

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Mario Anatole Loewenton
also acting on behalf of Chelsea Lowenton

in re Accounts of Marie Thenen

Claim Number: 401559/GO

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of Mario Anatole Loewenton (the “Claimant”) to the published accounts of Marie Thenen (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his paternal grandmother’s cousin’s daughter, Maria Thenen, who was born on 12 December 1882. The Claimant indicated that his relative was the daughter of Julius Thenen, who was the first cousin of Carolina Loewenton, née Thenen, the Claimant’s paternal grandmother. According to the Claimant, Maria Thenen, who was Jewish, was unmarried, had no children, and resided at Ferstelgasse 6 in Vienna, Austria. The Claimant indicated that Maria Thenen had a sister, Elsa Thenen, who was also unmarried and did not have any children. The Claimant stated that Maria and Elsa Thenen were deported in 1942 from Vienna to Izbica, Poland, and that they both perished in either the Sobibor or Bergen-Belsen concentration camp.

In support of his claim, the Claimant submitted copies of: (1) his father’s birth certificate, indicating that Julius Leventon was born on 20 September 1897 in Lalatz, Romania, and that his parents were Vilhelm Leventon and Caroline Leventon, née Tenen, and that they were both Jewish; (2) his father’s death certificate, indicating that Julius Leventon died on 22 September 1965 in Paris, France, and that his parents were Wilhelm Leventon and Caroline Thenen; and (3) his own birth certificate, indicating that Mario-Anatole Loewenton was born on 8 February 1922 in Bucharest, Romania and that his parents were Iulius and Rosy Loewenton.

The Claimant indicated that he was born on 8 February 1922 in Bucharest. The Claimant is representing his cousin, Chelsea Lowenton, who was born on 14 August 1922 in Bucharest.

Information Available in the Bank's Records

The Bank's records consist of a customer card and Bank correspondence with the Account Owner. According to these records, the Account Owner was *Frl.* (Miss) Marie Thenen, who resided in Vienna, Austria. The Bank's records indicate that the Account Owner held one demand deposit account, which was opened in 1935 and closed on 20 December 1938, and one custody account, numbered L 51316, which was opened on 18 December 1923 and closed on 27 September 1949. These records indicate that the Account Owner instructed the Bank to hold correspondence.

The records further indicate that in the letter, dated 19 September 1949, which was never sent to the Account Owner because of the hold mail instruction, the Bank stated that for several years there had been no contact with the Account Owner and that in the absence of contact by 30 November 1949 the custody account, numbered L 51316, would be closed by the Bank. This letter indicates that on 19 September 1949 the custody account contained securities identified as:

- 5% *Rumänische vereinheitl. amort. Rente von 1903 (dat. 1929)* bonds with a nominal value of 5,000.00 Romanian Leis ("ROL");
- 4% *dergl.* ("the same") *von 1889/1910 (dat. 1929)* bonds with a nominal value of ROL 22,000.00;
- 4% *dergl. von 1889 äussere Anleihe (dat. 1929)* bonds with a nominal value of ROL 5,000.00.

The amounts in the accounts on the dates of their closures are unknown. There is no evidence in the Bank's records that the Account Owner or her heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant's father's cousin's name matches the published name of the Account Owner.¹ The Claimant identified the Account Owner's marital status and city, and country of residence, 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 Marie Thenen, and indicates that her date of birth was 12 December 1882 and that she resided at Scholzgasse 4/14 in Vienna, 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 there are no other claims to these accounts. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

¹ The CRT notes that Marie and Maria are variations of the same name, and determines that the spelling discrepancy does not materially affect the Claimant's identification of 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, that she resided in Nazi-controlled Austria, that she was deported to Izbica, and that she perished in Sobibor or Bergen-Belsen. As noted above, a person named Marie Thenen was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information demonstrating that the Account Owner was the Claimant's grandmother's cousin's daughter.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records and that the Claimant also identified information which matches information contained in the Yad Vashem records. The CRT further notes that the Claimant submitted copies of his father's birth certificate and death certificate, which provide independent verification that the Claimant's relatives bore the same family name as the Account Owner. 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.

There is no information to indicate that the Account Owner has surviving heirs other than the party whom the Claimant is representing.

The Issue of Who Received the Proceeds

With respect to the demand deposit account, given that the Account Owner's account was closed after the incorporation of Austria into the German Reich in March 1938 (the "*Anschluss*"); that the Account Owner resided in Nazi-controlled Austria until she was deported by the Nazis and subsequently perished; that Nazi confiscatory legislation was in effect at the time the account was closed; that the Nazis had, at the time of the *Anschluss*, immediately embarked on a campaign to confiscate the assets of the Jewish residents of Austria, and the CRT has found that numerous such confiscations of Swiss bank accounts occurred at this time; that there is no record of the payment of Account Owner's account to her and her heirs would not have been able to obtain information about her 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 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 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 her 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 custody account, the Bank's records indicate that the Bank wrote to the Account Owner in 1949 informing her that, if she did not respond, the Bank would close out the account. The CRT notes that the Bank could not in good faith have expected a response to this letter, as it was never mailed, but was simply added to the account file, pursuant to the Account Owner's instructions to hold mail. Given that the Account Owner perished before the account was closed in 1949, the CRT concludes that, in accordance with its letter, the Bank closed the account to its own profit and loss account.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant and represented party Chelsea Lowenton. 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 grandmother's cousin's daughter, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one demand deposit account and one custody account.

With respect to the demand deposit 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs ("SF"). 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 26,750.00.

With respect to the custody account, the CRT notes that the securities listed as deposited in the account were in default.² Accordingly, their market value would have been well below their nominal value. The Bank's records indicate that the total nominal value of the securities was ROL 32,000.00, which as of 19 September 1949 was equivalent to SF 16.00.³ In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 375.00, which reflects standardized bank fees charged to the custody account between 1945 and 1949. Consequently, the adjusted balance of the account at issue is SF 391.00. According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00. Absent evidence to the contrary, and consistent with Article 29 of the Rules, the CRT presumes that there may have been additional assets in the custody account, and determines the

² See Moody's Manual of Investments, American and Foreign: Government Securities, p. 1,947 (New York: Moody's Investors Service, 1940).

³ The CRT uses official exchange rates when making currency conversions. The CRT notes that the total nominal value of the securities falls well below the value presumption for a custody account as set forth in Article 29 of the Rules. Accordingly, the CRT had no need to obtain the market value for the defaulted securities.

account value to be SF 13,000.00. The current value of this amount 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 162,500.00.

Consequently, the total award amount is SF 189,250.00.

Division of the Award

According to Article 23(1)(g) of the Rules, if none of the persons entitled to an award under pursuant to Article 23(1)(a)-(f) has submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity. In this case, the Claimant and represented party, Chelsea Lowenton, are the descendants of the Account Owner's great-grandparents. Accordingly, the Claimant and represented party Chelsea Lowenton are each entitled to one-half of the total award amount.

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 claim 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
19 July 2007