

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1] and to Claimant [REDACTED 2]

in re Accounts of Emmanuel Schotten

Claim Number: 210171/ES; ENG-0002 037¹

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED], née [REDACTED], (“Claimant [REDACTED 1]”) and [REDACTED] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Emmanuel Schotten (the “Account Owner”) at 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

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her father, Emmanuel Schotten, who was born on 7 January 1888 in Mattersburg, Austria-Hungary, and was married to Ida [REDACTED] on 1 August 1914 in Austria-Hungary. Claimant [REDACTED 1] stated that her father, who was Jewish, was a businessman and the owner of a wholesale china and glass business. Claimant [REDACTED 1] stated that her parents resided at Starcevicev Trg 4 in Zagreb, Croatia, until 1944, when they fled to Rab, Yugoslavia, which was under Italian occupation at that time. Claimant [REDACTED 1] stated that her parents were later deported to Auschwitz, where they both perished. Claimant [REDACTED 1] identified Claimant [REDACTED 2] as her brother. In support of her claim, Claimant [REDACTED 1] submitted a letter, dated 4 July 1945, from Dr. Louis Weisz, a neighbor of the family, in which he stated that the Claimant’s brother was detained in an internment camp in Zeideln, Switzerland; her birth certificate and her marriage certificate, all identifying Emmanuel and Ida Schotten from Zagreb, Croatia, as her parents.

¹ Claimant [REDACTED 2] did not submit a Claim Form to the Claims Resolution Tribunal (the “CRT”). However, in 1999 he did submit an Initial Questionnaire with the Court in the United States. 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).

Claimant [REDACTED 1] indicated that she was born on 21 May 1919 in Zagreb. Claimant [REDACTED 1] previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her husband, [REDACTED], who was born on 22 July 1914 and died on 6 June 1993. In the Initial Questionnaire, Claimant [REDACTED 1] stated that her father, who was from Zagreb, Croatia, discussed depositing money in a Swiss bank account, but that she was a child at the time and was not involved in discussions about her family's finances.

Claimant [REDACTED 2] submitted an Initial Questionnaire with the Court in 1999, identifying the Account Owner as his father, Emmanuel Schotten, who resided at Starcevicev Trg 4 in Zagreb. Claimant [REDACTED 2] indicated that either his father or his mother, Ida Schotten, deposited monies in Switzerland. Claimant [REDACTED 2] stated that he tried to enter Switzerland three times, but that he was denied entry each time by the Swiss. Claimant [REDACTED 2] stated that on his fourth attempt, in September 1943, he succeeded in entering Switzerland, near Locarno, but was apprehended and was sent to holding and work camps (“*Aufnahmslager*” and “*Arbeitslager*”) in Adliswill near Zurich. In support of his Initial Questionnaire, Claimant [REDACTED 2] submitted a certificate from his internment in Switzerland, demonstrating that he entered the camp on 7 December 1943. Claimant [REDACTED 2] indicated that his last name was previously spelled “[REDACTED].” Claimant [REDACTED 2] further indicated that he was born on 9 February 1915 in Zagreb.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form dated 22 August 1929 in Zagreb, Croatia, and printouts from the Bank's database. According to these records, the Account Owner was Emmanuel Schotten and the Power of Attorney Holder was *Frau* (Mrs.) Ida Schotten, who both resided at Starcevicev Trg 4 in Zagreb. The Bank's records indicate that the Account Owner held a custody account² and an account of unknown type.

The account of unknown type was closed on 4 March 1939, unknown to whom. The amount in the account on the date of its closure is unknown. The Bank's records do not show when the custody account was closed, or to whom it was paid. The amount in the custody account on the date of its closure is unknown. 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 the custody 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 records that the Account Owner, the Power of Attorney Holder or their heirs closed the accounts and received the proceeds themselves.

² The Bank's records contain a power of attorney form that references a “*Titeldepot*,” a type of custody account.

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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their parents' names match the published names of the Account Owner and the Power of Attorney Holder. The Claimants both identified their parents' street address as Starcevicev Trg 4, Zagreb, which matches unpublished information about the Account Owner contained in the Bank's records. Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Emmanuel Schotten and indicates that his place of residence was Zagreb, Yugoslavia, and that his date of death was 1 January 1945. That database also includes a person named Ida Schotten and indicates that her date of birth was 14 April 1893, that her place of residence was Zagreb, and that her date of death was 31 December 1944. This information is consistent with the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. Finally, the CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner and Power of Attorney Holder were Victims of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and that that Account Owner and the Power of Attorney Holder both perished in Auschwitz. As noted above, persons named Emmanuel Schotten and Ida Schotten were included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimants have plausibly demonstrated that the Account Owner was their father and the Power of Attorney Holder was their mother. Claimant [REDACTED 1] submitted her birth and marriage certificates, which indicate that Emmanuel and Ida Schotten are her parents, and identified Claimant [REDACTED 2] as her brother.

The Issue of Who Received the Proceeds

Given that the Account Owner and the Power of Attorney Holder both perished in Auschwitz; that the Account Owner's heirs would not have been able to obtain information about the custody 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, Beneficial Owners and heirs because of the banks' concerns regarding double liability; that there is no record of the payment of the accounts to the Account Owner in the Bank's records; and given the application of Presumptions (h), (i) 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 Owner, the Power of Attorney Holder, 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.

With regard to the account of unknown type closed on closed on 4 March 1939, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner or his heirs received the proceeds of the account.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither he Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one 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. 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 162,500.00 Swiss Francs.

Division of the Award

According to Article 23(1)(c) 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 who have submitted a claim, in equal shares by representation. In this case, both Claimants are the children of the Account Owner. Accordingly, the Claimants are each entitled to one-half of the total award amount

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to

which they 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