

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Leonie Elsinger

Claim Numbers: 501374/AE; 501388/AE

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (“the Claimant”) to the published accounts of Leonie Elsinger (the “Account Owner”), over which Eduard Elsinger (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).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 bank have been redacted.

Information Provided by the Claimant

The Claimant submitted two Claim Forms identifying the Account Owner as her maternal great-aunt, Leonie Elsinger, née del Banco, who was born on 6 October 1869 in Hamburg, Germany, to [REDACTED] and [REDACTED]. The Claimant identified the Power of Attorney Holder as her maternal great-aunt’s husband, Eduard Elsinger, who was born on 9 July 1871 in Kappel, in Saxony, Germany. The Claimant indicated that her great-aunt, who was Jewish, was a housewife, and that her great-aunt’s husband, who was not Jewish, was a factory owner, and that they were married on 8 December 1917 in Pressburg, Slovakia. The Claimant further indicated that her great-aunt and great-aunt’s husband resided at Stadlergasse 8 in Vienna, Austria.

In support of her claim, the Claimant submitted the death certificates of her great-aunt and uncle, which indicate that Eduard Elsinger died on 25 November 1942 and that, on 10 December 1942, Leonie Elsinger was found dead in her apartment. The Claimant also submitted a copy of her great-aunt’s last will and testament, dated 6 December 1942, listing her great-aunt’s name as

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”), Leonie Elsinger is listed as owning two accounts and Eduard Elsinger is listed as owning one account. Upon careful review, the CRT has concluded that the Bank’s record evidences the existence of only two accounts, both of which were owned by Leonie Elsinger, and over which Eduard Elsinger held power of attorney.

Leonie Sara Elsinger, née del Banco, and naming her heirs as her grandnieces, the Claimant and [REDACTED]. The Claimant also submitted a copy of her great-aunt's husband's last will and testament, stating her great-aunt's husband's name was Eduard Elsinger, and listing his wife, Leonie Elsinger, née del Banco as his sole heir. Additionally, the Claimant submitted the death certificates of her great-aunt and great-aunt's husband, indicating their names as Leonie Elsinger and Eduard Elsinger. The Claimant further submitted her father's baptism certificate identifying her father as [REDACTED], and his parents as [REDACTED] and [REDACTED], née del [REDACTED],² whose parents were [REDACTED] and [REDACTED], née [REDACTED]. The Claimant also submitted her birth certificate, listing her date of birth as 16 August 1923, and that her father was [REDACTED]. The Claimant further submitted the Austrian State Archive Records for Leonie Elsinger, indicating that her husband was Eduard Elsinger and that they resided at Stadlergasse 8 in Vienna.

Information Available in the Bank's Records

The Bank's records consists of a customer card, deposit receipts, a consent form signed by the Account Owner's husband, a power of attorney form signed by the Account Owner and the Power of Attorney Holder on 22 January 1927, an acknowledgement form authorizing Eduard Elsinger to access the accounts for his own benefit, correspondence between the Account Owner and the Bank from January 1936, and printouts from the Bank's database.

According to these records, the Account Owner was Leonie Elsinger, née del Banco, and the Power of Attorney Holder was Eduard Elsinger, the Account Owner's spouse, who both resided at Stadlergasse 8 in Vienna, Austria. The Bank's records indicate that the Account Owner also used an address at Anhofstrasse 78 in Vienna. 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") also indicated that the Account Owner used another address at Villa Flora at Marchetstrasse 35 in Baden, Austria.

The Bank's records indicate that the Account Owner held one demand deposit account, and one custody account, numbered 23968, that was opened no later than 22 January 1927. The Bank's records indicate that the custody account contained the following as of 1 November 1934: Swiss Federal Railway bonds (*4% Oblig. Schweizerische Bundesbahnen*) with a nominal value of 3,000.00 Swiss Francs ("SF"); 50 privileged shares of stock in the *Sté Nationale des Chemins de fer Belges*, with a nominal value of 500.00 Belgian Francs ("BF") per share (equivalent to SF 3,600.00); and French gold pieces (*Französische Goldstücke*) with a value of SF 5,200.00. The Bank's records further indicate that on 19 January 1936, the Power of Attorney Holder, acting on behalf of the Account Owner, wrote to the Bank, inquiring whether it was possible to pledge the Swiss Federal Railway bonds and the French gold pieces deposited in the custody account, as well as 40 shares of the *Oesterreichische Nationalbank* which were deposited in Vienna at the

² The CRT notes that the Claimant's maternal family name is indicated as "del Banio" on the Claimant's father's baptism certificate. The CRT further notes that the Account Owner's maiden name is indicated as "del Banco" in the Bank's record. The CRT finds that this discrepancy does not adversely effect the Claimant's identification of the Account Owner.

Oesterreichische Wiener-Wiener Bankverein, as collateral for a loan of 11,000.00 Austrian Schillings (“S”). The records contain the Bank’s response, dated 21 January 1936, rejecting the Account Owner’s request. The Bank’s records indicate that the demand deposit account was closed on 16 November 1939 and that the custody account was closed on 3 June 1938. The value of the accounts on the date of the closure is not known. There is no evidence in the Bank’s record that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

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 Leonie Elsinger, numbered 700, and Eduard Elsinger, numbered 701. According to these records, Leonie Elsinger, née del Banco, was born on 6 October 1870,³ and resided at Stadlergasse 8 in Vienna with her husband, Eduard Elsinger, a factory owner who held the title *Kommerzialrat* (commercial counselor). These records indicate that Eduard Elsinger was not Jewish. These records further indicate that Leonie Elsinger’s property located at Stadlergasse 8 was valued at 59,430.00 Reichsmark (“RM”), and that she also co-owned a house in Baden with her husband, near Vienna, which was valued at RM 16,500.00. These records further indicate that Leonie Elsinger owned various valuable objects worth RM 7,050.00. According to correspondence in the file, Leonie Elsinger transferred, with the approval of the aryanization authorities, many of her real estate holdings to her husband, who, as noted above, was not Jewish. This correspondence further indicates that her husband advanced her the necessary liquid funds to pay the first two installments of the atonement tax assessed against her in the amount of RM 17,200.00, and that he took her jewelry as security for the RM 4,300.00 he advanced for the first installment. These records make no mention of assets held in a Swiss bank account.

The CRT’s Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), claims to the same or related accounts may be joined in one proceeding at the CRT’s discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimant in one proceeding.

Identification of the Account Owner

³ The CRT notes that the Claimant indicated the date of birth of her great-aunt, Leonie Elsinger, as 6 October 1869, but that the 1938 Census records indicate that Leonie Elsinger was born on 6 October 1870. The CRT finds that this discrepancy is minor and does not adversely affect the Claimant’s identification of the Account Owner.

The Claimant has plausibly identified the Account Owner and the Power of Attorney Holder. The Claimant's great-aunt's name matches the published name of the Account Owner. The Claimant's great-aunt's husband's name matches the published name of the Power of Attorney Holder. The CRT notes that the 1938 Census record submitted by the Claimant indicates that her great-aunt also owned a property in Baden, Austria, which matches the Account Owner's published city and country of residence. The Claimant also indicated that the Account Owner's maiden name was del Banco and that the Account Owner and the Power of Attorney Holder were married, which matches unpublished information about the relationship between the Account Owner and the Power of Attorney Holder contained in the Bank's records and in the 1938 Census records. Moreover, the Claimant identified her relatives' street address in Vienna as Stadlergasse 8, which matches unpublished information about the Account Owner and the Power of Attorney Holder contained in the Bank's records and in the 1938 Census records. The Claimant also provided her great-aunt's 1938 Census declaration containing her great-aunt's signature, which matches the Account Owner's signature contained in the Bank's records.

In support of her claim, the Claimant submitted documents, including a copy of her great-aunt's last will and testament, indicating her great-aunt's name as Leonie Sara Elsinger, née del Banco, and listing the Claimant as her grandniece and heir. The Claimant also submitted a copy of her great-aunt's husband's last will and testament, indicating her great-aunt's husband's name as Eduard Elsinger, and listing his wife, Leonie Elsinger, née del Banco, as his sole heir. The Claimant further submitted the 1938 Census declaration of Leonie Elsinger, indicating that her husband was Eduard Elsinger and that they resided at Stadlergasse 8 in Vienna. These documents provide independent verification that the persons who are claimed to be the Account Owner and the Power of Attorney Holder had the same names and resided at the same address recorded in the Bank's records as the names and address of the Account Owner and the Power of Attorney Holder.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Leonie Elsinger, and indicates that her date of birth was 6 October 1869, 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 further 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, that she was forced to register her assets in the 1938 Census, that she paid atonement tax, and that she resided in Nazi-controlled Austria until her death in 1942. Furthermore, the documents indicate that her husband, who was not Jewish and had been able to protect her, died on 25 November 1942. Following his death, Leonie Elsinger made her will, dated 6 December 1942. According to her death certificate, Leonie Elsinger was found dead in her apartment only four days later, on 10 December 1942, leading to the presumption that fear of persecution drove her to her death.

As noted above, a person named Leonie Elsinger was included in the CRT's database of victims.

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 and documents, demonstrating that the Account Owner was the Claimant's great-aunt. These documents include the Account Owner's last will and testament indicating that her name was Leonie Elsinger, née del Banco, and listing the Claimant as the Account Owner's grandniece and heir. The CRT notes that the Claimant submitted her great-aunt's will, in which [REDACTED] is named as a beneficiary, along with the Claimant. However, the CRT has not received a claim to these accounts from [REDACTED].

The Issue of Who Received the Proceeds

The Bank's records indicate that the demand deposit account was closed on 16 November 1939, and the custody account was closed on 3 June 1938. Given that the Account Owner and Power of Attorney Holder resided in Nazi-controlled Austria until their deaths in 1942; that there is no record of the payment of the Account Owner's accounts to her; that the Account Owner, the Power of Attorney Holder, and their heirs would not have been able to obtain information about the 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 (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 accounts were not paid to the Account Owner, the Power of Attorney Holder, or their 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 claims are 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 maternal great-aunt. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their 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. The CRT notes that the Bank's records specify the contents of the Account Owner's custody account as of January 1936. However, the CRT notes that the value Account Owner's custody account may have fluctuated between 1936 and the date of its closure on 3 June 1938. Therefore, the CRT is not relying on the specified items in the Account Owner's custody account in order to determine the value of the account and is instead treating the custody account as an account 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 demand deposit account was SF 2,140.00 and the average value of a custody account was SF 13,000.00. Thus, the total 1945 average value of the accounts at issue is SF 15,140.00. The current value of these amounts is calculated by multiplying them by a factor of 12.5 in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 189,250.00.

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 claims 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
13 May 2005