

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2],
[REDACTED 3] and [REDACTED 4]

in re Account of Ernst Toch

Claim Number: 214933/SB

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published account of Ernst Toch (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 identifying the Account Owner as his maternal grandfather, Ernst Toch, who was born on 7 December 1887, in Vienna, Austria, and who was married to [REDACTED], née [REDACTED], in July 1916 in Vienna. The Claimant stated that his grandfather, who was Jewish, was a composer, conductor and musician who lived in Berlin, Germany, from 1920 to 1933. The Claimant indicated that in 1933, his grandfather became a target of anti-Semitic persecution and that he, together with his wife and daughter, [REDACTED], fled Nazi Germany in April 1933, ultimately arriving in Santa Monica, California, the United States, where the family settled. The Claimant stated that his grandfather was Professor of Music at the University of California, Los Angeles, and that he died in California on 1 October 1964.

The Claimant submitted (1) a copy of a petition, dated 2 June 1989, lodged with the County Court of Los Angeles regarding his mother, [REDACTED], née [REDACTED], indicating that his mother died on 5 April 1988 and that the Claimant and his three siblings, [REDACTED 2], [REDACTED 3] and [REDACTED 4] are the only beneficiaries to her estate and as beneficiaries are entitled to any royalty income and all rights arising from Ernst Toch's music; (2) an excerpt from Diane Peacock Jezic's book, *The Musical Migration and Ernst Toch* (1989), indicating that [REDACTED 2] is the grandson of Ernst Toch, and that [REDACTED] was his daughter; (3) a

CD cover for Ernst Toch's Symphonies 5-7, indicating that Ernst Toch resided in Berlin; and (4) an article, *My Grandfather's Tale*, published in *The Atlantic Online* in December 1996, also indicating that Ernst Toch resided in Berlin.

The Claimant indicated that he was born on 13 February 1960 in Toulouse, France. The Claimant is representing his brothers: [REDACTED 3], who was born on 7 January 1954 in Van Nuys, California, and [REDACTED 2], who was born on 13 February 1960 in Van Nuys, and his sister [REDACTED 4], who was born on 29 November 1955 in Hollywood, California.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Dr. Ernst Toch, who resided first in Berlin-Lichterfelde, Germany, and later in London, the United Kingdom. The Bank's record indicates that the Account Owner held a demand deposit account, which was opened on 21 October 1930 and closed on 20 June 1936. The amount in the account on the date of its closure is unknown. There is no evidence in the Bank's record that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's grandfather's name matches the published name of the Account Owner. The Claimant identified the Account Owner's city of residence, which matches unpublished information about the Account Owner contained in the Bank's record. The Claimant did not state in the Claim Form that his grandfather held the title of Doctor, but the CRT notes from its own research that sometime after 1909, but prior to the onset of World War One, his grandfather was appointed Professor of Composition at the Mannheim University for Music and that later he was Professor of Music at the University of California, Los Angeles. The CRT therefore considers that in these circumstances it is reasonable to conclude that the Claimant's grandfather had obtained, or been awarded, a doctoral degree, which is consistent with unpublished information about the Account Owner contained in the Bank's record. In support of his claim, the Claimant submitted an excerpt from Diane Peacock Jezic's book, *The Musical Migration and Ernst Toch*, the CD cover for Ernst Toch's Symphony CD as well an article, *My Grandfather's Tale*, indicating that Ernst Toch resided in Berlin, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner. The CRT notes that the name Ernst Toch appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution. The CRT further notes that the other claim to this account was disconfirmed because that claimant provided a different country of residence than the country of residence 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, resided in Germany and was a target of anti-Semitic persecution until he fled Nazi Germany in April 1933.

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, demonstrating that the Account Owner was the Claimant's grandfather. These documents include a petition, dated 2 June 1989, regarding the Claimant's mother's estate, naming as her children the Claimant [REDACTED 1], [REDACTED 2], [REDACTED 3] and [REDACTED 4], and an excerpt from Diane Peacock Jezic's book, *The Musical Migration and Ernst Toch*, indicating that Ernst Toch's daughter and eldest grandson were [REDACTED] and [REDACTED 2] respectively. There is no information to indicate that the Account Owner has other surviving heirs other than the parties which the Claimant is representing.

The Issue of Who Received the Proceeds

The CRT notes that the Bank's record indicates that the account was closed on 20 June 1936, at which time, according to information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. However, given that the Bank's record does not indicate to whom the account was closed, that the Account Owner fled his country of origin due to Nazi persecution, that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety, that the Account Owner and his heirs would not have been able to obtain information about his account after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 there is a sufficient probability 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.

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 their grandfather, 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 claimed account.

Amount of the Award

In this case, the Account Owner held one 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 a total award amount of SF 26,750.00.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner’s spouse has not 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, the Claimant is representing his three siblings in these proceedings. Accordingly, the Claimant and his siblings are each entitled to receive one quarter (1/4) 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
18 August 2004