

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 Jacques Silberberger

Claim Number: 501857/MC

Award Amount: 204,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Jacques Silberberger (the “Account Owner”) at the Zurich branch of the [REDACTED] (“Bank I”), and to the published and unpublished accounts of the Account Owner at the Zurich and Lugano branches of the [REDACTED] (“Bank II”).¹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 banks have been redacted.

Information Provided by the Claimant

The Claimant’s representative submitted a Claim Form identifying the Account Owner as his client’s great-grandmother’s brother, Jacques Silberberger, who was born on 28 April 1876 and was married to [REDACTED], née [REDACTED], on 16 May 1923. The CRT notes that the Claimant himself provided very little information about his relative. In a telephone conversation with the CRT on 9 December 2009, the Claimant stated that Jacques Silberberger and his siblings were deported to Poland on an unknown date, but that he did not know any details about his ultimate fate. The Claimant stated that his great-grandmother [REDACTED] (Jacques’ sister) moved from Austria to Chile after World War One and prior to World War Two, and that after the War, his grandfather [REDACTED] ([REDACTED]’s son) returned to Vienna, where he died. The Claimant stated that he did not know many details about his family in Europe.

The following information related in this Award is taken from official documents regarding Jacques Silberberger that were obtained on the Claimant’s behalf by his representative from

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”), the names Jacques Silberberger (Vienna, Austria) is listed, and the name Jacques Silberberg (Austria) is also listed. Upon careful review, the CRT has concluded that the Banks’ records indicate that the account owner listed as Jacques Silberberg was actually named Jacques Silberberger, and that these two names refer to the same individual.

various sources, including the Jewish Community of Vienna (*israelitische Kultusgemeinde Wien*), and submitted to the CRT.

According to these documents, Jacques Silberberger had seven siblings, including [REDACTED] (the Claimant's maternal grandfather's mother) and [REDACTED], née [REDACTED], who perished in the Holocaust. The documents show that Jacques Silberberger was Jewish and resided at Schottenfeldgasse 63 in Vienna, Austria.

The documents submitted in support of the claim include:

- 1) Jacques Silberberger's marriage certificate, which indicates that he was born to [REDACTED] and [REDACTED], née [REDACTED], on 28 April 1876 in Vienna, that he was a businessman who resided in Vienna, and that he married [REDACTED] on 16 May 1923;
- 2) [REDACTED]'s marriage certificate, which indicates that she was born to [REDACTED] and [REDACTED], née [REDACTED], on 22 March 1870, that she resided in Vienna, and that she married [REDACTED] on 25 March 1891;
- 3) the birth record of [REDACTED], which indicates that he was born to [REDACTED] and [REDACTED] on 26 September 1896;
- 4) the birth record of [REDACTED], which indicates that she was born to [REDACTED] and [REDACTED] on 8 May 1922;
- 5) excerpts from a file regarding Jacques Silberberger from the Austrian State Archives consisting only of the copy of a declaration of assets as of 1 January 1938 for Jacques Silberberger signed by Jacques Silberberger's representative, which is further described below;
- 6) a list of victims from Austria that includes [REDACTED] (Jacques Silberberger's sister), who was born on 3 June 1871 and who was deported from Vienna on 26 February 1941 and who later perished;
- 7) his own birth certificate, indicating that [REDACTED] was born to [REDACTED], née [REDACTED], and [REDACTED] in Lima, Peru on 23 May 1946; and
- 8) the death certificate of [REDACTED], indicating that her parents were [REDACTED] and [REDACTED], that she was born in Vienna, Austria, and that she died on 11 August 2002.

The Claimant indicated that he was born on 23 May 1946 in Lima.

Information Available in the Banks' Records

Bank I

Bank I's records consists of a printout from Bank I's database and a memorandum regarding accounts frozen pursuant to the 1945 Freeze of assets held in Switzerland by the citizens of Germany and the territories incorporated into the Third Reich (the "1945 Freeze"). According to these records, the Account Owner was Jacques Silberberger, who resided at Schottenfeldstrasse 63 in Vienna, Austria.

Bank I's records indicate that the Account Owner held one demand deposit account that was frozen in the 1945 Freeze on 17 February 1945. As of that date, the balance of the account was 56.00 Swiss Francs ("SF"). The records indicate that the last contact with the Account Owner was in 1942. According to the records, the balance of the account was released from the 1945 Freeze back to Bank I on 1 July 1955.

The auditors who carried out the ICEP Investigation did not find this account in Bank I's system of open accounts, and they therefore presumed that it was closed. There is no evidence in Bank I's records that the Account Owner or his heirs closed the account and received the proceeds themselves.

Bank II

Bank II's record consists of a customer card. According to this record, the Account Owner was Jacques Silberberger, who resided in Vienna, Austria. Bank II's record indicates that the Account Owner held two safe deposit boxes, numbered 2366 and 1316, that were both opened on 31 December 1931 and closed on 5 March 1938 and 13 April 1946, respectively. The records do not indicate the value or content of these safe deposit boxes.

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 Jacques Silberberger, numbered 50564. While the Claimant's representative submitted excerpts from the file pertaining to Jacques Silberberger, the CRT obtained the entire file from the Austrian State Archive.

Such files usually contain, among other documents, the 1938 Census declaration of the person named. However, the file for Jacques Silberberger does not contain his 1938 Census declaration, but instead contains a declaration of assets as of 1 January 1938 (*i.e.*, prior to the annexation of Austria by the Reich in March 1938, the "*Anschluss*") and an annex to the declaration, both of which were signed in Vienna on 9 November 1938 by Edmund Schaller, the official administrator (*kommissarischer Verwalter*) appointed to look after Jacques Silberberger's affairs. The file also contains a statement of flight tax due dated 20 June 1939 and addressed to Mr. Jacques Silberberger care of ("*zu Handen*") Edmund Schaller in Vienna. This statement shows that flight tax in the amount of 71,642.00 Reichsmark ("RM") had been assessed against Jacques Silberberger and that this amount had become due on 1 July 1938. The file also contains an internal memorandum and a document to close the file.

The asset declaration form submitted by Jacques Silberberger's representative Edmund Schaller appears to be the usual annual statement of assets required to be filed for capital tax purposes,

which also was utilized by the Nazi regime for purposes of fixing the amount of flight tax due.² Accordingly, the declaration, though signed on 9 November 1938 and submitted on 15 November 1938, reports the value of assets as of 1 January 1938. According to his capital assets form, Jacques Silberberger was a businessman dealing wholesale in chemical products (“*Handel mit chemischen Produkten, Grosskaufmann*”), was married to [REDACTED], née [REDACTED], and resided at Schottenfeldgasse 63 in Vienna. The annex to the asset declaration consists of a form declaring one’s intention to travel abroad, which was utilized to obtain a certification of non-objection by the tax authorities before leaving the country. On this form Schaller noted that Jacques Silberberger in fact had already left Austria on 27 June 1938 (“*Ausreise erfolgte am 27.VI.1938*”) and that his departure was permanent (*Ausreise dauernd*), but his destination was not identified. According to an internal memorandum, dated 23 November 1938, written by the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or “VVSt.”) and contained in the file, the asset declaration was made by Edmund Schaller because Jacques Silberberger had already been living abroad for a considerable period of time (“*Zur Vermögensanmeldung des Silberberger Jacques, wird vom komm. Leiter Edmund Schaller, die Erklärung abgegeben, dass Silberberger seit längerer Zeit im Ausland lebt.*”). The memorandum further notes that criminal proceedings relating to violations of the foreign currency regulations were pending against him, and that all his assets had been seized (*beschlagnahmt*).

In his asset declaration, Jacques Silberberger reported holding an unspecified type of account at the Zurich branch of Bank I containing assets totaling 139.00 Swiss Francs (“SF”) as of 1 January 1938. He also indicated that as of 1 January 1938, he held securities worth SF 50,069.28; 8.6414 kilograms in gold bars worth SF 42,342.86; and cash worth SF 660.00 at the Zurich and Lugano branches of Bank II.

The records do not indicate at which of the listed branches of Bank II these assets were held, nor do they contain information about the ultimate disposition of these assets.

The CRT’s Analysis

Identification of the Account Owner

The Claimant’s great-grandmother’s brother’s name, and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant identified the Account Owner’s street address, which matches unpublished information about the

² The CRT notes that the form used by the Nazi regime for its 1938 Census of Jewish-owned assets was modeled after the capital tax form.

Account Owner contained in Bank I's records.³ The CRT notes that there are no other claims to these accounts.

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 lived in Austria after the *Anschluss* until he fled on the officially stated date of 27 June 1938.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, mainly obtained from the Jewish Community in Vienna, demonstrating that the Account Owner was the Claimant's great-grandmother's brother. These documents include Jacques Silberberger's marriage certificate, indicating that he was born to [REDACTED] and [REDACTED]; [REDACTED]'s marriage certificate, indicating that she was born to [REDACTED] and [REDACTED] and that she married [REDACTED]; the birth record of [REDACTED], indicating that he was the son of [REDACTED] and [REDACTED]; the birth record of [REDACTED], indicating that she was the daughter of [REDACTED] and [REDACTED]; and his own birth certificate, indicating that Leopoldo Guillermo Sagasti is the son of [REDACTED], née [REDACTED].

The CRT notes that the Claimant indicated that he may have 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 Owner's accounts in this decision.

The Issue of Who Received the Proceeds

Bank I

Bank I's records indicate that the Account Owner held one demand deposit account at Bank I with a value of SF 56.00 as of 17 February 1945. The CRT notes that in his asset declaration, Jacques Silberberger reported holding assets worth SF 139.00 as of 1 January 1938 in an account of unspecified type at Bank I. The CRT concludes that the assets identified at Bank I in Jacques Silberberger's asset declaration were held in the demand deposit account reported by the ICEP auditors at Bank I.

Given that there is no record of the payment of this account to the Account Owner, nor any record of a date of closure of the account; that this account was frozen in the 1945 Freeze; and

³ The CRT notes that the asset declaration filed by the Account Owner and contained in the records from the Austrian State Archive indicate that the Account Owner resided at Schottenfeldgasse 63, while Bank I's records indicate that the Account Owner resided at Schottenfeldstrasse 63. The CRT considers it likely that the entry in Bank I's records regarding the address is an administrative error which does not affect the identification of the Account Owner as identified in Bank I's records as the same person who completed the asset declaration contained in the records from the Austrian State Archive.

given the application of Presumptions (d), (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 proceeds of these two accounts 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.

Bank II

As noted above, Bank II’s record indicates that the Account Owner held two safe deposit boxes, numbered 2366 and 1316, both of which were opened on 31 December 1931 and which were closed on 5 March 1938 and 13 April 1946, respectively. With regard to safe deposit box numbered 2366 that was closed on 5 March 1938, the CRT notes that this safe deposit box was closed prior to the *Anschluss* on 12 March 1938. Accordingly, the CRT concludes that the Account Owner closed this account and received the proceeds himself.

With regard to safe deposit box numbered 1316 which was closed on 13 April 1946, Bank II’s records do not indicate to whom the account was closed.

The CRT notes that the Account Owner’s asset declaration contained in the files from the Austrian State Archive indicates the likely existence of at least one custody account at Bank II that contained securities.⁴ However, the asset declaration specifically identifies the Account Owner’s assets and their values as of 1 January 1938, some two months prior to the *Anschluss*. As noted above, on 5 March 1938, *i.e.*, between the date of this asset declaration and the *Anchluss*, the Account Owner closed his safe deposit box numbered 2366. It is not clear which of the assets – including the gold bars – were contained in this safe and thus removed by the Account Owner himself. The CRT notes that the Account Owner was assessed flight tax in a statement dated 20 June 1939, approximately one year after the Account Owner was recorded as having fled Austria, and that the flight tax is noted as having become due on 1 July 1938, a few days after 27 June 1938, the date cited in official documentation for his departure from Austria. The CRT also notes that the file from the Austrian State Archive contains an internal memorandum dated 23 November 1938 in which the Nazi authorities note that criminal proceedings were pending against Jacques Silberberger for violations of the foreign currency regulations. Furthermore, the absence of a 1938 Census declaration, the filing of the 1 January 1938 asset declaration by the officially appointed administrator, dated 9 November 1938 and filed 15 November 1938, *i.e.*, at the time assessments were made for the payment of atonement tax, all point to the likelihood that Jacques Silberberger fled before the officially recorded date. Based upon all this evidence, the CRT concludes that Jacques Silberberger fled Austria without paying his flight tax and without turning over his reported Swiss-held assets to the Nazi authorities. However, given that there is no record from Bank II regarding the existence of a

⁴ The CRT notes that all the assets – including the securities, gold, and cash – listed by the Account Owner in his asset declaration could have been held in the safe at Bank II that was closed on 5 March 1938. However, given that securities were usually held in custody accounts, and that this interpretation is most favorable to the Claimant, the CRT considers that the asset declaration shows the existence of one custody account at Bank II that was not reported by the auditors during the ICEP Investigation and that still existed, with unknown contents, at the time of the *Anschluss*.

custody account as late as 1 January 1938; that Bank II's records show that safe deposit box numbered 1316 was closed on 13 April 1946, but do not show to whom it was closed, and given the application of Presumptions (d) and (f), as provided in Article 28 of the Rules, the CRT concludes that it is plausible that the proceeds of the safe deposit box numbered 1316 and the custody account at Bank II 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 great-grandmother's brother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the demand deposit account at Bank I and the custody account and safe deposit box at Bank II.

Amount of the Award

In this case, the Award is for the Account Owner's demand deposit account at Bank I and safe deposit box numbered 1316 and a custody account at Bank II.

With regard to the demand deposit account at Bank I, the Account Owner's asset declaration indicates that the value of this account as of 1 January 1938 was SF 139.00. Bank I's records indicate that as of 17 February 1945, the value of the account was SF 56.00. For purposes of determining the award amount, the CRT uses the value closest to 1945, or, in this case, SF 56.00. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00.

With regard to the safe deposit box and custody account at Bank II, as detailed above, the Account Owner's asset declaration shows the value of the Account Owner's assets and indicates that he held cash, securities, and gold bars. However, the asset declaration specifically identifies the Account Owner's assets and their values as of 1 January 1938, some two months prior to the *Anschluss*. As noted above, on 5 March 1938, *i.e.*, between the date of this asset declaration and the *Anchluss*, the Account Owner closed his safe deposit box numbered 2366. It is not clear which of the assets – including the gold bars, the cash, and/or the securities – were contained in this safe and thus removed by the Account Owner himself. Further, based upon the closure of the safe deposit box numbered 2366 on 5 March 1938, it is clear that the Account Owner actively managed his assets at Bank II at least until that date, and that he had the opportunity to access all the assets he held at Bank II. The CRT notes that the Account Owner was assessed flight tax in a statement dated 20 June 1939, approximately one year after the Account Owner fled Austria, and that the flight tax is noted as having become due on 1 July 1938, *after* he left Austria no later than 27 June 1938. The CRT also notes that the file from the Austrian State Archive contains an internal memorandum dated 23 November 1938 in which the Nazi authorities state that criminal proceedings were pending against Jacques Silberberger for violations of the foreign currency regulations and that his assets had been seized. Based upon this evidence, the CRT considers that Jacques Silberberger fled Austria without paying his flight tax and without turning over his

reported Swiss-held assets to the Nazi authorities. Based upon these facts, and especially on the fact that the Account Owner managed and accessed his assets at Bank II and received at least some portion of them from Bank II during the two months after their valuation in his asset declaration, the CRT concludes that it cannot rely on the value of the Account Owner's assets as of 1 January 1938 to determine the value of the Account Owner's custody account and safe deposit box numbered 1316 at Bank II. Thus, these two accounts are to be treated as accounts of unknown value. 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 SF 13,000.00, and the value of a safe deposit box account was SF 1,240.00, for a combined 1945 value of SF 14,240.00 for the two accounts at Bank II.

The total combined 1945 value of the Account Owner's three accounts at Bank I and Bank II was therefore 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 a total award amount 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
28 May 2010