

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Eva Werner
represented by Michael Werner

in re Account of Simon Horowitz

Claim Number: 501448/HS

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of Eva Werner, née Horowitz, (the “Claimant”) to the published accounts of Simon Horowitz (the “Account Owner”), over which Franz Bischofswerder (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).¹

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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her father, Dr. Simon Horowitz, who was born on 16 January 1884 in Thorn, Germany. The Claimant stated that her father, who resided at Droysenstrasse 15 in Berlin, Germany before 1938, was an attorney and notary. The Claimant further stated that her father, who was Jewish, was a lawyer, and that following the Nazi rise to power, he was no longer allowed to practice law. The Claimant indicated that her father and mother, Maximiliane Horowitz, née Harden, were married in Berlin in 1938. The Claimant further indicated that her parents fled Germany in April 1939, settling in Palestine, where the Claimant, her father’s only child, was born in 1943. According to the Claimant, she and her parents returned to Germany in 1950, settling in West Berlin, where her father, after having been reinstated by the bar association, died on 13 November 1951. The Claimant stated that her mother died in Issy-les-Moulineaux, France, on 17 February 1983.

The Claimant identified the Power of Attorney Holder as Franz Bischofswerder, her uncle, who was married to her father’s sister, Justina Bischofswerder, née Horowitz, and who was also her

¹ 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”), Simon Horowitz is indicated as having two accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only one account.

father's partner. The Claimant indicated that her aunt, Justina, was arrested on the street in Berlin during the *Fabrikaktion*² of February 1943 and deported to Auschwitz, where she perished, and that her uncle Franz had already fled to the United States at the time.

The Claimant submitted numerous documents, including: Simon Horowitz's birth certificate, dated in 1884 in Thorn, showing that his parents were Jewish; his solicitor's qualification certificate, dated in 1924 in Berlin, showing his name and professional status; a document issued by the Minister of Justice in Berlin, dated in July 1933, withdrawing Dr. Simon Horowitz's admission to represent clients in Court; a letter from the office of the President of the Berlin Court of Appeals (*Kammergerichtspräsident*) to Dr. Simon Horowitz of Berlin, dated in October 1938, withdrawing permission to practice law; Simon Horowitz's certificate of German nationality, dated in November 1938 in Berlin; Dr. Simon Horowitz's German passport, dated in Berlin in March 1939, which is stamped with the letter "J" to indicate his status as a Jew; a letter from the Jewish Community of Berlin to Dr. Simon Horowitz, dated in March 1939, showing that he resided at Droysenstrasse 15 in Charlottenburg, Berlin, and instructing him to pay emigration tax (*Auswanderer-Abgabe*) of 486.00 Reichsmark ("RM"), and a receipt from the Jewish Community for payment of this amount; a receipt from the *Deutsche Golddiskontbank* in connection with Simon Horowitz's departure from Germany, dated in March 1939, indicating that he resided at Droysenstrasse 15; and the Claimant's birth certificate, dated in 1943 in Tel Aviv, Palestine, stating that her father, Simon (Shimon) Horowitz, was Jewish.

The Claimant also submitted various documents related to Dr. Simon Horowitz's return to Germany and his reinstatement as a lawyer and solicitor following the Second World War, dated from 1949 to 1950, and issued by the Office of the Mayor of Berlin, the Office of the President of Police of Berlin, the President of the Berlin Court of Appeals, and the Berlin Bar Association, and including a certificate, dated in 1950, granting Dr. Simon Horowitz, Maximiliane Horowitz, and Eva Horowitz (the Claimant) permission to reside in Berlin. Additionally, the Claimant submitted Dr. Simon Horowitz's death certificate, dated in 1951 in Berlin, showing his Jewish faith and professional status; and the Claimant's marriage certificate, dated in 1966 in Munich, Germany, stating that her maiden name is Horowitz.

The Claimant stated that she was born on 27 July 1943 in Tel Aviv.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form, dated 4 October 1930 in Berlin, Germany, and printouts from the Bank's database. According to these records, the Account Owner was Dr. Simon Horowitz, who resided at Droysenstrasse 15 in Charlottenburg, Berlin, and the Power of Attorney Holder was Dr. Franz Bischofswerder, who resided at Siegmundshof 16 in Berlin NW 87. These records indicate that the Account Owner held one account, the type of which is not indicated, which was opened on or before 4 October 1930.

² The Nazi code name for one of the final waves of mass arrests of Jews in Berlin, which commenced in February 1943.

The Bank's records do not show when the account at issue was closed, 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. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name and city and country of residence match the published name and city and country of residence of the Account Owner, and her uncle's name matches the published name of the Power of Attorney Holder. Furthermore, the Claimant identified the Account Owner's exact street address and his professional title, which match unpublished information about the Account Owner contained in the Bank's records.

In support of her claim, the Claimant submitted numerous documents, including: Simon Horowitz's birth certificate, his solicitor's qualification certificate, a document issued by the Minister of Justice in Berlin, a letter from the President of the Berlin Court of Appeals, Simon Horowitz's certificate of German nationality and German passport, a letter and a receipt from the Jewish Community of Berlin, a receipt from the *Deutsche Golddiskontbank*, various documents related to Dr. Simon Horowitz's return to Germany and his reinstatement as a lawyer and notary following the Second World War, and his death certificate. These documents provide independent verification that the person who is claimed to be the Account Owner had the same name, professional title, and street address as those recorded in the Bank's records for the Account Owner. The CRT notes that the other claims to this account were disconfirmed because those claimants failed to identify unpublished information about the Account Owner, provided a country of residence that differs from the Account Owner's, and failed to identify the Power of Attorney Holder.

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 submitted substantial documentation indicating that the Account Owner was Jewish, that he resided in Berlin following the Nazi rise to power, that he was deprived of the right to practice law, and that he fled Germany in 1939, following payment of an emigration tax to the Jewish Community of Berlin. These documents include: a document issued by the Minister of Justice in Berlin, a letter from the President of the Berlin Court of Appeals, the Account Owner's German passport, a letter and a receipt from the Jewish Community of Berlin, and a receipt from the *Deutsche Golddiskontbank*. Additionally, the

Claimant stated that the Account Owner's sister, who was arrested during the *Fabrikaktion* in Berlin, perished in Auschwitz.

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 her father. These documents include: the Claimant's birth and marriage certificates and a Berlin residence certificate. The Claimant stated that she is the Account Owner's only child. 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 resided in Germany following the Nazi rise to power; that there is no record of the payment of the Account Owner's account to him or to the Power of Attorney Holder, nor any record of a date of closure of the account; that 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 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, 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 has plausibly demonstrated that the Account Owner was her father, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor the Account Owner's heirs received the proceeds of the claimed account.

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 unknown type 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.

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
31 March 2005