

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Erez Bernstein

in re Accounts of Jenny Flatow

Claim Number: 501796/NB

Award Amount: 211,875.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published accounts of Jenny Flatow (the “Account Owner”), over which Philipp Flatow (“Power of Attorney Holder Philipp Flatow”) and Rosie Flatow (“Power of Attorney Holder Rosie Flatow”) (together the “Power of Attorney Holders”) held power of attorney, 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 her maternal grandmother, Jenny (Bertha) Flatow, née Levy; Power of Attorney Holder Philipp Flatow as her maternal grandfather, Philipp Flatow; and Power of Attorney Holder Rosie Flatow as her mother, Rosie Rubens, née Flatow, who was born in 1908 and who was the only child of Jenny and Philipp Flatow.

The Claimant stated that her grandparents, who were Jewish, owned a men’s and boys’ clothing store located at 21-23 Oststrasse in Wattenscheid, Germany, where the family also resided. The Claimant indicated that in the mid-1920s, as her grandparents’ business grew, her family moved to 19 Oststrasse in Wattenscheid. The Claimant further stated that her parents Rosie and Dr. [REDACTED] were married in 1932 and moved to Cologne, Germany, in order to study at the university, where they suffered discrimination under the Nazi regime. Finally, the Claimant stated that her parents and her grandmother Jenny Flatow fled Nazi Germany for Chile in September 1936. According to the Claimant, Jenny Flatow died on 27 April 1945 in Santiago, Chile.

In support of her claim, the Claimant submitted a copy of (1) her grandmother's obituary, published in a newspaper dated May 1945, indicating that Jenny Flatow, née Levy, (who was the mother of Rosie Rubens, née Flatow, the mother-in-law of Dr. [REDACTED], and the grandmother of [REDACTED],) passed away on 27 April 1945 in Santiago, and that she had formerly resided in Wattenscheid; (2) an article entitled "*Erinnern für die Zukunft*," ("Remember for the Future")¹ dated September 2006, which indicates that Rosi Rubens was born Rosi Flatow in 1908 in Wattenscheid, and that her parents were Bertha and Philipp Flatow, who owned a men's and boys' clothing store located at 21-23 Oststrasse in Wattenscheid, where her family also resided, and that her family fled Germany for Chile in September 1936.

The Claimant indicated that she was born on 24 May 1940 in Chile.

Information Available in the Bank's Records

The Bank's records consist of power of attorney forms signed in Wattenscheid, Germany; a spousal consent form signed in Wattenscheid on 5 July 1930; and printouts from the Bank's database. According to the Bank's records, the Account Owner was *Frau* (Mrs.) Jenny Flatow, née Levy, who resided at 21 Oststrasse in Wattenscheid.

The Bank's records indicate that the Account Owner held a custody account,² which was opened in 1930, and an account of unknown type, which was opened in 1931. The records indicate that the Account Owner granted power of attorney over the custody account to her husband, Philipp Flatow, who also resided at 21 Oststrasse in Wattenscheid, on 5 July 1930. Power of attorney was extended to *Frl.* (Miss) Rosie Flatow in a form signed on 31 March 1931. The records do not indicate the value of these accounts. 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 these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holders or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner and the Power of Attorney Holders. The Claimant's relatives' names, city and country of residence match the published names, city

¹This article is published at <http://www.erinnern-fuer-die-zukunft.de/Mitteilungen/Titelseite10/Inhalt10/WiedersehenRosiRubens/wiedersehenrosirubens.html>.

² The Bank's records contain power of attorney forms that reference a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although these power of attorney forms therefore do not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the CRT concludes that it is plausible that she held such an account.

and country of residence of the Account Owner and the Power of Attorney Holders. The Claimant identified the Account Owner's maiden name, the street address of the Account Owner and Power of Attorney Holder Philipp Flatow, as well as their marital status, which match unpublished information about the Account Owner and Power of Attorney Holder Philipp Flatow contained in the Bank's records.

In support of her claim, the Claimant submitted documents, including Jenny Flatow's obituary, 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, and that the persons who are claimed to be the Power of Attorney Holders had the same names recorded in the Bank's records as the names of the Power of Attorney Holders. Additionally, the Claimant submitted an article entitled "*Erinnern für die Zukunft*," which indicates that the people identified as the Account Owner and Power of Attorney Holder Philipp Flatow resided at the same street address recorded in the Bank's records as the street address of the Account Owner³ and Power of Attorney Holder Philipp Flatow. The CRT 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 and that she fled Nazi Germany in 1936. The CRT notes that the Claimant submitted an article entitled "*Erinnern für die Zukunft*" indicating that the Account Owner and Power of Attorney Holders, who were Jewish, fled Nazi Germany for Chile in 1936.

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 a document demonstrating that the Account Owner was the Claimant's maternal grandmother. This document is the Account Owner's obituary, which indicates that Jenny Flatow was the grandmother of [REDACTED].

The CRT notes that the Claimant indicated that the Account Owner may have another surviving relative, namely the Claimant's brother David Rubens, but that because he is not represented in the Claimant's claim, the CRT will not treat his potential entitlement to the Account Owner's account in this decision.

The Issue of Who Received the Proceeds

Given that there is no record of the payment of the Account Owner's accounts to her; that there is no record of a date of closure of the accounts; that the Account Owner's heirs would not have

³ The CRT notes that the article submitted by the Claimant and discussed above lists Philipp Flatow's spouse's first name as Bertha, whereas the Bank's records list her first name as Jenny. However, given that the remaining detailed information provided by the Claimant, including the information in the claimed Account Owner's obituary, identifies her as Jenny, the CRT determines that this discrepancy is not substantial, and that Bertha Flatow and Jenny Flatow are the same person.

been able to obtain information about their 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, the Power of Attorney Holders, 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 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 maternal grandmother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holders, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody account and one account of unknown type. 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 custody account was 13,000.00 Swiss Francs ("SF") and the average value of an account of unknown type was SF 3,950.00, for a total average 1945 value of SF 16,950.00. 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 211,875.00.

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
26 November 2008