

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Hugo Heksch

Claim Number: 200542/EZ¹

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Hugo Heksch (the “Account Owner”), over which Kaethe and Simon Salomon (the “Power of Attorney Holders”) held power of attorney at the Basel branch of [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 paternal cousin, Hugo Heksch, who was born prior to 1911 in Germany, was married and had no children. While the Claimant stated that she could not remember the name of her cousin's spouse, the Claimant stated that her father, [REDACTED], and Hugo Heksch's father, [REDACTED], were brothers. The Claimant indicated that Hugo Heksch was a banker who resided in Heidelberg, Germany, and worked in Mannheim, Germany. The Claimant stated that her own parents emigrated from Germany to the Netherlands in May 1919 but her cousin, who was Jewish, fled Germany for the United States some time between 1933 and 1940 because of Nazi persecution. According to the Claimant, Hugo Heksch died in New York, New York, the United States, at some point during the 1980s or 1990s and that he had no other surviving relatives.

In a telephone conversation with the CRT on 11 January 2002, the Claimant indicated that Hugo Heksch had two sisters, Katharina and [REDACTED]. The Claimant stated that Katharina Heksch was married to Simon Salomon, and that they lived in Saarbrücken, Saarland (Germany from 1935), where they owned and managed a textile warehouse, which was later confiscated by

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 200542 and 206780. The CRT has determined that these claims are duplicate claims and is treating them under the Consolidated Claim Number 200542.

the Nazis. The Claimant added that just before the Second World War, Katharina Heksch and her husband, who were Jewish, fled from Germany to the United States and that they later moved to Lugano, Switzerland. In a telephone conversation on 9 July 2004, the Claimant further stated that Katharina Salomon, née Heksch, died in the 1970s in Lugano and that Simon Salomon died ten years later, also in Lugano.

In support of her claim, the Claimant submitted a copy of her passport showing that her maiden name is [REDACTED] and that she lives in Amsterdam, the Netherlands. The Claimant stated that she was born on 29 January 1911 in Vienna, Austria.

The Claimant previously submitted an Initial Questionnaire (“IQ”) with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her family and indicating her family’s Dutch origin and that her maiden name is [REDACTED].

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form, an acknowledgment of receipt of the Bank’s rules regarding custody accounts, and mailing instructions, all of which were signed by the Account Owner on 27 October 1936. According to the Bank's records, the Account Owner was Hugo Heksch who resided at 14 Koningsweg in Baarn, the Netherlands, and the Power of Attorney Holders were *Herr* (Mr.) Simon Salomon and *Frau* (Mrs.) Kaethe (Käthe) Salomon, née Heksch, who resided at 15 avenue Elisée Réclus in Paris, France.

The Bank's records indicate that the Account Owner held a custody account, numbered 40904-II, which was opened on or before 27 October 1936. According to the Bank's records, on 27 October 1936, the Bank was instructed to send all mail regarding the account to *Herr* (Mr.) Fritz Bernheim, who was a *Prokurist* (senior bank officer) and that on 6 November 1936, the Bank was re-instructed to send the mail directly to the Account Owner.

The Bank's records do not show when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. 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, the Power of Attorney Holders, or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The names of the Claimant's cousin, his sister² and her husband match the published names of the Account Owner and the Power of Attorney Holders. The Claimant identified that the Power of Attorney Holders were married, which is consistent with the published surnames of the Power of Attorney Holders and also consistent with the unpublished information in the Bank's records showing that the Power of Attorney Holders resided at the same address.

The CRT notes that the Claimant stated that her cousin Hugo Heksch lived in Germany and fled to the United States, and that Katharina and Simon Salomon lived in Saarbrücken, Saarland, while the Bank's records indicate that the Account Owner had an address in Baarn, the Netherlands, and the Power of Attorney Holders shared an address in Paris, France. The CRT also notes that Baarn is approximately 30 kilometers from Amsterdam, the Netherlands, to which the Claimant's parents emigrated from Germany. The CRT deems it plausible that given the confusion and circumstances surrounding the Second World War, the Claimant did not know or is no longer able to recall all the correspondence addresses her cousins may have used.

Finally, the CRT notes that the name Hugo Heksch appears only once on the February 2001 list of published accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List") and that there were no other claims to this account. 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 was Jewish, and fled Germany between 1933 and 1940 because of Nazi persecution.

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 Claimant's paternal cousin. The CRT notes that the Claimant identified information regarding the marital status of the Power of Attorney Holders which is consistent with unpublished information contained in the Bank's records. The CRT further notes that the Claimant submitted her passport, which indicates that her maiden name is [REDACTED] and that she resides in the Netherlands, which provides independent verification that the Claimant's relatives bore the same family name as the Account Owner and that they resided in the Netherlands. The CRT further notes that the foregoing information is the type that family members would possess and indicates that the Account Owner

² The CRT notes that the Claimant indicated that her cousin's first name was Katharina while the Bank's records indicate that one of the Power of Attorney Holders' names was Kaethe (Käthe). The CRT further notes that the name Kaethe (Käthe) can be used as a shortened version of the name Katharina.

was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as she asserted in her claim form.

The Issue of Who Received the Proceeds

The Bank's records do not indicate when the account was closed. Given that the Account Owner fled Germany after the Nazis came to power; that there is no record of the payment of the Account Owner's account to him, the Power of Attorney Holders, or his heirs; that there is no record of a date of closure of the account; 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 Presumption (h) and (J), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), 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 cousin, and this relationship justifies an Award. Finally, 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. 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"). 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 162,500.00.

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
10 September 2004