

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]
represented by [REDACTED]

in re Account of Nelly Mosbacher and Max Mosberg

Claim Number: 773665/KG¹

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (the “Claimant”) to the account of Kurt Mosbacher.² This Award is to the published account of Nelly Mosbacher (“Account Owner Mosbacher”) and Max Mosberg (“Account Owner Mosberg”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).³

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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted an Initial Questionnaire (“IQ”) with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her father, Dr. [REDACTED]. Following the Claimant’s death on 1 March 2004, the Claimant’s children, [REDACTED] and [REDACTED]

¹ [REDACTED 1] did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered ENG 0130 016, 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 Initial Questionnaires 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 773665.

² In a separate decision, the CRT awarded the account of Kurt Mosbacher and Hans Clemens von Francken-Sierstorff to the Estate of the Claimant. See *In re Account of Kurt Mosbacher and Hans Clemens von Francken-Sierstorff* (approved on 31 August 2005).

³ 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”), Nelly Mosbacher and Max Mosberg are each indicated as having one account. Upon careful review, the CRT has concluded that the Bank’s record evidences the existence of only one account, which was jointly owned by Nelly Mosbacher and Max Mosberg.

2], were appointed as executors of her estate and provided the CRT with additional information and documents about the Claimant's claim. [REDACTED] identified Account Owner Mosbacher as the Claimant's mother, Nelly (Cornelia) Mosbacher, née Pauson, who was born on 25 October 1893 in Munich, Germany, and was married to [REDACTED] on 18 January 1920. [REDACTED] indicated that, at some time during the 1930s, his mother, the Claimant, was sent to live in Cambridge, England with her cousins, while her parents, Nelly and [REDACTED], who were Jewish, remained in Munich. [REDACTED] indicated that his grandfather, [REDACTED], was a lawyer. [REDACTED] was not aware under what exact circumstances Nelly and [REDACTED] left Germany, but indicated that he believed they fled to the United States during the late 1930s. Finally, [REDACTED] indicated that [REDACTED] died in 1973 in Los Angeles, California, the United States, and that Nelly Mosbacher died in 1976 or 1977, also in Los Angeles.

[REDACTED] submitted documents in support of his mother's claim, including the Claimant's birth certificate, indicating that she was born in Munich on 5 August 1923, to Nelly Mosbacher, née Pauson, and Dr. [REDACTED]; Nelly Mosbacher's German passport, which shows that she resided in Munich, and that she fled Germany in early 1939; the Claimant's last will, dated 6 December 1993, which bequeaths her trust estate in equal shares to her children, [REDACTED] and [REDACTED 2]; and the Claimant's death certificate, indicating that she passed away on 1 March 2004, that her parents were [REDACTED] and Nellie Mosbacher, née Pauson, and that [REDACTED] was her son. The Claimant indicated that she was born on 5 August 1923 in Munich.

The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Graf Clemens von Francken-Sierstorpf, whose name was published by the Swiss Bankers Association in July 1997, and over whose account [REDACTED] held power of attorney (the "CRT I Claim").⁴ During the course of the CRT I Arbitration, the Claimant provided CRT I with information about her father, Dr. [REDACTED], who was married to Nelly Mosbacher. According to the information provided by the Claimant in relation to her CRT I Claim, [REDACTED] resided at Pienzenauerstrasse 2 in Munich until November 1938, when he was arrested and deported to the Dachau concentration camp. The Claimant stated that her father was freed in December of the same year, whereupon he fled to England, where he arrived on 16 January 1939, via Switzerland and France. The Claimant further stated in her CRT I Claim that she and her parents emigrated to the United States in December 1939.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, Account Owner Mosberg was Max Mosberg, who resided in Bielefeld, Germany. The Bank's record indicates that Account Owner Mosberg held a custody account, numbered L39837. In addition, 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") indicated that Account Owner Mosberg jointly held the account with Account Owner Mosbacher. The auditors further indicated that Account Owner Mosbacher

was Nelly Mosbacher, who resided in Germany. The Bank's record further indicates that the account was closed on 26 March 1937. The amount in the account on the date of its closure is unknown. There is no evidence in the Bank's record that the Account Owners or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant's mother's name and country of residence match the published name and country of residence of Account Owner Mosbacher.

In support of her claim, the Claimant and her son submitted documents, including the Claimant's birth and death certificates, indicating that her parents were Nelly and [REDACTED]; and Nelly Mosbacher's German passport, which indicates that she resided in Munich. These documents provide independent verification that the person who is claimed to be Account Owner Mosbacher had the same name and resided in the same country identified by the auditors as the name and country of residence of Account Owner Mosbacher.

The CRT notes that the name Nelly Mosbacher 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 CRT further notes that the Claimant did not identify Account Owner Mosberg. However, given that the Claimant's son, [REDACTED], who provided the CRT with further information about his mother's claim, was not born until after the Second World War, and may therefore not have full knowledge about his grandmother's family members and associates, and given that Account Owner Mosberg, who neither shares Account Owner Mosbacher's married surname nor her maiden name, does not appear to have been a close family member, the CRT determines that this does not undermine the Claimant's identification of Account Owner Mosbacher. Finally, the CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified Account Owner Mosbacher.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Mosbacher was a Victim of Nazi Persecution. The Claimant stated that Account Owner Mosbacher was Jewish, and that she lived in Nazi Germany until she fled to the United States during the late 1930s. The CRT notes that the Claimant also indicated that Account Owner Mosbacher's husband, who was also Jewish, was imprisoned at Dachau in 1938.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to Account Owner Mosbacher by submitting specific information and documents, demonstrating that Account Owner Mosbacher was the Claimant's mother. These documents include the Claimant's birth and death certificates,

indicating that her parents were Nelly and [REDACTED]. There is no information to indicate that Account Owner Mosbacher has surviving heirs, other than her grandchildren, [REDACTED] and [REDACTED 2], who are representing the Claimant's estate.

The Issue of Who Received the Proceeds

Given that the account was closed on 26 March 1937, when Account Owner Mosbacher resided in Nazi Germany; that her husband was held at the Dachau concentration camp, and that she and her family subsequently fled the country; that there is no record of the payment of the Account Owners' account to them; that the Account Owners and their heirs would not have been able to obtain information about their 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 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 Owners 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 Account Owner Mosbacher was her mother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owners held a custody account. 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 13,000.00 Swiss Francs ("SF"). 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 162,500.00.

Division of the Award

According to Article 25(2) of the Rules, in cases where a joint account is claimed by relatives of only one or some of the joint account owners, it shall be presumed that the account was owned as a whole in equal shares by the account owners whose shares of the account have been claimed. Accordingly, the CRT determines that the Claimant is entitled to the entire 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 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
29 March 2006