

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED 1]¹
also acting on behalf of [REDACTED 2]

**in re Account of Lilly Wittels
and
Account of Josef Stein
and
Accounts of Albert Gerngross
(Power of Attorney Holder Josef Stein)²**

Claim Number: 600246/AV³

Award Amount: 172,875.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (the “Claimant”) to accounts of Lilly Wittels and Josef Stein.⁴ This Award is to the published account of Lilly Wittels (“Account Owner Wittels”), over which [REDACTED] (the “Power of Attorney Holder”) held power of attorney, the published account of Josef Stein (“Account Owner Stein”), and the published accounts of Albert Gerngross (“Account Owner Gerngross”) (together

¹ In an email dated 3 March 2005, the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department informed the CRT that the Claimant died on 24 April 2004, and forwarded a copy of the Claimant’s death certificate and will, indicating that [REDACTED 2] was to be the executor of her estate.

² In an effort to locate any and all accounts that might have belonged to the Claimant’s relative, the CRT has reviewed and analyzed all accounts whose owners’ or power of attorney holders’ names are the same as those of the Claimant’s relatives, even if the Claimant could not identify the owner of the account as her relative.

³ The Claimant submitted a claim, numbered B-00894, on 17 April 1998, to the HCPO. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600246. The Claimant submitted an additional Claim Form, which was registered under the Claim Number 601656. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 600246.

⁴ In this claim, the Claimant also claimed the accounts of [REDACTED 1], [REDACTED], Bertha Stein, [REDACTED], [REDACTED], Antoinette Sachsova, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. In a separate decision, the CRT awarded the Claimant the accounts of Berta Stein and Antoinette Sachs. See *In re Accounts of Berta Stein and Antoinette Sachs* (approved on 13 October 2004). The CRT will treat the claims to the other accounts in separate determinations.

the “Account Owners”), over which Account Owner Stein held power of attorney,⁵ all at the Zurich branch of the [REDACTED] (the “Bank”).⁶

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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a claim to the Holocaust Claims Processing Office (“HCPO”), and in subsequent correspondence with the HCPO, which was forwarded to the CRT on 1 September 2001, the Claimant identified Account Owner Wittels as her first husband’s sister, Lilly Wittels. According to the Claimant, her relative, who was Jewish, resided in Vienna, Austria. The Claimant stated that her relative was married and had one son. The Claimant indicated that her relative perished at Theresienstadt or Auschwitz.

In addition, the Claimant identified Account Owner Stein as her second husband’s cousin, Josef Stein. According to the Claimant, her relative, who was Jewish, was a lawyer and resided in Vienna. The Claimant stated that her relative fled from Vienna to Prague, Czechoslovakia, and that he was deported from Prague to Theresienstadt or Auschwitz, where he perished.

The Claimant submitted her second husband’s will, identifying the Claimant’s daughter as [REDACTED 2] and indicating that she was born in Vienna. The Claimant further submitted her Austrian passport, identifying her as [REDACTED 1]. The CRT notes that in the Claimant’s original claim form to the HCPO, submitted on 17 April 1998, the Claimant identified several relatives with the last name of Stein and indicated that they resided in Vienna. According to the records forwarded by the HCPO, on 25 September 1998, the Claimant submitted additional information to the HCPO identifying several relatives with the last name of [REDACTED] and indicating that they resided in Vienna. The Claimant indicated that she was born on 2 May 1909 in Solotwina, Poland (today the Ukraine). The Claimant is representing her daughter, [REDACTED 2], née [REDACTED], who was born on 6 April 1938 in Vienna.

⁵ The CRT notes that Account Owner Stein held power of attorney over the accounts of Albert Gerngross. For purposes of this Award, he will be referred to as Account Owner Stein.

⁶ 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”), Lilly Wittels is identified as owning two accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only one account. The CRT further notes that, on the ICEP List, Albert Gerngross is identified as owning two accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of three accounts.

Information Available in the Bank's Records

Account Owner Wittels

The Bank's records consist of a power of attorney form and printouts from the Bank's database. According to these records, Account Owner Wittels was Lilly Wittels, who resided in Vienna, and the Power of Attorney Holder was [REDACTED], who resided at Liechtensteinstrasse 14 in Vienna. The Bank's records indicate that Account Owner Wittels held one custody account.⁷ 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 Account Owner Wittels, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

Account Owner Stein

The Bank's records consist of an account card and printouts from the Bank's database. According to these records, Account Owner Stein was Dr. Josef Stein, who resided at Schottenring 25 in Vienna. The Bank's records indicate that Account Owner Stein held a savings account, numbered 9492. 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 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 Account Owner Stein or his heirs closed the account and received the proceeds themselves.

Account Owner Gerngross

The Bank's records consist of a customer card, a list of closed custody accounts belonging to customers residing in Austria, and printouts from the Bank's database. According to these records, Account Owner Gerngross was Albert Gerngross. The person who held power of attorney over these accounts was *Rechtsanwalt* (Attorney) Dr. Josef Stein, who resided at Schottenring 25 in Vienna.

⁷ The Bank's records contain a power of attorney form that references 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 this power of attorney form therefore does not necessarily demonstrate that Account Owner Wittels 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.

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 Josef Stein, numbered 60293. These records state that Dr. Josef Israel Stein was born on 11 November 1877 in Vienna, that he was married to [REDACTED], née [REDACTED], who was born on 28 June 1898 in Vienna, and that he resided at Schottenring 25 in Vienna. These records further state that Josef Stein’s assets were seized by the Gestapo on 24 November 1941. These records make no mention of assets held in a Swiss bank account.

The CRT’s Analysis

Identification of the Account Owners

Account Owner Wittels

The Claimant’s first husband’s sister’s name and city and country of residence match the published name and city and country of residence of Account Owner Wittels. The CRT notes that the Claimant filed an HCPO claim form in 1998, and subsequently submitted additional information, asserting her entitlement to Swiss bank accounts owned by several relatives with the last name [REDACTED] who resided in Vienna, 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 had reason to believe that her relatives owned Swiss bank accounts prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant. The CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified Account Owner Wittels.⁸

Account Owner Stein

The Claimant has plausibly identified Account Owner Stein. The Claimant’s second husband’s cousin’s name and city and country of residence match the published name and city and country of residence of Account Owner Stein. The Claimant identified Account Owner Stein’s profession, which matches unpublished information about Account Owner Stein contained in the Bank’s records. The CRT notes that the other claim to this account was disconfirmed because

⁸ The CRT notes that the Claimant did not identify the Power of Attorney Holder. The CRT further notes that there is no indication in the Bank’s records that Account Owner Wittels and the Power of Attorney Holder were related, and that Account Owner Wittels and the Power of Attorney Holder have different last names. Therefore, the CRT concludes that the failure to identify the Power of Attorney Holder does not affect the plausibility of the identification of Account Owner Wittels.

that claimant provided a different country of residence than the country of residence of Account Owner Stein.

Account Owner Gerngross

The CRT notes that the Claimant has not identified Account Owner Gerngross.

Status of Account Owner Wittels and Account Owner Stein as Victims of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Wittels and Account Owner Stein were Victims of Nazi Persecution. The Claimant stated that Account Owner Wittels and Account Owner Stein were Jewish, and that they perished at either Theresienstadt or Auschwitz.

The Claimant's Relationships to Account Owner Wittels and Account Owner Stein

The Claimant has plausibly demonstrated that she is related to Account Owner Wittels and Account Owner Stein by submitting specific biographical information, demonstrating that Account Owner Wittels was the Claimant's first husband's sister and that Account Owner Stein was the Claimant's second husband's cousin. The CRT notes that the Claimant submitted a copy of her second husband's will, identifying the Claimant's daughter's last name as [REDACTED] and indicating that she was born in Vienna; and the Claimant's Austrian passport, identifying the Claimant's last name as [REDACTED]; which provide independent verification that the Claimant's relatives bore the same family names as Account Owner Wittels and Account Owner Stein and that they resided in Austria. The CRT further notes that the Claimant submitted information to the HCPO, identifying several relatives with the last names of [REDACTED] and [REDACTED], and indicating that they resided in Vienna, prior to the publication in February 2001 of the ICEP List. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that Account Owner Wittels and Account Owner Stein were well known to the Claimant as family members, and all of this information supports the plausibility that the Claimant is related to Account Owner Wittels and Account Owner Stein, as she has asserted in her Claim Form. There is no information to indicate that Account Owner Wittels and Account Owner Stein have other surviving heirs.

The Issue of Who Received the Proceeds

Given that Account Owner Wittels and Account Owner Stein were deported to either Theresienstadt or Auschwitz, where they perished; that there is no record of the payment of Account Owner Wittels's or Account Owner Stein's accounts to them nor any record of dates of closure of the accounts; that Account Owner Wittels's and Account Owner Stein's heirs would not have been able to obtain information about their 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 (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 Account Owner Wittels, the Power of Attorney Holder, Account Owner Stein, 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.

Entitlement to the Accounts of Account Owner Gerngross

The CRT notes that Account Owner Stein, the Claimant's second husband's cousin, was not an owner of the accounts owned by Account Owner Gerngross, but rather held power of attorney over the accounts. Furthermore, there is no indication in the Bank's records that Account Owner Stein was related to Account Owner Gerngross. The CRT further notes that, under Swiss law, a power of attorney holder is not considered to be the owner of an account. After a power of attorney holder dies, his or her powers in an account no longer exist, and they do not pass to his or her heirs. This means that, where a claimant has identified the power of attorney holder, but not the account owner, as his or her relative, the Claimant is not entitled to the account unless there is evidence in the Bank's records that the power of attorney holder and the account owner were related. In this case, no such evidence exists. Accordingly, the CRT determines that the Claimant is not entitled to the accounts of Account Owner Gerngross. Moreover, it should be noted that the CRT has awarded these accounts to another claimant, who plausibly identified the Account Owner as her relative. All decisions are published upon release on the CRT's website at www.crt-ii.org.

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 Account Owner Wittels was her first husband's sister, and that Account Owner Stein was her second husband's cousin, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither Account Owner Wittels, the Power of Attorney Holder, Account Owner Stein, nor their heirs received the proceeds of the claimed accounts. Further, the CRT notes that [REDACTED 2], as Account Owner Wittels's niece, has a better entitlement to the account of Account Owner Wittels than the Claimant, who is related to Account Owner Wittels by marriage.

Amount of the Award

In this case, Account Owner Wittels held one custody account, and Account Owner Stein held one savings 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"), and the average value of a savings account was SF 830.00. The current value of these amounts 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 172,875.00.

Division of the Award

With respect to the account of Account Owner Wittels, according to Article 23(1)(d) of the

Rules, if neither the account owner's spouse nor any descendants of the account owner have submitted a claim, the award shall be in favor of any descendants of the account owner's parents who have submitted a claim. In this case, the Claimant is representing her daughter, [REDACTED 2], who is Account Owner Wittels's niece. Accordingly, [REDACTED 2] is entitled to the entire award amount pertaining to Account Owner Wittels's account.

With respect to the account of Account Owner Stein, according to Article 23(1)(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23(1)(a-f) has submitted a claim, the CRT may make an award to any relative of the account owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity. In this case, both the Claimant and [REDACTED 2] are related to Account Owner Stein by marriage. Accordingly, the Claimant and [REDACTED 2] are each entitled to one-half of the award amount pertaining to Account Owner Stein's account.

Consequently, the Claimant is entitled to SF 5187.50, and represented party [REDACTED 2] is entitled to SF 167687.50.

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
30 November 2005