienna after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”), arriving in Bolivia in 1948. The Claimant further stated that Georg Messinger died in Cochabamba, Bolivia, on 26 April 1972.

In support of her claim, the Claimant submitted a certified translation of Samuel Messinger’s Czech passport, indicating that he was born on 8 March 1875 in Bratislava; Georg Messinger’s birth certificate, indicating that he was born on 6 February 1918 to Samuel Messinger and Malvine Reisz; a certificate of inheritance issued by a Vienna court in 1937, indicating that Samuel Messinger’s heirs were his wife, Malvine Messinger, and his son, Georg Messinger; a certificate issued by the Vienna police department on 26 July 1938, indicating that Georg Messinger had no criminal record; Georg Messinger’s German passport and his visa for Bolivia issued in Paris on 8 March 1939; the Claimant’s own birth certificate, indicating that the Claimant is the daughter of Jorge Messinger and [REDACTED 2]; and Jorge Messinger’s death certificate, indicating that he died on 26 April 1972 in Cochabamba.

The Claimant indicated that she was born on 28 August 1952 in Cochabamba. The Claimant is representing her mother, [REDACTED 2], née [REDACTED], who was born on 20 October 1921, and her sisters, [REDACTED 4], née [REDACTED], and [REDACTED 3], who were born on 6 January 1948 and 27 December 1961, respectively.

The Claimant previously submitted an Initial Questionnaire (“IQ”) with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Samuel and Malvine Messinger.

Information Available in the Bank’s Records

The Bank’s records submitted to the CRT by 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”) consist of a customer card; correspondence from Georg Messinger to the Bank; a signature sample card; decisions issued by the district court of *Innere Stadt*, Vienna, Austria, concerning the estates of Samuel Messinger and Malvine Messinger; documents relating to the 1945 freeze of assets held in Switzerland by citizens of Germany and the territories incorporated into the Third Reich (the “1945 Freeze”); printouts from the Bank’s database; and an internal memorandum by the Bank. Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), the CRT requested the voluntary assistance of the Bank to obtain additional information about this account (“Voluntary Assistance”). The Bank provided the CRT with additional documents. These documents consist of a form for a pledge of assets as collateral (*Pfand-Bestellung*) signed by the Account Owner on 8 March 1935 for the benefit of the Bank; a list of credits granted to the Account Owner by the Bank between 1935 and 1938; and another customer card.

According to the Bank’s records, the Account Owner was *Direktor* (director) Samuel Messinger

and the Power of Attorney Holder was Malvine Messinger, Samuel Messinger's wife. The Bank's records indicate that the Messinger family resided at Wiesingerstrasse 1 in Vienna.

The Bank's records indicate that the Account Owner held a custody account, numbered 35545, which was subsequently renumbered 112, and a demand deposit account, and that Malvine Messinger held power of attorney over these accounts. The Bank's records further indicate that the Bank granted a loan to the Account Owner in 1935, and that the loan was covered by the proceeds from coupons of securities deposited in the custody account. According to the Bank's records, the loan was paid back by 14 March 1938, on which date the balance of the demand deposit account was SF 1,997.00.

The Bank's records further indicate that on 26 April 1938 the name on the accounts was changed to "the Estate of Director Samuel Messinger" (*Nachlass von Herrn Direktor S. Messinger*). Inheritance documents and an internal memorandum by the Bank dated 16 August 1939 indicate that Georg Messinger, the Account Owner's son, was recognized as the sole heir of the Account Owner and the Power of Attorney Holder. By a letter, dated 13 April 1938, Georg Messinger granted power of attorney over the accounts of the Estate of the Account Owner to *Ing.* (engineer) Dr. Karl Partisch of Vienna, who temporarily resided in Zurich, Switzerland. This power of attorney was cancelled on 26 July 1939. The Bank's records indicate that the Bank was ordered on 25 August 1939 and 22 February 1940 to send any correspondence to Georg Messinger, care of Fredy Wang and later care of Wolfgang Mayer, Casilla 120, Sucre, Bolivia.

The Bank's records indicate that the accounts were blocked in the 1945 Freeze. These records further indicate that the custody account contained coupons of 7% *Internationale Anleihe der Republik Österreich 1930, Schweizer Tranche* bonds. The Bank's records further indicate that the coupons had been cashed before the 1945 Freeze (probably on 4 October 1938) and that they did not have any value in 1945. According to the Bank's records, the balance of the demand deposit account was SF 110.00 Swiss Francs on 17 February 1945.

The Bank's records indicate that the custody account was closed on 26 October 1954. The Bank's records further indicate that the balance of the demand deposit account on 22 March 1955 was SF 22.00, and that the demand deposit account was eventually closed on 13 May 1959.

There is no evidence in the Bank's records that the Account Owner's heirs, the Power of Attorney Holder or her heirs 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 all Jews who resided within the Reich and/or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Georg Messinger, numbered 22814. These documents indicate that Georg Messinger was born on 6 February 1918, that he resided in Vienna at Wiesingerstrasse 1, and that he was a university student (*Hochschüler*). The 1938 Census records indicate that Georg Messinger declared

securities deposited at the Zurich branch of the Bank with a total value of 13,430.00 Reichsmark (“RM”). A letter dated 17 August 1938 from Georg Messinger to the authorities shows that in compliance with the laws at that time, he had offered his securities held abroad for sale to the *Reichsbankhauptstelle*. These documents further show that Georg Messinger was assessed flight tax (*Reichsfluchtsteuer*) of RM 36,583.00 and an “inheritance fee” (*Erbgebühren*) of RM 15,892.00.

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. Her grandfather’s name and city and country of residence match the published name and city and country of residence of the Account Owner. Her grandmother’s name matches the published name of the Power of Attorney Holder, and her father’s name matches the published name of the Account Owner’s son. The Claimant identified her grandfather’s profession, which matches unpublished information about the Account Owner contained in the Bank’s records. Furthermore, the Claimant indicated that her father emigrated to Bolivia, which is consistent with unpublished information contained in the Bank’s records that an address in Bolivia was provided to the Bank. In support of her claim, the Claimant submitted her grandfather’s birth certificate and a translation of his Czech passport, a certificate of inheritance issued by a Vienna court, as well as her father’s birth and death certificates, providing independent verification that the persons who are claimed to be the Account Owner and the Power of Attorney Holder had the same names and resided in the same city recorded in the Bank’s records as the names and city of residence of the Account Owner and the Power of Attorney Holder. The Claimant also submitted a sample of her father’s signature, which matches the signature sample of Georg Messinger contained in the Bank’s records.

The CRT notes that the Claimant filed an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Samuel and Malvine Messinger, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons (“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.

The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The CRT notes that while the Account Owner was not a Victim of Nazi Persecution, the Account Owner's wife and son, who were his direct heirs were Victims of Nazi Persecution. The Claimant stated that the Account Owner's wife and son were Jewish, resided in Austria after the *Anschluss*, and that his son fled Austria in 1938.

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 her grandfather. These documents include her birth certificate, indicating that her father was Jorge Messinger, and her father's birth certificate, indicating that his father was Samuel Messinger. There is no information to indicate that the Account Owner has surviving heirs other than the parties which the Claimant is representing.

The Issue of Who Received the Proceeds

With respect to the custody account, as indicated above, the Claimant was previously awarded this account in the May 2002 Award.

With respect to the Account Owner's demand deposit account, which was closed in 1959, given that the Account Owner died in 1937 and that his assets were transferred to the name of his estate in 1938; that his son and heir, Georg Messinger, fled Vienna in 1938 because of Nazi persecution; that there is no record of the payment of the Account Owner's account to his heirs; that the Account Owner's demand deposit account was frozen in the 1945 Freeze; that the Account Owner's 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 inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (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's heirs, the Power of Attorney Holder, 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 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 grandfather, and that relationship justifies an award. Third, the CRT has determined that it is plausible that neither the Account Owner's heirs, the Power of Attorney Holder nor her heirs received the proceeds of the claimed account.

Further, the CRT notes that the Claimant and her sisters, as grandchildren of the Account Owner, have a better entitlement to the account than the Claimant's mother, [REDACTED 2], the daughter-in-law of the Account Owner.

Amount of the Award

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

The Bank's records indicate that the value of the demand deposit account as of 17 February 1945 was SF 110.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 15.00, which reflects standardized bank fees charged to the demand deposit account during 1945. Consequently, the adjusted balance of the account at issue is SF 125.00. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of this amount is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 26,750.00.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. As indicated above, the Claimant and her sisters, [REDACTED 3] and [REDACTED 4], whom she represents, have a better entitlement to the Award than their mother, [REDACTED 2]. Accordingly, the Claimant and her sisters are each entitled to one-third 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 her claims 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
26 November 2008