

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Thomas J. Fillion,

Albert A. Hirsch,

and Susan Reisner

in re Account of *Beger & Röckel*

Claim Numbers: 500399/GO; 500587/GO; 500657/GO

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claims of Thomas J. Fillion (“Claimant Fillion”), Albert A. Hirsch (“Claimant Hirsch”), and Susan Reisner, née Archenhold, (“Claimant Reisner”) (together the “Claimants”) to the account of Wilhelm Marx.¹ This Award is to the unpublished account of *Beger & Röckel* (the “Account Owner”), at the St. Gallen branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimants

Claimant Reisner and Claimant Hirsch, who are cousins, and Claimant Fillion, who is Claimant Hirsch’s nephew, submitted substantially similar Claim Forms identifying the Account Owner as a company owned by their relative, Wilhelm Marx (the maternal grandfather of Claimant Reisner and Claimant Hirsch, and the maternal great-grandfather of Claimant Fillion). The Claimants indicated that their relative was born on 14 January 1875 in Nördlingen, Germany, and that he was married to Sophie Oppenheimer in 1902 in Hanover, Germany. The Claimants further indicated that Wilhelm and Sophie Marx, who were Jewish, had two children: Elisabeth (Claimant Reisner’s mother), and Anna (Claimant Hirsch’s mother and Claimant Fillion’s maternal grandmother). The Claimants stated that their relative resided at Ohmstrasse 20 in Munich, Germany. Claimant Hirsch and Claimant Reisner further indicated that Wilhelm Marx owned a printing factory, *Graphia - Kunstanstalt und Drukerei*, in Munich, and Claimant Fillion indicated that Wilhelm Marx owned a printing factory, *Berger & Röckel*, in Munich. According

¹ In a separate decision, the CRT awarded the accounts of Wilhelm Marx to the Claimants. See *In re Accounts of Wilhelm Marx* (approved on 18 November 2004).

to information provided by the Claimants, Wilhelm Marx was arrested and incarcerated in Dachau in November 1938, and his businesses were confiscated by Nazi authorities. The Claimants indicated that after Wilhelm Marx was released from Dachau, Wilhelm and Sophie Marx fled from Germany to England in March 1939, and then to the United States in early 1940. The Claimants indicated that Sophie Marx died on 5 October 1950 in Kansas City, Missouri, the United States, and Wilhelm Marx died on 15 September 1966 in Milwaukee, Wisconsin, the United States.

The Claimants indicated that their relative's children, Anna and Elisabeth, are still alive, but that they are incapable of submitting claims, and Claimant Fillion indicated that his mother is no longer alive.

In support of his claim, Claimant Fillion submitted a family history, written in 1922 by Louis H. Oppenheimer, the paternal uncle of Sophie Marx, indicating that Sophie Marx was married to Willi Marx and that they resided in Munich. Claimant Reisner submitted an excerpt of her mother's autobiography, written in 1999, indicating that Wilhelm Marx was a businessman in Munich married to Sophie Oppenheimer, and that his factory was confiscated by the German authorities in November 1938, shortly after "the Night of Broken Glass" ("*Kristallnacht*").

Claimant Fillion indicated that he was born on 5 September 1952 in Ann Arbor, Michigan, the United States. Claimant Hirsch indicated that he was born on 21 January 1933 in Heidelberg, Germany. Claimant Reisner did not indicate her date and place of birth.

Information Available in the Bank's Records

The CRT notes that 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 report an account belonging to *Beger & Röckel* during their investigation of the Bank. The documents evidencing accounts belonging to *Beger & Röckel* were obtained from archival sources in Germany, and the existence of an account at the Bank is evidenced by its inclusion on the Account Owner's letterhead.

Information Available from the State Archive in Munich

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, 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 State Archive in Munich (*Staatsarchiv München*), there are documents concerning the assets of Wilhelm Marx, numbered 90/24b. These records include Wilhelm Marx's 1938 Census declaration and official correspondence. They indicate that Wilhelm Marx was born on 14 January 1875 in Nördlingen, Germany, that he was married to Sofie Marx, née Oppenheimer, and that he resided at Elisabethstrasse 46/II. The records further indicate that Wilhelm Marx was a businessman and a co-owner of two companies: *Graphia* and *Beger & Röckel*, which were located in Munich. According to the correspondence, aryization proceedings for the two companies, of which

Wilhelm Marx was a co-owner, had started before 12 November 1938 and were concluded on 15 February 1939. According to a letter, addressed by Wilhelm Marx to the Regional Tax Office in Munich and dated 17 February 1939, the sale price was 243,024.07 Reichsmark (“RM”), of which he was credited with RM 146,640.07. This compared with a value of RM 339,827.00 reported in his original asset declaration. The records further indicate that on 21 March 1939 the tax authorities quickly moved to block these and other assets belonging to the co-owners of the two aryanized companies, including Wilhelm Marx. The blocking order allowed Wilhelm Marx to withdraw up to RM 1,500.00 monthly for living expenses and to pay official entities. All other withdrawals required the approval of the Foreign Exchange Regulations Office (*Devisenstelle*). The reason, detailed in the order, was that the subjects had sold their businesses and were non-Aryan. According to the order, experience, especially recent experience, had shown that non-Aryans, after the sale of their businesses, would attempt to evade the foreign exchange regulations and move the liquid assets they had received abroad. A letter to the tax authorities in Munich from a consultant, acting on behalf of Wilhelm Marx and dated 2 December 1939, requested a declaration of non-objection for the sale of blocked Reichsmark (*Sperrmark*) from Wilhelm Marx’s emigrants’ account. This letter indicates that, as of 14 July 1939, Wilhelm Marx was in Amsterdam.

In addition, these records contain evidence of account ownership at the Bank. Specifically, these records included a letter from *Beger & Röckel*, written on the company’s letterhead, to the Munich Tax Office (*Finanzamt München*), dated 10 December 1935, and stating that Wilhelm Marx’s partners were guaranteeing any flight tax (*Reichsfluchtsteuer*) due in case their partner decided to leave the country. The company’s letterhead, *Beger & Röckel* indicates that it held business accounts in Munich; Vienna, Austria; and the Bank in St. Gallen, Switzerland. The type of these accounts is not indicated. With respect to the account held by *Beger & Röckel* at the Bank, the records contain no further information regarding the disposition of the account.

The CRT’s Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), claims to the same or related accounts may be joined in one proceeding at the CRT’s discretion. In this case, the CRT determines it appropriate to join the three claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants’ relative’s business’s name, and the city and country in which it was located, match the name of the Account Owner and the city and country in which it was located. The Claimants further indicated that Wilhelm Marx was married to Sophie Marx, née Oppenheimer, that he was a co-owner of the business *Beger & Röckel*, and that he resided in Munich, which matches information about Wilhelm Marx contained in the 1938 Census records.

In support of their claims, Claimant Fillion submitted a family history, and Claimant Reisner submitted her mother's autobiography, providing independent verification that the person who is claimed to be the owner of the Account Owner had the same name, and resided in the same city recorded in the 1938 Census records as the name and city of residence of the owner of the Account Owner.

The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that Wilhelm Marx, who was the co-owner of the Account Owner, was a Victim of Nazi Persecution. The Claimants stated that Wilhelm Marx was Jewish, that he resided in Nazi Germany, and that he was arrested in November 1938 and incarcerated in Dachau and that he fled Germany to avoid further persecution. In addition, the Claimants indicated that the Account Owner was aryanized. The CRT notes that Wilhelm Marx was required to register his assets pursuant to the 1938 Census.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to Wilhelm Marx, by submitting specific biographical information, demonstrating that the Account Owner was a business belonging to Claimant Hirsch's and Claimant Reisner's grandfather, and Claimant Fillion's great-grandfather. The CRT notes that the Claimants identified unpublished information about the Account Owner as contained in the 1938 Census records. The CRT further notes that Claimant Reisner submitted an excerpt of the autobiography written by the daughter of the owner of the Account Owner, indicating that Sophie Oppenheimer was married to Wilhelm Marx; and that Claimant Fillion submitted a history of Sophie Oppenheimer's family, indicating that she was married to the owner of the Account Owner. 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 most likely only family members would possess and indicates that the owner of the Account Owner was well known to the Claimants as a family member, and all of this information supports the plausibility that the Claimants are related to the owner of the Account Owner, as they have asserted in their Claim Forms. There is not information to indicate that the Claimants' grandfather and great-grandfather, respectively, has other surviving heirs who have filed claims.

The Issue of Who Received the Proceeds

Given that the owner of the Account Owner was Jewish, and that the companies he co-owned were aryanized; that he was arrested and incarcerated in Dachau in November 1938; that the account was identified on company letterhead that was contained in Wilhelm Marx's 1938 Census file; that the owner of 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), as provided in Article 28 of the Rules Governing the Claims

Resolution Process, as amended (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the owner of the Account Owner or his 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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant Hirsch and Claimant Reisner have plausibly demonstrated that Wilhelm Marx, the co-owner of the Account Owner, was their grandfather, and Claimant Fillion has plausibly demonstrated that Wilhelm Marx was his great-grandfather, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the co-owner of the Account Owner, nor their heirs or beneficiaries received the proceeds of the claimed account.

The CRT notes that the Claimants indicated that the children of Wilhelm Marx are still alive, but that they are incapable of submitting claims to the CRT; the CRT will not treat their potential entitlement to the Account Owner's account, as they have not submitted claims on their own behalf, and are not represented in the Claimants' claims.

Amount of the Award

In this case, the Account Owner held one account of unknown type. 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 an account of the type of which is not indicated was 3,950.00 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 49,375.00.

Division of the Award

According to Article 23(3) of the Rules, if the Account Owner is a legal or other entity, the Award will be made in favor of those Claimants who establish a right of ownership to the assets of the entity. In this case, all three Claimants have established that their relative, Wilhelm Marx, was an owner of the Account Owner.

Further, according to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Accordingly, Claimant Reisner, as the daughter of Wilhelm Marx's daughter Elisabeth, is entitled to one-half of the total award amount, and Claimant Hirsch, who is the son of Wilhelm Marx's other daughter, Anna, and Claimant Fillion, who is the son of Anna Hirsch's daughter, Eva, are each entitled to one-quarter of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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
28 June 2006