

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] and [REDACTED 3]
represented by [REDACTED]

in re Account of Joseph Metzker

Claim Number: 501095/AC

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published account of Joseph Metzker (the “Account Owner”), over which Marie Metzker and Otto Metzker (the “Power of Attorney Holders”) held power of attorney, 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 identifying the Account Owner as his maternal uncle, Joseph (Josef) Metzker, who was born on 11 February 1870 in Votitz, Czechoslovakia (now Votice, Czech Republic), and was married to Marie Roubitschek. According to the Claimant, his uncle, who was Jewish, was part of a large family, and his sister, [REDACTED], was the Claimant’s mother. The Claimant indicated that his uncle had six children with his wife, including a son named Otto Metzker and a son named [REDACTED]. In a telephone conversation with the CRT on 6 January 2005, the Claimant indicated that his uncle owned his own clothing manufacturing business in Prague, Czechoslovakia, where he and his family resided. The Claimant stated that his uncle’s financial assets, real property, and business were all confiscated by the Nazis, and that Joseph and Marie Metzker, their son Otto Metzker, and possibly other members of their family, were deported to concentration camps, where his uncle and Otto Metzker perished. According to the Claimant, his uncle’s wife survived the Second World War, and later unsuccessfully attempted to file suit for the return of the family’s assets. The Claimant indicated that to his knowledge, his uncle’s family remained in Czechoslovakia after the Second World War, and that, despite having searched for survivors, he does not know of any surviving family members other than those he represents in this claim.

The Claimant submitted documents in support of his claim, including: 1) an excerpt from the register of births of the Jewish community of Votitz, indicating that Josef Metzker was born on 11 February 1870 in Votitz, Czechoslovakia, that he was one of seven children, that he had a sister named [REDACTED], who was born on 5 April 1878; 2) an excerpt from the register of births of the Jewish Community of Prague, indicating that Josef Metzker was a merchant from Votitz, Czechoslovakia, that he was married to Marie Roubitschek, that they had six children, including Otto Metzker, who was born on 17 September 1898, and [REDACTED], who was born on 17 August 1901, and that at least one of the children was born in Prague, Czechoslovakia; 3) a copy of his uncle's firm's trademark, bearing the initials J and M; 4) a copy of his own birth certificate, stating that he was born on 27 June 1916, that his parents were [REDACTED] and [REDACTED], and that his mother was born in Prague; and 5) a copy of his own baptism certificate, showing that [REDACTED] was born on 27 June 1916 in Chicago, Illinois, the United States, and that his parents were [REDACTED] and [REDACTED].

The Claimant represents his son, [REDACTED 3], born on 21 January 1942, and his daughter, [REDACTED 2], née [REDACTED], born on 3 December 1940, both in Chicago.

Information Available in the Bank's Records

The Bank's records consist of a copy of a letter sent to the Bank by the Account Owner's son, [REDACTED], on 1 June 1967, a power of attorney form dated 30 October 1936, and printouts from the Bank's database. According to these records, the Account Owner was *Herr* (Mr.) Joseph Metzker and the Power of Attorney Holders were *Frau* (Mrs.) Marie Metzker, the Account Owner's wife, and *Herr* (Mr.) Otto Metzker. These records indicate that the Account Owner resided at Mustek 5 in Prague, Czechoslovakia, and that the Power of Attorney Holders resided at na Valech 287 in Prague. The Bank's records indicate that the Account Owner held an account, the type of which is not indicated. According to these records, the Account Owner's son, [REDACTED], who resided at 10308 Missouri Avenue in Los Angeles, California, United States, wrote to the Bank on 1 June 1967. In his letter, contained in the Bank's records, he requested the return of an account held by his father's firm, *J. Metzker*, which manufactured neckties in Prague prior to the Second World War, citing an account balance of 309.80 Swiss Francs ("SF") for the account, stating that he only knew of the account in 1967 because he had been living in the United States since 1941; he also stated that he was his father's sole heir. The Bank's records indicate that the Bank determined that no such account existed as of the date of the inquiry. The Bank's records further indicate that the Bank replied to [REDACTED]'s letter, but the Bank's response is not available.

The Bank's records do not show when the account at issue was closed, or to whom it was paid. 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 this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holders or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's uncle's name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant also identified the Power of Attorney Holders as his uncle's wife and son, whose names match the published names of the Power of Attorney Holders. In addition, the Claimant identified the relationship between the Account Owner and Power of Attorney Holder Marie Metzker, the Account Owner's occupation, the type of business owned by the Account Owner, and that the Account Owner had a son named [REDACTED], which matches unpublished information about the Account Owner contained in the Bank's records.

In support of his claim, the Claimant submitted documents, including an excerpt from the register of births of the Jewish community of Votice, and an excerpt from the register of births of the Jewish community of Prague, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Otto Metzker, and indicates that his date of birth was 17 September 1898, which matches the information about Power of Attorney Holder Otto Metzker provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. The CRT also notes that the name Joseph Metzker appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the "ICEP List"). Finally, the CRT notes that the other claims to this account were disconfirmed because those claimants provided a different country of residence or spouse's name than the country of residence or spouse's name of the Account Owner. The CRT notes that the Claimant is unaware of the fate of four of Joseph Metzker's six children, and that apart from [REDACTED], one of Joseph Metzker's sons, who wrote to the Bank in 1967, that no claims to this account were made by another other members of Joseph Metzker's family.

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, that his assets and property were confiscated, that he and his son were imprisoned and murdered by the Nazis in concentration camps, and that his wife was imprisoned in a concentration camp. As noted above, a person named Otto Metzker was included in the CRT's database of victims.

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, demonstrating that the Account Owner was the Claimant's uncle. These documents include an excerpt from the register of births of the Jewish community

of Notice, indicating that Josef Metzker had a sister named [REDACTED]; a copy of his own birth certificate, indicating that his mother's name was [REDACTED]; and a copy of his own baptism certificate, stating that his mother's name was [REDACTED]. There is no information to indicate that the Account Owner has surviving heirs other than the parties whom the Claimant represents.

The Issue of Who Received the Proceeds

Given that the Account Owner perished in a concentration camp; that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; that the Account Owner's heirs may have resided in a Communist country in Eastern Europe after the Second World War; that the Account Owner's heirs were not 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), (i) 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, the Power of Attorney Holders, or their 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 uncle, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holders nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one account of unknown type. The CRT notes that the Account Owner's son wrote to the Bank in 1967, indicating that he believed the account had a balance of SF 309.80. However, given that there is nothing in the Bank's records to indicate the circumstances under which the Account Owner's son determined this balance amount, and that there is no corresponding balance date, the CRT is treating this account as an account of unknown value. 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 an account of unknown type was SF 3,950.00. 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 49,375.00.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, the Claimant is representing his children, [REDACTED 3] and [REDACTED 2]. Accordingly, the Claimant is solely entitled to 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 his claim 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
9 March 2005