

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Erez Bernstein

in re Accounts of Helene Sgalitzer and Max Sgalitzer

Claim Number: 501855/HB

Award Amount: 204,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published accounts of Helene Sgalitzer (“Account Owner Helene Sgalitzer”) at the Basel branch of the [REDACTED] (“Bank I”) and to the published accounts of Max Sgalitzer (“Account Owner Max Sgalitzer”) (together the “Account Owners”) at the [REDACTED] (“Bank II”) (together the “Banks”).¹

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 identifying the Account Owners as her parents, Helene Sgalitzer, née Adler, who was born on 4 April 1890, and Max Sgalitzer, who was born on 20 September 1884 in Prague, Czechoslovakia (today the Czech Republic). According to the Claimant, her parents, who were Jewish, resided in Vienna, Austria, until some time after the incorporation of Austria into the German Reich in March 1938 (the “*Anschluss*”), when they fled to the United States. The Claimant stated that her parents had three children: [REDACTED]; [REDACTED], née [REDACTED]; and herself, [REDACTED], née [REDACTED]. The Claimant further stated that her mother died on 4 February 1972, and that her father died in 1973 in the United States.

¹ 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”), Helene Sgalitzer is indicated as holding one account, and Max Sgalitzer is indicated as holding one account. Upon careful review, the CRT has concluded that the Banks’ records evidence the existence of two accounts held by Helene Sgalitzer, and six accounts held by Max Sgalitzer.

In support of her claim, the Claimant submitted copies of: (1) her own baptism certificate, issued on 27 February 1937 in Vienna, indicating that [REDACTED] was born on 5 August 1918 in Vienna, and that her parents were Dr. Max Sgalitzer and Helena Sgalitzer, née Adler, who was the secretary of the Vienna State Opera (*Sekretärin der Staatsoper*); and (2) records from the Austrian State Archive regarding Max Sgalitzer, which are further described below.

The Claimant indicated that she was born on 5 January 1918 in Vienna.

Information Available in the Banks' Records

Bank I

Bank I's record consists of a printout from Bank I's database. Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of Bank I to obtain additional information about these accounts ("Voluntary Assistance"). Bank I provided the CRT with additional documents that consist of a custody account agreement and two power of attorney forms. According to these records, the account owner was *Frau* (Mrs.) Helene Sgalitzer, née Adler, who resided at Porzellangasse 37 in Vienna, Austria, and the Power of Attorney Holders were Professor Dr. Max Sgalitzer ("Power of Attorney Holder Sgalitzer"), who also resided at Porzellangasse 37 in Vienna, and Dr. Walther Adler ("Power of Attorney Holder Adler") (together "the Power of Attorney Holders"), who resided at Albertgasse 39 in Vienna.

Bank I's records indicate that Account Owner Helene Sgalitzer held a demand deposit account and a custody account, both numbered 36640. Bank I's records do not indicate the value of the accounts. 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 these accounts in Bank I's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in Bank I's records that Account Owner Helene Sgalitzer, the Power of Attorney Holders, or their heirs closed the accounts and received the proceeds themselves.

Bank II

Bank II's records consist of a customer card, and printouts from Bank II's database. According to these records, Account Owner Max Sgalitzer was *Direktor* (Director) Dr. Prof. Max Sgalitzer, who later also held the title of lecturer (*Dozent*), and resided in Vienna, and subsequently in Istanbul, Turkey, and Denver and Seattle, both in the United States.

Bank II's records indicate that Account Owner Max Sgalitzer a safe deposit box numbered 1588 which was closed on 9 April 1938. Bank II's records do not indicate the value of the safe deposit box numbered 1588. There is no evidence in Bank II's records that Account Owner Max Sgalitzer, or his heirs, closed this account and received the proceeds themselves.

The CRT notes that Bank II's records also indicate that Max Sgalitzer held five demand deposit accounts, including one demand deposit account, numbered W1268 that was opened on 29 April 1938. Bank II's records indicate that these five demand deposit accounts included two accounts held in US dollars, and one "special" demand deposit account ("*Sonderkonto*"). Bank II's records indicate that these five accounts were closed on 30 April 1946, 10 March 1948, 5 April 1948, 10 April 1948, and 10 April 1959.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Helene Sgalitzer and Max Sgalitzer.

The records relating to Helene Sgalitzer, numbered 21978, include her asset declaration, signed by Helene Sgalitzer on 12 July 1938 in Vienna. According to these records, Helene Sgalitzer was born on 16 April 1890, and was married to Dr. Max Sgalitzer, who was a radiologist. The declaration indicates that Helene Sgalitzer resided at Porzellangasse 37 in Vienna. These documents further include correspondence between Helene Sgalitzer and the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or "VVSt."), signed by Helene Sgalitzer on 12 December 1938 at the address of Gumpendorferstrasse 5a in Vienna VI. These records make no mention of assets held in a Swiss bank account.

The records relating to Dr. Max Sgalitzer, numbered 21979, include his asset declaration, signed by Max Sgalitzer on 12 July 1938 in Vienna. According to these records, Max Sgalitzer resided at Porzellangasse 37 in Vienna, was married to Helene Sgalitzer, née Adler, worked as a radiologist, and was a partner of mineral oil refinery *Kraluper Lederer & Comp.* The records contain a letter from Max Sgalitzer and Helene Sgalitzer's attorney, Dr. Norbert Betteleheim, to the VVSt., dated 15 December 1938, stating that Max and Helene Sgalitzer had left Austria several months ago ("*Die beiden sind seit mehreren Monaten aus Deutschland ausgewandert.*"). These records indicate that on 7 July 1939, Dr. Max Sgalitzer and his wife were assessed flight tax (*Reichsfluchtsteuer*) of 139,521.00 Reichsmark ("RM") based upon total joint assets of RM 558,685.00.

In addition, these records indicate that Max Sgalitzer held a US Dollar-denominated demand deposit account at Bank II which had a balance as of 11 July 1938 of US \$4,040.00.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's mother's name and city and country of residence match the published name and city and country of residence of

Account Owner Helene Sgalitzer, and the Claimant's father's name and country of residence match the published name and country of residence of Account Owner Max Sgalitzer. The Claimant identified Account Owner Helene Sgalitzer's maiden name and Account Owner Max Sgalitzer's profession, which match unpublished information about the Account Owners contained in the Banks' records.

In support of her claim, the Claimant submitted documents, including her own baptism certificate, and her father's 1938 Census records, providing independent verification that the persons who are claimed to be the Account Owners had the same names and resided in the same town recorded in the Banks' records as the names and city of residence of the Account Owners.

The Claimant also submitted her father's 1938 Census records, which include a sample of her father's signature, which matches the signature sample of Account Owner Max Sgalitzer contained in Bank I's records.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Max Sgalitzer, and indicates that his professional title was Professor Dr. and that he resided in Vienna, which matches the information about Account Owner Max Sgalitzer 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 there are no other claims to the account of Account Owner Max Sgalitzer. However, the CRT notes that the other claims to the accounts of Account Owner Helene Sgalitzer were disconfirmed because those claimants provided a different country of residence, spouse's name, or maiden name than the country of residence, spouse's name, and maiden of Account Owner Helene Sgalitzer.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they fled Austria in 1938. The CRT notes that the Account Owners were required to register their assets pursuant to the 1938 Census, and that they were required to pay flight tax to the Nazi authorities in 1939.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were her parents. These documents include her baptism certificate, indicating that [REDACTED]'s parents were Dr. Max Sgalitzer and Helene Sgalitzer, née Adler. The CRT notes that the Claimant indicated that she has other surviving relatives, but that because they are not represented in the Claimant's claim, the CRT will not treat their potential entitlement to the Account Owners' accounts in this decision.

The Issue of Who Received the Proceeds

With respect to the custody account and the demand deposit account, both numbered 36640, which were held by Account Owner Helene Sgalitzer at Bank I, given that the Account Owner Helene Sgalitzer resided in Austria after the *Anschluss* before fleeing to the United States; that there is no record of the payment of these accounts to Account Owner Helene Sgalitzer, or any record of a closing date for the accounts; and given 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 Owners, the Power of Attorney Holders, or their heirs.

With respect to the safe deposit box numbered 1588 that was closed on 9 April 1938 and that was held by Account Owner Max Sgalitzer at Bank II, the CRT notes that Account Owner Max Sgalitzer resided in Austria after *Anschluss* and that, according to documents in his 1938 Census file, fled Austria several months prior to December 1938.² It is not clear from the records when exactly Account Owner Max Sgalitzer fled Austria, but assumes for the purposes of this award that he was still in Austria at the time that the safe deposit box was closed on 9 April 1938. Given this information, and given that there is no record of the payment of this account to Account Owner Max Sgalitzer; and that he would not have been able to repatriate the account without its confiscation; 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, the Power of Attorney Holders, 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 respect to the five demand deposit accounts held by Account Owner Max Sgalitzer at Bank II, the CRT notes that these accounts were closed after the Second World War in the period from 30 April 1946 to 10 April 1959. The CRT also notes that Account Owner Max Sgalitzer fled Austria in 1938, survived the War, and maintained contact with Bank II, as is evidenced by the fact that Bank II’s records list his later residences in Istanbul, Denver, and Seattle. The CRT therefore concludes that Account Owner Max Sgalitzer maintained contact with Bank II after the Second World War, that he was able to retain control over these remaining five accounts, and that he closed these accounts and received the proceeds himself.

The CRT notes that the 1938 Census records indicate the existence of a US Dollar-denominated demand deposit account with a balance of US \$4,040.00, which was held by Account Owner Max Sgalitzer at Bank II in 1938. The CRT also notes that, generally, Swiss bank accounts identified in an account owner’s 1938 Census or other Nazi documentation are presumed to have been turned over to Nazi authorities. In this case, however, Bank II’s records indicate that Account Owner Max Sgalitzer held two demand deposit accounts denominated in US Dollars, which were closed on 30 April 1946 and 10 March 1948. As noted above, the records also

² The CRT notes that Account Owner Helene Sgalitzer signed correspondence contained in her 1938 Census file in Vienna on 12 December 1938. It is not clear from the records how this signature is consistent with the notation in her husband’s file indicating that the family had fled months before December 1938.

clearly indicate that Account Owner Max Sgalitzer remained in contact with Bank II after the Second World War. The CRT considers this sufficient evidence to override the presumption that the account was paid to Nazi authorities, even though it was included in Account Owner Max Sgalitzer's 1938 Census. The CRT therefore concludes that the US Dollar-denominated demand deposit account identified in Account Owner Max Sgalitzer's 1938 Census record was one of the two US Dollar-denominated demand deposit accounts held by Account Owner Max Sgalitzer at Bank II and contained in Bank II's records, and that Account Owner Max Sgalitzer was able to maintain control over this account and close it properly after the War.

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 Owners were her parents, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, nor the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts awarded in this decision.

Amount of the Award

Account Owner Helene Sgalitzer held one demand deposit account and one custody account at Bank I. 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 ("SF"), and the average value of a custody account was SF 13,000.00. Thus, the combined 1945 average value for the two accounts at Bank I is SF 15,140.00.

With respect to Bank II, Account Owner Max Sgalitzer held one safe deposit box. Based on the ICEP Investigation, in 1945 the average value of a safe deposit box was SF 1,240.00.

The combined 1945 average value for the three accounts at issue is SF 16,380.00. 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 for the five accounts at Bank I and Bank II of SF 204,750.00.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
12 May 2009