

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED]¹

in re Accounts of Otokar Miks and Irene Miks

Claim Numbers: 700181/MBC; 700683/MBC²

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the account of Otokar Miks. This award is to the accounts of Otokar Miks (“Account Owner Otokar Miks”) and Irene Miks (“Account Owner Irene Miks”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”), over which Heinrich Wiener (the “Power of Attorney Holder”) held power of attorney.³

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 Claimants

The Claimant submitted two Initial Questionnaires identifying Account Owner Otokar Miks as his father, Dr. Otokar Miks. The Claimant indicated that his family lived in Nitra, Czechoslovakia (now Slovakia), until 1938, when they relocated to Prague, Czechoslovakia (now the Czech Republic), where they lived at Belohorska 1427 in Prague XVIII Brevnov. The Claimant further indicated that after the Nazi occupation of Czechoslovakia, he was unable to

¹ In a telephone conversation with the CRT on 20 August 2007, [REDACTED], who is the wife of Claimant [REDACTED] (the “Claimant”), informed the CRT that her husband passed away in 2005. Therefore, this award is to the Claimant’s estate.

² The Claimant did not submit a Claim Form to the CRT. However, in 1999 he submitted two Initial Questionnaires (“IQs”), numbered CZE-0005061 and CZE-0021112, to the Court in the United States. Although these IQs were not Claim Forms, the Court, in an Order signed on 30 July 2001, ordered that those IQs 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 IQs were forwarded to the CRT and have been assigned claim numbers 700181 and 700683, respectively.

³ The CRT notes that, on the List of Account Owners Published in 2005 (the “2005 List”), the names Irene Miks and H. Wiener are listed as being account owners and the name Otokar Miks is not published. Upon careful review, the CRT has concluded that Otokar Miks and Irene Miks jointly owned two accounts and that Heinrich Wiener held power of attorney over the accounts.

finish his education because he was Jewish, and that he was imprisoned in Theresienstadt and in various forced labor camps. The Claimant indicated that his father and his sister were also imprisoned by the Nazis and that his father's assets, including his home in Prague, were looted.

The Claimant submitted documents in support of his claim, including: 1) a certificate issued by the Czech Ministry of Defense in 1991, indicating that [REDACTED], who was born on 18 December 1922 in Nitra, was a political prisoner during the Second World War; and 2) a letter from the *Statni realne gymnasium* in Prague II, dated in July 1945, confirming that [REDACTED], who was born on 18 December 1922 in Nitra and resided at Belohorska 1427 in Prague XVIII, was suspended from school in 1942.

The Claimant indicated that he was born on 18 December 1922 in Nitra.

In a telephone conversation with the CRT on 20 August 2007, the Claimant's wife, [REDACTED], informed the CRT that the Claimant passed away in 2005. [REDACTED] provided additional information and documents pertaining to the Claimant's family. [REDACTED] stated that the Claimant's mother was Irene Miksova (Miks), née Wienerova (Wiener). [REDACTED] further indicated that the Claimant's father, who was a medical doctor, directed a hospital in Nitra. According to [REDACTED], during the Nazi occupation of Czechoslovakia, the Claimant's father was deported to a concentration camp, from which he returned in 1945. [REDACTED] further indicated that the Claimant's mother, who had tuberculosis during the Second World War, was able to avoid deportation. According to the information provided by [REDACTED], the Claimant's parents resided in Prague after the Second World War. [REDACTED] further indicated that the Claimant had a sister, [REDACTED], who passed away many years ago. Additionally, according to [REDACTED], the Claimant's father died in Prague in 1952 and his mother died of leukemia 1960 in Bratislava, Czechoslovakia (now Slovakia).

[REDACTED] submitted the following documents: (1) the Claimant's mother's birth certificate, issued by the registry office of the Jewish Community of Vienna (*Matrikelamt der israelitischen Cultusgemeinde in Wien*) in 1900, indicating that Irene Wiener was born on 29 August 1894 in Vienna, to [REDACTED] and [REDACTED], née [REDACTED]; (2) the Claimant's father's birth certificate, indicating that Otokar Miksch (Miks) was born on 3 September 1886 in Frenstat pod Radhostem, Czechoslovakia (now the Czech Republic), to [REDACTED] and [REDACTED], née [REDACTED]; (3) the Claimant's parents' marriage certificate, indicating that Dr. Otokar Miksch (Miks), who was Catholic and resided in Vienna, and Irene Wiener, who was Protestant and resided in Vienna, were married in 1916; the marriage certificate also indicates that Irene Wiener's father was [REDACTED], and that Heinrich Wiener, also resident in Vienna, participated in the wedding ceremony; (4) the Claimant's birth certificate, indicating that [REDACTED] was born on 18 December 1922 in Nitra to Dr. Otokar Miks and Irena Miksova (Miks), née Wienerova (Wiener); and (5) the marriage certificate of the Claimant, [REDACTED], and [REDACTED], née [REDACTED], indicating that they were married in Prague in 1955 and that [REDACTED]' parents were Otokar Miks and Irena Miksova (Miks), née Wienerova (Wiener).

Information Available in the Bank's Records

The Bank's records consist of contracts to open a custody account; power of attorney forms, a customer card; an internal Bank notice; and printouts from the Bank's database. According to these records, the Account Owners were Dr. Otokar Miks and *Frau* (Mrs.) Irene Miks, who resided in Vienna and Prague, and the Power of Attorney Holder was Dr. Heinrich Wiener, a notary who resided in Vienna. The Bank's records contain several signature samples of the Account Owners and the Power of Attorney Holder. The Bank's records indicate that the Account Owners held a custody account, numbered 28124, opened on 27 September 1929, and a demand deposit account, whose opening date is not indicated.

These records indicate that the Account Owners originally listed their city of residence as Vienna and their postal address in the care of [REDACTED], an inspector for the Austrian State Railroad, who resided at Heinestrasse 35 in Vienna II. According to the Bank's records, in January 1934 the Account Owners designated Heinrich Wiener, who also resided at Heinestrasse 35 in Vienna II, as the Power of Attorney Holder. Additionally, according to a notation in the Bank's records dated January 1935, the Account Owners granted the Power of Attorney Holder the authority to use the accounts for his own benefit. In addition, undated notations in the Bank's records indicate that the Account Owners changed the name on their correspondence address from [REDACTED] to Heinrich Wiener, and that they later gave their address as Belohorska tr. 1427/II in Prague-Brevnov. According to the Bank's records, the Power of Attorney Holder notified the Bank on 23 March 1938 that the Account Owners were foreign nationals whose permanent residence was outside Austria and Germany. Additionally, the records indicate that on 28 March 1938 or earlier, and again on 17 July 1939 and 10 November 1939, the Bank was instructed to hold all correspondence. Finally, the Bank's records contain a notation indicating that on 4 November 1939, the Power of Attorney Holder - who resided in New York, the United States at that time - instructed the Bank not to authorize any transactions on the accounts by the Account Owners without his consent.

The Bank's records indicate that on 9 January 1930 the custody account held $4\frac{1}{2}\%$ *Obl. Schweizerische Eidgenossenschaft von 1927* bonds, with a nominal value of 8,500.00 Swiss Francs ("SF"). The Bank's records do not indicate the amount held in the demand deposit account. Finally, the Bank's records indicate that the custody account was closed on 8 March 1940 and that the demand deposit account was closed on or before that date. The amount in the accounts on the date of their closure is unknown. There is no evidence in the Bank's records that the Account Owners, 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 Dr. Heinrich Wiener, numbered 35998. These documents indicate that Heinrich Wiener was a

notary and that he lived at Heinestrasse 35 in Vienna II. The CRT notes that Heinrich Wiener's signature on these documents matches the Power of Attorney Holder's signature in the Bank's records. These 1938 Census records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owners

The Claimant and [REDACTED] have plausibly identified the Account Owners. The Claimant's parents' names and street address, the Claimant's father's professional title, and his mother's marital status match the Account Owners' names and street address, Account Owner Otokar Miks' professional title, and Account Owner Irene Miks' marital status. The CRT notes that, aside from the name of Account Owner Irene Miks and the first initial and last name of the Power of Attorney Holder, which appeared on the List of Account Owners Published in 2005 (the "2005 List"), all of this information is unpublished.

Additionally, the Claimant and [REDACTED] submitted documents, including the birth and marriage certificates for the Claimant's parents and the Claimant, and a letter from the *Statni realne gymnasium* in Prague, providing independent verification that the Claimants' parents had the same names, street address, professional title, and marital status as those indicated in the Bank's records. These documents also illustrate the Claimant's parents' connection to [REDACTED] and Heinrich Wiener of Vienna, which is consistent with unpublished information in the Bank's records.

The CRT notes that the Claimant submitted IQs asserting his entitlement to Swiss bank accounts owned by his father in 1999, six years before Account Owner Irene Miks' name appeared on the 2005 List. Finally, the CRT notes that the other claims to these accounts were disconfirmed because those claimants failed to identify the Account Owners and provided a first name and/or country of residence for the Power of Attorney Holder that differ from the information in the Bank's records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. According to the information provided by the Claimant and by [REDACTED], Account Owner Irene Miks was Jewish, the Account Owners' assets were looted by the Nazis, Account Owner Otokar Miks was imprisoned in a concentration camp, Account Owner Irene Miks lived in Nazi-occupied Czechoslovakia, and their daughter and son (the Claimant) were imprisoned by the Nazi regime. [REDACTED] submitted a birth certificate issued by the Jewish Community of Vienna, indicating the Jewish faith of Account Owner Irene Miks' family.

The Claimant's Relationship to the Account Owner

The Claimant and [REDACTED] have plausibly demonstrated that the Claimant is related to the Account Owners by submitting specific biographical information and the Claimant's birth and

marriage certificates, demonstrating that the Account Owners were the Claimant's parents. There is no indication that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

The Bank's records indicate that the custody account was closed on 8 March 1940 and that the demand deposit account was closed on or before that date. The CRT notes that, according to the Bank's records, the Power of Attorney Holder, who was authorized to use the accounts for his own benefit, was outside Nazi-occupied territory before the custody account was closed, and possibly before the demand deposit account was closed. However, there is no indication in the Bank's records that the Power of Attorney Holder withdrew funds from the accounts or that he closed the accounts himself. Therefore, given that at the time the accounts were closed Account Owner Otokar Miks was either living in Nazi-occupied Czechoslovakia or already imprisoned in a concentration camp; that Account Owner Irene Miks resided in Nazi-occupied Czechoslovakia at that time; that the Account Owners' assets were looted by the Nazis; that there is no record of the payment of the Account Owners' accounts to them or to the Power of Attorney Holder; that the Account Owners, 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 (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 Owners, 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 claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant and [REDACTED] have plausibly demonstrated that the Account Owners were the Claimant's parents, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holder, or their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owners held one custody account and one demand deposit account. The balance of the demand deposit account is unknown. Although the Bank's records indicate that in 1930 the custody account contained bonds with a nominal value of SF 8,500.00, the CRT notes that this information predates the German occupation of Czechoslovakia by nine years and the closure of the account by ten years, and that the contents of the account could have changed

significantly during that time. Therefore, the CRT will treat this account as an account of unknown value.⁴

Pursuant to Article 29 of the Rules, when the value of an account is unknown 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 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 SF 2,140.00 and the average value of a custody account was SF 13,000.00. Thus, the combined 1945 average value for the two accounts at issue is SF 15,140.00. 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 189,250.00.

Scope of the Award

Pursuant to Article 20 of the Rules, the CRT will carry out further research on the Claimant’s claims 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
15 November 2007

⁴ The CRT notes that, even if the 1930 contents of the custody account were used as a basis for calculating the Award amount, the amount of the Award would not change, as the value of the bonds were below the average value for custody accounts, and in such cases, presumptive value is used to determine the Award amount.