

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Marcelo Walter Moses De Beer
also acting on behalf of Matilde Moses De Beer Weisner and Sonia Berta Moses De Beer

in re Accounts of Karl Moses

Claim Number: 212327/MBC

Award Amount: 42,250.00 Swiss Francs

This Certified Award is based upon the claim of Marcelo Walter Moses De Beer (the “Claimant”) to the accounts of Karl Moses (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

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 identifying the Account Owner as his father, Karl Moses (Weisner), who was born on 17 March 1906 in Glan-Münchweiler, Germany, and was married to Matilde Moses De Beer Weisner, on 11 February 1942 in Ñuñao, Santiago, Chile. The Claimant further indicated that his father was the son of Max Moses and Berta Moses, née Wälder, and that he resided in Frankfurt am Main, Germany, until 1938. The Claimant stated that his father, who was Jewish, was a sales representative for a German company that produced sewing supplies. The Claimant further stated that his father traveled frequently to Switzerland and, in particular, to Zurich. The Claimant indicated that his father fled Germany in 1938 to Milan, Italy. According to the Claimant, in 1939 his father was forced to leave Italy for Chile, where he resided until his death on 29 May 1996 in Valparaíso, Chile.

On 3 September 2002 the Claimant submitted to the CRT a deposit slip from the Bank’s branch in Zurich. The deposit slip, on the Bank’s letterhead and dated 28 February 1939, confirms the deposit of 1,550.00 Swiss Francs in a demand deposit account owned by Mr. Karl Moses of via Tedino 46, Milan by Mr. Hugo Bollag of Stampfenbachstrasse 75, Zurich and references the Bank’s previous letter of 22 February 1939 in which the Bank requested further instructions. In a telephone conversation with the CRT, the Claimant indicated that Mr. Bollag may have been a friend of his father.

The Claimant indicated that he was born on 12 July 1948 in Valparaíso. The Claimant is representing his mother, Matilde Moses De Beer Weisner, who was born on 18 May 1921 in

Klerfeld, Germany, and his sister, Sonia Berta Moses De Beer, who was born on 21 May 1943 in Santiago. In support of his claim, the Claimant submitted copies of his father's high school diploma; driver's license; 1936 German identification card; 1938 Italian travel permit; and Chilean visa, issued in Italy on 23 February 1939 and signed "Karl Moses." The Claimant also submitted copies of his parents' marriage certificate, dated 1942, his mother's birth certificate, his father's death certificate, and a court decision regarding the execution of his father's will.

Information Available in the Bank's Records

The Bank's records consist of a customer card and a safe deposit box account card. According to these records, the Account Owner was Karl Moses, who resided in Milan, Italy. The Bank's records indicate that the Account Owner held a safe deposit box, numbered S 852. The safe deposit box was rented on 4 September 1937 and its rental was terminated on 10 February 1940. The Bank's records do not show who closed the account, nor do these records indicate the contents of the safe deposit box account or their value. There is no evidence in the Bank's records that the Account Owner or his heirs closed the account and received the proceeds themselves. 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 (the "ICEP Investigation") did not provide the CRT with any bank records pertaining to the demand deposit account indicated on the deposit slip that was submitted to the CRT by the Claimant.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father's name and country of residence match the published name and country of residence of the Account Owner. The Claimant identified his father's city of residence, which matches unpublished information about the Account Owner contained in the Bank's records. Furthermore, the Claimant submitted a deposit slip for a demand deposit account held by his father at the Zurich branch of the Bank, indicating an address in Milan for Karl Moses. The information regarding the name and branch of the Bank contained in the deposit slip submitted by the Claimant matches unpublished information regarding the name and branch of the Bank at which the safe deposit box was held. In support of his claim, the Claimant submitted copies of his father's high school diploma, driver's license, German identification card, Italian travel permit, and Chilean visa application. The Claimant also submitted copies of his parents' marriage certificate, dated 1942, his father's death certificate, and a court decision regarding the execution of his father's will. 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 the Account Owner.

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 and that he was forced to flee Europe due to Nazi persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents, including a court decision regarding the execution of his father's will, demonstrating that he is the son of the Account Owner. The CRT further notes that the Claimant identified unpublished information about the Account Owner's city of residence (Milan) and the name and branch of the Bank contained in the Bank's records. There is no information to indicate that the Account Owner has other surviving heirs than the Claimant and his relatives whom he represents.

The Issue of Who Received the Proceeds

With respect to the safe deposit box account, given that the safe deposit rental contract was terminated on 10 February 1940; that the Account Owner fled from Italy to Chile in 1939 due to Nazi persecution and that he remained in Chile until his death in 1996, indicating that it is not plausible that the Account Owner terminated his safe deposit box contract at his own initiative; that 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 inquiries by account owners because of the Bank's concern regarding double liability; that there is no record of the payment of the Account Owner's account to him; 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.

With respect to the demand deposit account, Article 22(3) of the Rules provides that the CRT may make an Award in a case in which the Claimant plausibly establishes a right to an Account that falls within the CRT's jurisdiction but which, for whatever reasons, was not identified during the ICEP Investigation. In this case, the Claimant submitted a copy of a deposit slip, issued by the Bank's branch in Zurich on the Bank's letterhead and dated 28 February 1939, confirming the deposit of 1,550.00 Swiss Francs in a demand deposit account owned by Mr. Karl Moses of via Tedino 46, Milan by Mr. Hugo Bollag of Stampfenbachstrasse 75, Zurich and referencing the Bank's previous letter of 22 February 1939 in which the Bank requested further instructions. The deposit slip does not indicate whether the demand deposit account was closed, or to whom it was paid, nor does this record indicate the total value of this account. There is no evidence that the Account Owner or his heirs closed this account and received the proceeds themselves.

First, given that the account was held at the Bank, which is a party to the Settlement Agreement; and given that the account was open during the relevant period in 1939, the CRT concludes that the demand deposit account falls within the CRT's jurisdiction.

Second, the CRT notes that the information contained in the deposit slip pertaining to the Account Owner's name and city of residence as well as the Bank's name and branch matches the information about the Account Owner and the safe deposit account contained in the Bank's records. The CRT also notes that the information contained in the deposit slip pertaining to the Account Owner's city of residence, the Bank's name, and the Bank's branch match unpublished information about the Account Owner and the safe deposit account contained in the Bank's records. Further, in a telephone conversation with the CRT, the Claimant explained that Mr. Bollag may have been a friend of his father. Therefore, the CRT concludes that it is plausible that the Account Owner held a demand deposit account at the Bank.

Third, given that the Account Owner fled from Italy to Chile in 1939 due to Nazi persecution and that he remained in Chile until his death in 1996, that 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 inquiries by account owners because of the Bank's concern regarding double liability, and given that there is no record of the payment of the Account Owner's account to him, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs.

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 father, and that relationship justifies an Award. Finally, 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 safe deposit box account and one demand deposit account. With respect to the safe deposit box, 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 safe deposit box account was 1,240.00 Swiss Francs.

With respect to the demand deposit account, the deposit slip submitted by the Claimant indicates that an amount of 1,550.00 Swiss Francs was deposited in the demand deposit account on 28 February 1939; however, there is no indication of the total value of this account in either 1939 or in 1945. As noted above, 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 demand deposit account was 2,140.00 Swiss Francs. Thus, the total 1945 average value of the two accounts at issue was 3,380.00 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 a total award amount of 42,250.00 Swiss Francs.

Division of the Award

According to Article 23(1)(b) of the Rules, if the Account Owner's spouse and descendants have submitted a claim, the spouse shall receive one-half of the account and any descendants who have submitted a claim shall receive the other half in equal shares by representation. In this case, the Claimant is representing his mother, who is the Account Owner's spouse, and his sister. Accordingly, the Claimant's mother shall receive one-half of the total award amount and the Claimant and his sister each shall receive one-quarter 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 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
31 December 2003