

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Bernhard Schön

Claim Number: 214530/MBC

Award Amount: 69,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published accounts of Bernhard Schön (the “Account Owner”) 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 and an Initial Questionnaire identifying the Account Owner as her maternal uncle, Bernhard Schön, who was born in approximately 1895 in Brünn (Brno), Czechoslovakia, and was married to [REDACTED]. The Claimant stated that the couple did not have any children. The Claimant indicated that Bernhard Schön was the brother of her mother, [REDACTED], née [REDACTED], and that he and the Claimant’s father, [REDACTED], were brothers-in-law and business partners who lived in Vienna, Austria. The Claimant stated that her uncle and father jointly owned retail fashion stores named *Breitmann-Schön* in Vienna, and that the partnership still exists today under the name *Gazelle*. The Claimant further stated that her father and her uncle jointly deposited assets into a Swiss bank account prior to the Second World War. The Claimant indicated that her entire family fled Austria in 1938, after Germany annexed Austria (the “*Anschluss*”), but she was unable to provide the exact date when her family fled Austria. The Claimant stated that her family initially attempted to flee via Switzerland, but that they were denied entry. The Claimant further stated that her family then fled to Czechoslovakia and finally to Poland, from where they were able to obtain passage on the last boat bound for the United Kingdom. The Claimant stated that her uncle later immigrated to Australia on an unknown date, where he died in the 1980s. The Claimant indicated that her mother died on 27 January 1982 in London, the United Kingdom, and that her father died on 17 April 1959 in London. In support of her claim, the Claimant submitted her mother’s marriage and death certificates, indicating that her mother’s maiden name was [REDACTED] and that she resided in Vienna; and her own birth certificate, indicating

that she is the daughter of [REDACTED] and [REDACTED]. The Claimant indicated that she was born on 6 May 1923 in Vienna.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the sole Account Owner was Bernhard Schön. The Bank's record indicates that the Account Owner held five accounts: two demand deposit accounts in Swiss Francs, two demand deposit accounts in foreign currency, and a safe deposit box. The Bank's record indicates that the two demand deposit accounts in Swiss Francs were opened on 10 August 1933. One of these accounts was transferred to a foreign currency demand deposit account on 20 April 1934, and the other demand deposit account was closed on 10 April 1938. The Bank's record also indicates that one of the demand deposit accounts in foreign currency was closed on 30 June 1936, and that the other demand deposit account in foreign currency was closed on 10 April 1938. The Bank's record does not show if or when the safe deposit box was closed. 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. The Bank's record does not indicate who closed the accounts at issue or to whom they were paid, nor does this record indicate the value of these accounts.

The CRT's Analysis

Identification of the Account Owner

The Claimant's uncle's name matches the published name of the Account Owner. The Claimant stated that her uncle resided in Vienna, which matches unpublished information about the Account Owner's city of residence contained in the Bank's record. The CRT notes that the Bank's record does not contain any specific information about the Account Owner other than his name and city and country of residence. In addition, the Claimant's mother's marriage certificate indicates that her mother's maiden name was [REDACTED].

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Bernhard Schön, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her claim not simply on the fact that a person identified on the ICEP List as owning a Swiss bank account bears the same name as her relative's, 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 these accounts. Taking all 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 was forced to flee Austria in 1938 to avoid Nazi persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information about her uncle, her own birth certificate and her mother's marriage certificate, demonstrating that the Account Owner was the brother of the Claimant's mother. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

In this case, the Account Owner held five accounts, two demand deposit accounts in Swiss Francs, two demand deposit accounts in foreign currency, and one safe deposit box.

With regard to the demand deposit account in Swiss Francs and the demand deposit account in foreign currency, both of which were closed on 10 April 1938, given the existence of Nazi confiscatory legislation; that the Claimant stated that the Account Owner was forced to flee Austria after the *Anschluss*; that the Nazis had, at the time of the *Anschluss*, immediately begun a major effort to confiscate the assets of the Jewish residents of Austria, and the CRT has found numerous such confiscations of Swiss bank accounts occurred at this time; that the Account Owner and his family were denied entry into Switzerland during their attempt to flee; that there is no record of the payment of the Account Owner's accounts to him; that the Account Owners and his heirs would not have been able to obtain information about his 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 (a), (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 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 regard to the safe deposit account that was closed on an unknown date, given the circumstances identified above and the application of Presumptions (h) and (j), as provided in Article 28 of the Rules, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs.

With regard to the other demand deposit account in Swiss Francs, the Bank's record indicates that the assets in that account were transferred to one of the Account Owner's demand deposit accounts in foreign currency on 20 April 1934. The CRT therefore concludes that the Account Owner received the proceeds of this account.

With regard to the other foreign currency demand deposit account, the Bank's record indicates that the account was closed on 30 June 1936, prior to the *Anschluss*. Accordingly, the CRT has concluded that the Account Owner or his heirs received the proceeds of that account.

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 uncle, 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 two demand deposit accounts and one 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 present 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. Based on the ICEP Investigation, in 1945 the average value of a safe deposit box was 1,240.00 Swiss Francs. Consequently, the total historical value of the two demand deposit accounts and the safe deposit box is 5,520.00 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 69,000.00 Swiss Francs.

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
September 15, 2003