

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Lilly Spitzer

Claim Number: 703091/AX¹

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Lilly Spitzer (the “Account Owner”) 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 an Initial Questionnaire (“IQ”) with the Court in 1999, identifying the Account Owner as his mother, Lilly Spitzer, who was born on 24 December 1897 in Vienna, Austria, and was married to [REDACTED] on 3 June 1920. According to the Claimant, his mother, who was Jewish, resided at Rudolfsplatz 10 in Vienna, until the incorporation of Austria into the Reich in 1938 (the *Anschluss*), when she fled Vienna for the United States. The Claimant indicated that when his family came to the United States, they used the name [REDACTED] as well as Spitzer. The Claimant further indicated that his mother died on 8 May 1986 in New York, New York, the United States. In support of his claim, the Claimant submitted his mother’s Austrian driving permit, showing that her name was Lilly Spitzer, and that she was from Vienna; his mother’s New York driving permit, showing that her name was Lilly Spitzer; and a copy of his school report card from Vienna showing that his name was [REDACTED]. The Claimant stated that he was born on 21 June 1928.

¹ [REDACTED] did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered 0227194, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires 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 IQ was forwarded to the CRT and has been assigned Claim Number 703091.

The Claimant previously submitted IQs asserting his entitlement to Swiss bank accounts owned by himself, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].²

Information Available in the Bank's Record

The Bank's record consists of a printout from the Bank's database. According to this record, the Account Owner was Lilly Spitzer, who resided in Vienna, Austria. The Bank's record indicates that the Account Owner held a custody account, numbered 17438. The Bank's record further indicates that the account was opened on 6 April 1933, and that it was closed on 31 August 1938. The Bank's record does not indicate the value of the account at the time of its closure. There is no evidence in the Bank's record that the Account Owner or her heirs closed the account 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, and/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 Lili Spitzer,³ numbered 17712. These records show that Lili Spitzer was born on 24 December 1897, was married to [REDACTED] and resided at Rudolfsplatz 10 in Vienna. According to these records, Lili and [REDACTED] Spitzer reported assets worth RM 1,142,899.44 and were assessed "flight tax" (*Reichsfluchtsteuer*) of RM 278,200.00 on these assets. On 1 June 1938, they joined the Gildemeester Aktion under which they could emigrate in return for putting their assets under trust management by the Aktion. Under this management, flight tax of RM 105,881.37 was paid by 12 November 1938 with RM 172,318.63 still owing. The records do not show whether this amount was paid subsequently. The family emigrated in September 1938 leaving as forwarding address the American Express Co., Paris. The records further indicate that the Spitzer family's final destination was the United States. These records make no mention of assets held in a Swiss bank account.

² The CRT did not locate an account belonging to the Claimant and his relatives, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (ICEP or ICEP Investigation), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the Rules). The Claimant should be aware that the CRT will carry out further research on his claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

³ The CRT notes that the Claimant indicated that his mother's name was "Lilly Spitzer" but that the 1938 Census form refers to "Lili Spitzer". Given that the information provided by the Claimant matches the information provided in the 1938 Census form, the CRT concludes that Lilly Spitzer and Lili Spitzer are the same person.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's mother's name matches the published name of the Account Owner. The Claimant's mother's city and country of residence match the published city and country of residence of the Account Owner. In support of his claim, the Claimant submitted documents, including his mother's Austrian driving permit, showing that her name was Lilly Spitzer, and that she was from Vienna, and his mother's New York driving permit, showing that her name was Lilly Spitzer, 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 record as the name and city of residence of the Account Owner. The CRT notes that the name Lilly Spitzer appears only once 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 CRT notes that the Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Lilly Spitzer. The CRT further notes that there are no other claims to this account.

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 Vienna to the United States after the *Anschluss*.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information, demonstrating that the Account Owner was the Claimant's mother. The CRT notes that the Claimant filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List. The CRT further notes that the Claimant submitted a copy of his mother's Austrian driving permit, showing that her name was Lilly Spitzer, and that she was from Vienna, and his mother's New York driving permit, indicating that her name was Lilly Spitzer. The CRT notes that it is plausible that these documents are documents which most likely only a family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all this information supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his Claim Form. 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 fled Vienna in 1938 after the *Anschluss*; that there is no record of the payment of the Account Owner's account to her; 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

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 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 his mother, 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 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 investigation carried out pursuant to the instructions of ICEP, 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 his claim 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
24 December 2004