

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Maria Mueller

Claim Number: 750131/SU¹

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Alfred Hurwitz (Horwitz).² This award is to the published account of Maria Mueller (the “Account Owner”) at the [REDACTED] (the “Bank”).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 Claimant

The Claimant submitted an ATAG Ernst & Young claim form in 1997, identifying the Account Owner as her maternal grandmother, Maria Dorothea Mueller, who was born on 8 January 1881. The Claimant stated that her grandparents were not married, but had a daughter, [REDACTED], née [REDACTED] (the Claimant’s mother), out of wedlock in Berlin, Germany on 7 August 1908. The Claimant indicated that her parents and grandparents resided in Berlin prior to the Second World War, and that she was born on 1 July 1939 in Berlin. According to the Claimant,

¹ Claimant [REDACTED] (the “Claimant”) did not submit a CRT Claim Form. However, in 1997 she submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-E-70-930-085-140, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 750131.

² The CRT will treat the claim to this account in a separate determination.

³ 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”), the name Maria Mueller appears twice. Upon careful review, the CRT has determined that the second Maria Mueller is not the same person addressed in the current decision and, consequently, the Claimant did not identify this other account owner as her relative.

her grandfather, Alfred Hurwitz, who was Jewish, opened a Swiss bank account for her shortly after she was born, but that he may have opened it in her mother's or grandmother's name. The Claimant indicated that during the War, her mother destroyed all documents regarding the Claimant's grandfather so that their Jewish heritage would not be exposed. The Claimant further stated that her grandfather died on a business trip to Shanghai, China before the end of the War. The Claimant indicated that her grandmother died in August 1960.

The Claimant submitted copies of documents in support of her claim, including: 1) her *Abnentafel* (family genealogical table), indicating that [REDACTED] was born on 7 August 1908 in Berlin, that her mother was [REDACTED], and that the name of her father was unknown; 2) her mother's birth certificate, also indicating that [REDACTED] was born on 7 August 1908 in Berlin to [REDACTED] and an unknown father; and 3) her family book, indicating that [REDACTED] was born 1 July 1939 in Berlin to [REDACTED] and [REDACTED], née [REDACTED]. The Claimant indicated that she was born on 1 July 1939 in Berlin.

Information Available in the Bank's Record

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 submit original documents pertaining to the account at issue, but provided a report regarding the Account Owner's account. According to the auditors' report, the Account Owner was *Frau* (Mrs.) Maria Mueller, who resided at Heidekrug 43 in Berlin, Germany. The auditors' report indicates that the Account Owner held an account, the type of which is not indicated at the Bank.

The auditors' report indicates that the account had a balance of 3,318.00 Swiss Francs ("SF") as of an unknown date. The auditors who carried out the ICEP Investigation did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the auditors' report that the Account Owner or her heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant's grandmother's name, title, and country of residence match the published name, title, and country of residence of the Account Owner. The Claimant identified the Account Owner's city of residence, which matches unpublished information about the Account Owner contained in the auditors' report.

In support of her claim, the Claimant submitted copies of documents, including her family genealogical table, her mother's birth certificate, and her family book, providing independent

verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the auditors' report as the name and city of residence of the Account Owner.

The CRT notes that the Claimant filed an ATAG Ernst & Young claim form in 1997, asserting her entitlement to a Swiss bank account owned by her grandfather, Alfred Hurwitz, 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"). This indicates that the Claimant has based her 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 her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that a member of her family 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 the other claims to this account were disconfirmed because those claimants provided a different city or country of residence than the city and country of residence of the Account Owner, or provided a date of birth that was inconsistent with the Account Owner's title. 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 Target of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Target of Nazi Persecution. The Claimant indicated that her grandmother had a child out of wedlock with her grandfather. The CRT notes that, according to Article 46(26) of the Rules Governing the Claims Resolution Process (as amended) (the "Rules"), "spouse" is defined as "anyone who was married to the Account Owner at the time of the Account Owner's death, as well as a person who cohabited and maintained a joint household with the Account Owner for a substantial period of time immediately prior to the Account Owner's death or deportation, provided that neither of the parties was married to another person during that time. Although the Claimant did not indicate how long her grandparents were together prior to her grandfather's death, the CRT notes that the two had a child together, and that the Claimant stated that her grandmother attempted to shield her family from the Nazis by destroying all documents that could reveal their Jewish heritage. The CRT therefore considers that the Claimant's grandmother was her grandfather's spouse under the meaning of Article 46(26) of the Rules. As the spouse of a Jewish man and the mother of his child, the Claimant's grandmother would have been targeted by the Nazis under the Nuremberg Laws.

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 grandmother. These documents include her family genealogical table and her mother's birth certificate, indicating that [REDACTED] was the daughter of [REDACTED]; and the Claimant's family book, indicating that [REDACTED] is the daughter of [REDACTED], née [REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner and her family resided in Nazi Germany; that there is no record of the payment of the Account Owner's account to her nor any record of a date of closure of the account; that the Account Owner and her heirs would not have been able to obtain information about her account after the Second World War from the 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), 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 her 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 grandmother and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one account of unknown type. The auditors' report indicates that the value of the unknown account as of an unknown date was SF 3,318.00. According to Article 29 of the Rules, if the amount in an account of unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 49,375.00.

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
27 February 2007