

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Emil Vogel

Claim Number: 735314/SJ¹

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published account of Emil Vogel (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

The Claimant submitted an Initial Questionnaire (“IQ”) identifying the Account Owner, Emil Vogel, as the uncle of her late husband, [REDACTED], who died in 1994. The Claimant indicated that Emil Vogel (formerly Elmel Vogel), who was Jewish, was born in Krynica, Poland in approximately 1900 to [REDACTED] and [REDACTED]. The Claimant indicated that Emil Vogel had a brother, [REDACTED] (the father of the Claimant’s late husband), who died before 1946, and a sister, [REDACTED], nee [REDACTED], who died in Toulouse, France, in 1984.

The Claimant indicated that Emil Vogel lived in Mulhouse, France, but that the Claimant could not provide any further information about her husband’s uncle. In support of her claim, the Claimant submitted a copy of a decree issued by the District Court in Muszyna, Poland, dated 11 July 1994 and stating that the Claimant was the sole heir to the estate of [REDACTED].

The Claimant indicated that she was born on 6 April 1933.

¹ [REDACTED] did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered POL 0030 134, to the Court in the United States. Although this IQ was not a Claim Form, 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). The IQ was forwarded to the CRT and has been assigned claim number 735314.

The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a separate Swiss bank account owned by Emil Vogel of Mulhouse.²

Information Available in the Bank's Records

The Bank's records consist of a registry card, a list of dormant accounts, and a list of account owners whose whereabouts were unknown, dated 30 April 1946. According to these records, the Account Owner was Emil Vogel who resided in Mulhouse, France. The Bank's records indicate that the Account Owner held a demand deposit account. The Bank's records further indicate that the account was considered dormant by the Bank and was transferred to the Bank's suspense account in 1929 with a balance of 3.50 Swiss Francs ("SF").

The Bank's records indicate that the account was released from suspense on 12 July 1946 with the balance of SF 3.50 and that on 17 July 1946 SF 3.50 was debited from the account. There is no explanation as to why the account was released and debited.

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 this account in the Bank's system of open accounts, and they therefore presumed that it was closed. There is no evidence in the Bank's records 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's husband's uncle's name and city and country of residence match the published name and city and country of residence of the Account Owner. The CRT notes that there are no other claims to this account. Taking these factors into account, the CRT concludes that the Claimant has plausibly identified 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 and that he lived in the Nazi-occupied part of France during the Second World War.

² In 1998, the Claimant filed a claim with ATAG Ernst & Young to an account of Emil Vogel of Mulhouse, France, at a different Swiss bank. That claim followed the publication of the name of Emil Vogel on a list of dormant accounts held in Swiss banks in October 1997. The claim was reviewed by the Sole Arbitrator of the Claims Resolution Tribunal for Dormant Accounts in Switzerland. On 20 September 1999, the Sole Arbitrator issued a decision in which the Claimant's claim was dismissed because the Claimant failed to provide any information about her entitlement to the account or any biographical information about Emil Vogel.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information, demonstrating that the Account Owner was the uncle of the Claimant's late husband. The CRT notes that the Claimant submitted a copy of a decree issued by the District Court in Muszyna, Poland, providing independent verification that the Claimant's husband's paternal relatives bore the same family name as the Account Owner, which supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her IQ.

The Issue of Who Received the Proceeds

The Bank's records indicate that the account was transferred to a suspense account and was later closed. Given that there is no record of the payment of the Account Owner's account to him; 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 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 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 her late husband's uncle, 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 a demand deposit account. The Bank's records indicate that the value of the demand deposit account as of 1929, when it was transferred to the Bank's suspense account, and in 1946, when the balance was reversed from the Bank's suspense account, was SF 3.50. 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. The current value of the amount of the award 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. Consequently, the total award amount in this case is SF 26,750.00.

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 her claim to determine whether there are additional Swiss bank accounts to which she 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
15 July 2005