

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Charlotte Schlesinger and Julie Schlesinger-Kauffmann

Claim Numbers: 750890/AC;¹ 750891/AC; 750893/AC; 785741/AC;² 785742/AC; 789063/AC³

Award Amount: 64,875.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the accounts of Esta Levy, Vally Schlesinger, née Levy, Kurt Brienitzer, and Charlotte Brienitzer, née Schlesinger.⁴ This Award is to the published accounts of Charlotte Schlesinger (“Account Owner Schlesinger”) and Julie Schlesinger-Kauffmann (“Account Owner Schlesinger-Kauffmann”) (together the “Account Owners”) at the Geneva branch of the [REDACTED] (the “Bank”).⁵

¹ Claimant Walter Bernard (the “Claimant”) did not submit a CRT Claim Form. However, in 1998 he submitted ATAG Ernst & Young claim forms (“ATAG Forms”), numbered C-BSL-1-80-203-112-853, C-BSL-1-80-203-114-902, and C-BSL-1-80-203-121-123, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Forms were forwarded to the CRT and have been assigned Claim Numbers 750890, 750891, and 750893, respectively.

² In addition to his ATAG Forms, in 1999 the Claimant submitted three Initial Questionnaire (“IQs”), numbered ENG-0613141, ENG-0613142, and ENG-0781027, 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 785741, 785742, and 789063, respectively.

³ The Claimant submitted one additional claim, which is registered under the Claim Number 750892. The CRT will treat this claim in a separate determination.

⁴ The CRT did not locate an account belonging to Esta Levy, Vally Schlesinger, née Levy, or Kurt Brienitzer in the Account History Database prepared pursuant to the investigation of ICEP (the “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules.

⁵ The CRT notes that 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”), *Mlle.* (Miss) Charlotte Schlesinger, *Mme.* (Mrs.) Schlesinger-Kauffmann, and Julie Schlesinger-Kauffmann were separately listed as holding a total of five accounts. Upon careful examination of the Bank’s records, the CRT determines that there were a total of two accounts.

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 an Initial Questionnaire and ATAG Ernst & Young claim forms (“ATAG Forms”) identifying Account Owner Schlesinger as his mother, Charlotte Brienitzer, née Schlesinger. In a telephone conversation on 22 February 2007, the Claimant stated that his mother, who was Jewish, had two siblings: [REDACTED] and [REDACTED]. He stated that his mother was born in Rosenberg, Germany (now Olesno, Poland) on 9 April 1898, and that she married his father, [REDACTED] in 1922. The Claimant explained that his parents had two children: the Claimant and his brother, [REDACTED], and that the family resided briefly in Breslau, Germany (now Wroclaw, Poland), where the Claimant was born in 1925, before moving to Rosenberg, and subsequently to Berlin, Germany. According to the Claimant, he and his brother were sent away to a Jesuit school in southern Germany in approximately 1937, and that in July 1939, they escaped to England on a children’s transport (*Kindertransport*). The Claimant indicated that his mother performed forced labor in Berlin before being deported to Auschwitz, where she perished in 1943. In a letter dated 5 March 2007, the Claimant indicated that his grandmother, [REDACTED], also performed forced labor and then perished in Auschwitz. The Claimant stated that he believes that his mother held a safe deposit box at a Swiss bank, and that she may have used her maiden name when opening the account. The Claimant explained that he was advised to change his surname from [REDACTED] to [REDACTED] when he was in the British military, to avoid the discovery of his Jewish background, were he to be captured by German troops. According to information provided by the Claimant, his father passed away in 1950, his brother has also died, and the Claimant and his family have long since lost touch with his mother’s family members, including his uncle [REDACTED], whom the Claimant indicated may have been married, but whose spouse’s name is unknown to the Claimant. The Claimant stated that he is the only surviving member of his family.

The Claimant submitted copies of: (1) his own birth certificate, indicating that [REDACTED] was born on 14 April 1925 in Breslau, and that his parents were [REDACTED] and Charlotte Schlesinger; (2) a copy of his own German passport, dated in 1939, indicating that Walter [REDACTED] was born on 14 April 1925, that he resided in Rosenberg, and that he was Jewish; and (3) a name change certificate, indicating that [REDACTED] was born on 14 April 1925 in Breslau, and that he changed his name to [REDACTED] in January 1948.

The Claimant indicated that he was born on 14 April 1925 in Breslau.

Information Available in the Bank’s Record

The Bank’s record consists of a protocol for the forcible opening of a safe deposit box. Additionally, 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”) included a list of accounts that were included in the 1945 freeze of assets held in Switzerland by the citizens of Germany and the territories incorporated into the Third Reich (the “1945 Freeze”), and subsequently closed.

According to these records, the Account Owners were *Mlle.* (Miss) Charlotte Schlesinger and *Mme.* (Mrs.) Julie Schlesinger, née Kauffmann (Kaufmann), who resided in Germany. The Bank’s record and the list of accounts included in the 1945 Freeze indicate that the Account Owners held an account, the type of which is not indicated, which had a balance of 2,000.00 Swiss Francs (“SF”) as of 17 February 1945. These records indicate that the account was frozen in the 1945 Freeze, and was subsequently closed. There is no evidence in these records that the Account Owners or their heirs closed the account and received the proceeds themselves.

Additionally, these records indicate that Account Owner Schlesinger-Kauffmann held a safe deposit box, numbered 519, over which Account Owner Schlesinger held power of attorney. These records indicate that the safe deposit box was opened on 10 June 1940, and that Account Owner Schlesinger-Kauffmann subsequently departed for the United States, and that her contact information was in care of *Intern. Labor Organization*, 734 Jackson Place, Washington, D.C., United States. According to these records, the Bank forced the safe deposit box open on 27 February 1946, and listed its contents as a silver table service (“*un service de table en argent*”). These records indicate that the safe deposit box was frozen in the 1945 Freeze, and subsequently closed. There is no evidence in these records that Account Owner Schlesinger-Kauffmann, her heirs, or Account Owner Schlesinger, as power of attorney holder to this account, closed the safe and received the contents 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 four claims of the Claimant in one proceeding.

Identification of the Account Owners

The Claimant’s mother’s maiden name and country of residence match the published name and country of residence of Account Owner Schlesinger. In support of his claim, the Claimant submitted documents, including his own birth certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank’s record as the name of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Charlotte Brienitzer, née Schlesinger, and indicates that she was born in 1898 in Rosenberg, and that she was deported from Berlin to Auschwitz in 1943, which matches

the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the name Charlotte Schlesinger 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").

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999 and ATAG Ernst & Young claim forms in 1998, asserting his entitlement to a Swiss bank account owned by Charlotte Brienitzer, née Schlesinger, prior to the publication of the ICEP List. This indicates that the Claimant has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his 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 the other claims to these accounts were disconfirmed because those claimants provided a different country of residence or maiden name than the country of residence or maiden names of the Account Owners. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified Account Owner Schlesinger.

The CRT notes that the Claimant did not identify Account Owner Schlesinger-Kauffmann. However, the CRT notes that the Claimant was a minor for much of the Second World War, and that he lived away from home starting in 1937, and fled to England in 1939, before the accounts were opened, and therefore determines that it is plausible that the Claimant would not know the names of all of his mother's extended family members, and that the Claimant's failure to identify Account Owner Schlesinger-Kauffmann does not adversely affect the plausibility of his identification of Account Owner Schlesinger.

Status of Account Owner Schlesinger as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Schlesinger was a Victim of Nazi Persecution. The Claimant stated that Account Owner Schlesinger was Jewish, and that she conducted forced labor in Berlin before being deported to Auschwitz, where she perished.

As noted above, a person named Charlotte Brienitzer, née Schlesinger, was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to Account Owner Schlesinger by submitting specific information and documents, demonstrating that Account Owner Schlesinger was the Claimant's mother. These documents include his own birth certificate, indicating that [REDACTED]'s mother was Charlotte Schlesinger. There is no information to indicate that Account Owner Schlesinger has other surviving heirs.

The CRT further notes that the Claimant filed an Initial Questionnaire with the Court in 1999, identifying the relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List; and that the Claimant also identified information which matches information contained in the Yad Vashem records. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his Claim Form.

The CRT notes that the Claimant did not indicate that he is related to Account Owner Schlesinger-Kauffmann. However, given that the Bank's record indicates that Account Owner Schlesinger-Kauffmann's married name was the same as Account Owner Schlesinger's maiden name, and given that they both resided in Germany and held a joint account, the CRT concludes that it is plausible that the Account Owners were related, and that by plausibly demonstrating that he is related to Account Owner Schlesinger, the Claimant has also plausibly demonstrated that he is related to Account Owner Schlesinger-Kauffmann.

The Issue of Who Received the Proceeds

The Bank's record and records regarding the 1945 Freeze indicate that the accounts were included in the 1945 Freeze and subsequently closed.

Given that Account Owner Schlesinger resided in Nazi Germany until her deportation to Auschwitz in 1943; that the accounts were frozen in the 1945 Freeze; that there is no record of the payment of the Account Owners' accounts to them nor any record of a date of closure of the accounts; that the Account Owners and their heirs would not have been able to obtain information about their accounts 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 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 claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner Schlesinger was his mother, and Account Owner Schlesinger-Kauffmann was his relative, and those relationships justify 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 accounts.

Amount of the Award

In this case, the Account Owners held one safe deposit box and one account of unknown type. 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 was SF 1,240.00. 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 an award amount of SF 15,500.00.

With respect to the account of unknown type, records regarding the 1945 Freeze indicate that the value of the account as of 17 February 1945 was SF 2,000.00. 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 account of unknown type in 1945. Consequently, the adjusted balance of the account at issue is SF 2,015.00. According to Article 29 of the Rules, if the amount in an account of unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. The current value of the amount of the award 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 an award amount of SF 49,375.00.

Consequently, the total award amount in this case is SF 64,875.00.

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
23 April 2007