

CLAIMS RESOLUTION TRIBUNAL

In re Holocaust Victim Assets Litigation

Case No. CV96-4849

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED]

in re Accounts of Friedrich Wagner

Claim Number: 203709/MD¹

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Friedrich Wagner (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 a Claim Form identifying the Account Owner as his father, Moritz Friedrich Wagner, who was born on 28 June 1885 in Vienna, Austria, and was married to [REDACTED], née [REDACTED]. The documents submitted by the Claimant indicate that Friedrich Wagner, who was Jewish, was an actor who lived in Vienna. The Claimant explained that his father, whose given name was Moritz, preferred to use his middle name, Friedrich, in his professional life. The Claimant stated that his father traveled often to Zurich, Switzerland, in 1936 and 1937, and that his mother told him that his father had deposited money in Switzerland. The Claimant explained that his father and his uncle, [REDACTED], were co-owners of a café named *Internationales Artistenkaffee* located at Praterstrasse in Vienna, which was a seat of an international artist syndicate. The Claimant explained that the money used by the syndicate may have been transferred to Switzerland under his father’s or his uncle’s name. The Claimant further explained that his father’s café was Aryanized by the Nazis after the Nazi annexation of Austria in March 1938 (the *Anschluss*), and that his father was interned in Dachau concentration camp in 1939 and was later deported in 1942 to Riga, where he perished. The Claimant indicated that his mother, [REDACTED], died in 1969.

¹ In his Claim Form, the Claimant also claimed an account of [REDACTED]. The CRT will treat the claim to this account in a separate decision.

The Claimant explained that he and his sister are the illegitimate children of [REDACTED] and Friedrich Wagner. The Claimant indicated that he was born on 10 July 1936 in Vienna, and that his sister, [REDACTED], née [REDACTED], was born on 27 October 1937 in Vienna. In support of his statement, the Claimant submitted decisions issued by the District Court in Vienna III on 19 September 1936 and 10 December 1937, which recognize Friedrich Wagner as the father of the Claimant and Claimant's sister. The Claimant also indicated that Friedrich Wagner and [REDACTED] had a son, [REDACTED], who was born on 7 October 1939 and died on 10 October 1958. The Claimant stated that before meeting his mother, Friedrich Wagner had a daughter, [REDACTED], but the Claimant does not know her fate. In support of his claim, the Claimant also submitted documents concerning the aryanization of the café owned by his uncle and his father. These documents include a notice from the police in Vienna, dated 25 February 1948, to the federal department for property security and business planning, indicating that they had appointed a certain official to look into the case of the Aryanization of the café; and a letter from a building administrator in which the café was housed, dated 6 October 1938, to the Aryanization authorities, regarding the rent owed, which was to be settled by the authorities.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to Swiss bank accounts owned by [REDACTED] and Moritz Wagner. In the Initial Questionnaire, the Claimant indicated that his father, Moritz Wagner, was also known as Friedrich Wagner.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Friedrich Wagner, who resided in Vienna, Austria. The Bank's record indicates that the Account Owner held a demand deposit account and a custody account, both of which were opened in December 1927. According to the Bank's record, the custody account was closed on 26 April 1938, and the demand deposit account was closed on 20 March 1939. The amounts in the accounts on the dates of their closures are 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. His father's name and country of residence matches the published name and country of residence of the Account Owner. The Claimant stated that his father lived in Vienna, which matches unpublished information about the Account Owner contained in the Bank's record. In support of his claim, the Claimant submitted documents, including a decision issued by a District Court in Vienna, stating that the Claimant's father was Friedrich Wagner, who resided in

Vienna. This document provides independent verification that the person who is claimed to be the Account Owner resided in the same town recorded in the Bank's record as the residence of the Account Owner. The CRT recognizes that the Claimant refers to his father alternatively as Moritz Wagner or Friedrich Wagner. However, the Claimant explained that his father used his middle name "Friedrich" in his professional life as an actor. Furthermore, the Claimant produced official documents, including the aforementioned court decision, referring to the Claimant's father as "Friedrich Wagner." Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Moritz Wagner, and indicates that his date of birth was 28 June 1885 and place of birth was 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 further that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Moritz Wagner, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). In the Initial Questionnaire, the Claimant indicated that his father, Moritz Wagner, was also known as Friedrich Wagner. This indicates that the Claimant has based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant. 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.

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, who was Jewish, was interned in the Dachau concentration camp in 1939, and was deported in 1942 to Riga, where he perished. As noted above, a person named Moritz Wagner 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 and documents, demonstrating that the Account Owner was his father. These documents include a decision issued by a District Court in Vienna, demonstrating that the Claimant's father was Friedrich Wagner, who resided in Vienna.

The Issue of Who Received the Proceeds

Given that the Account Owner's accounts were both closed after the *Anschluss* (the custody account was closed on 26 April 1938, and the demand deposit account was closed on 20 March 1939); that Nazi confiscatory legislation was in effect at the time the accounts were closed; that the Nazis had, at the time of the *Anschluss*, immediately begun a major effort to confiscate the assets of the Jewish residents of Austria, and the CRT has found numerous such confiscations of Swiss bank accounts occurred at this time; that the Account Owner remained in Austria before being interned in the Dachau concentration camp in 1939, and was later deported in 1942 to Riga, where he perished; that there is no record of the payment of the Account Owner's accounts to him; that the Account Owner and his heirs would not have been able to obtain information about his closed accounts 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 (a), (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 his father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one custody account and 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, and the average value of a custody account was 13,000.00 Swiss Francs. Thus, the total 1945 average value of the accounts at issue is 15,140.00 Swiss Francs. 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 189,250.00 Swiss Francs.

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, the son of the Account Owner, is representing his sister, [REDACTED]. Accordingly, the Claimant and his sister 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
31 December 2003