

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1],
represented by Walter Friedrich

to Claimant [REDACTED 2],

to Claimant [REDACTED 3],

and to Claimant [REDACTED 4]

in re Accounts of Maria Jelinek-Drexler

Claim Numbers: 501729/RS;¹ 500397/RS;² 500441/RS; 500442/RS; 500632/RS

Award Amount: 15,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the account of Maria Jelinek-Drexler; the claim of [REDACTED 2], née [REDACTED] (“Claimant [REDACTED 2]”), to the account of Bruno Jelinek; the claims of [REDACTED 3] (“Claimant [REDACTED 3]”) to the accounts of Frida Jelinek and Bruno Jelinek; and the claims of [REDACTED 4] (“Claimant [REDACTED 4]”) (together, the “Claimants”) to the accounts of Frida Jelinek and Bruno Jelinek. This Award is to the published accounts of Maria Jelinek-Drexler (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).³

¹ [REDACTED 1] (“Claimant [REDACTED 1]”) submitted two additional claims, which are registered under Claim Numbers 850031 and 850033. In decisions released 3 January 2007, Special Master Bradfield treated Claimant [REDACTED 1]’s claims to these accounts.

² In a separate decision, the CRT awarded the accounts of Ernst Jelinek to [REDACTED 2] (“Claimant [REDACTED 2]”), [REDACTED 3] (“Claimant [REDACTED 3]”), and to [REDACTED 4] (“Claimant [REDACTED 4]”). See *In re Accounts of Ernst Jelinek* (approved on 28 July 2004). In another decision, the CRT awarded the accounts of Bruno Jelinek and Frida Jelinek to Claimant [REDACTED 2], Claimant [REDACTED 3], and to Claimant [REDACTED 4]. See *In re Accounts of Bruno Jelinek and Frida Jelinek* (approved on 11 May 2005).

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”), *Frau* Maria Jelinek-Drexler is indicated as having one account. Upon careful review, the CRT has concluded that the Bank’s records indicate that Maria Jelinek-Drexler held two accounts. In addition, the ICEP List indicates that Maria Jelinek-Drexler resided in Bad Hofgastein, Austria. The CRT has also concluded that the Bank’s records do not indicate that Maria Jelinek-Drexler resided in Bad Hofgastein, but rather indicate that she resided in Vienna, Austria.

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1], Claimant [REDACTED 3], and Claimant [REDACTED 2] submitted Claim Forms identifying the Account Owner as Maria Friederike Karoline Jellinek, née Drexler, who was married to [REDACTED], a lawyer in Vienna, Austria. Claimant [REDACTED 1] indicated that Maria Jellinek's father, [REDACTED], had a brother [REDACTED], who was Claimant [REDACTED 1]'s paternal grandfather. Claimant [REDACTED 3] and Claimant [REDACTED 2] indicated that Maria Jellinek was their father's paternal aunt by marriage. Claimant [REDACTED 1] indicated that Maria Jellinek, who was born on 27 February 1903 in Vienna, was not Jewish, but that her husband, [REDACTED], was Jewish. Claimant [REDACTED 1] and Claimant [REDACTED 3] indicated that Nazi persecution led [REDACTED] to commit suicide on 11 May 1938, shortly following the incorporation of Austria into the Reich in March 1938 (the "Anschluss"). Claimant [REDACTED 1] indicated that [REDACTED] and Maria Jellinek did not have any children.

Claimant [REDACTED 1], Claimant [REDACTED 3], and Claimant [REDACTED 2] indicated that Maria Jellinek remarried following the death of her husband [REDACTED], and that her second husband's surname was [REDACTED]. Claimant [REDACTED 1] stated that Maria Jellinek also had a third husband named [REDACTED], who died in 1969.

Claimant [REDACTED 3] indicated that during her lifetime, Maria Jellinek sent monthly checks to his grandmother, [REDACTED], who was the wife of [REDACTED]'s brother [REDACTED].

In support of his claim, Claimant [REDACTED 1] submitted:

- (1) a copy of the last will of [REDACTED], which was written on 11 April 1938 in Vienna, and which was certified by the Josefstadt District Court (*Bezirksgericht Josefstadt*) on 23 May 1938, and which indicates that his wife, Maria Friedrike Jellinek, née Drexler, was his primary heir;
- (2) a copy of an undated letter addressed to Maria and signed [REDACTED], which was also certified by the Josefstadt District Court, indicating that the author confirmed that the couple's new automobile was to be considered Maria's property, as Ernst had purchased it with money from Maria's accounts; and indicating that the bank deposit books that the couple possessed were also Maria's property;
- (3) a copy of the last will of Maria Sebastiani, née Drexler, dated 21 June 1996, indicating that she was born on 27 February 1903, that [REDACTED 1] of Gars was among her heirs, and making no mention of accounts held in Swiss banks;

- (4) minutes of the attendance on 25 June 1997 of a number of lawyers and notaries at the home of Mrs. Maria Sebastiani, who wished to amend her last will to include, *inter alia*, [REDACTED 1] as an heir of a greater share of her estate than in the original version of her last will, and indicating also that the surname on the door of Mrs. Sebastiani's apartment read [REDACTED];
- (5) a certificate of inheritance, dated 3 August 1938, indicating that the sole heir of the estate of [REDACTED], lawyer, who died on 11 May 1938, was Mrs. Maria Jellinek, née Drexler;
- (6) a certificate of inheritance, certified by the Central Vienna District Court (*Bezirksgericht Innere Stadt Wien*) on 20 April 1999, indicating that an heir of one-quarter of the estate of Maria Sebastiani, who was born on 27 February 1903, and who died on 26 June 1997, was [REDACTED 1];
- (7) the registry of death of [REDACTED], indicating that he died on 11 May 1938; that his spouse was Maria Jellinek, née Drexler; that he had no children; that his father was [REDACTED], who died in 1913; and that his siblings included [REDACTED] of Bielsko, Poland;
- (8) the registry of death of Maria Friedrike Karoline Sebastiani, née Drexler, indicating that she was born on 27 February 1903, that she was Catholic, that she resided in Vienna, that she was a widow, that her husband [REDACTED] had predeceased her in 1969 or 1970, that she died on 26 June 1997, and that her estate had a value of over 1 million Austrian schillings;
- (9) the death certificate of Maria Friedrike Karoline Sebastiani, indicating that her birth had been registered with the Roman Catholic church, and that she died on 26 June 1997;
- (10) extracts from the 1938 Austrian census records of both Maria Jellinek and [REDACTED] which are further described below; and
- (11) his own birth certificate, indicating that [REDACTED 1] was born on 14 September 1941 in Vienna, and that his father was [REDACTED].

In support of his claim, Claimant [REDACTED 3] submitted copies of numerous documents, including:

- (1) a handwritten letter dated 2 January 1951 signed 'Maria', written on letterhead bearing the name 'Maria Haas';
- (2) a detailed family tree;
- (3) the death certificate of [REDACTED], indicating that his father was [REDACTED];

- (4) a declaration of inheritance regarding the estate of [REDACTED], indicating that he had three sons, including [REDACTED] and [REDACTED 4], and that [REDACTED] had two children, namely [REDACTED 2] and [REDACTED 3];
- (5) the birth certificate of [REDACTED 2], indicating that she was born on 5 July 1962, and that her father was [REDACTED];
- (6) the birth certificate of [REDACTED 3], indicating that he was born on 21 May 1964, and that his father was [REDACTED]; and
- (7) the marriage certificate of [REDACTED] and [REDACTED], indicating that [REDACTED]'s father was [REDACTED].

Claimant [REDACTED 1] indicated that he was born on 14 September 1941 in Vienna. Claimant [REDACTED 3] indicated that he was born on 21 May 1964 in Buenos Aires, Argentina. Claimant [REDACTED 2] indicated that she was born on 5 July 1962 in Buenos Aires, and Claimant [REDACTED 4] indicated that he was born on 23 December 1922 in Bielsko, Poland.

Information Available in the Bank's Records

The Bank's records consist of a client card, a printout from the Bank's database of safe deposit box clients, and a list of accounts reported to the Swiss authorities following the 1945 freeze of assets held in Switzerland by the citizens of Germany and the territories incorporated into the Third Reich (the "1945 Freeze").

According to these records, the Account Owner was *Frau* (Mrs.) Maria Jellinek-Drexler, who resided in Vienna, Austria. The Bank's records indicate that the Account Owner held two accounts at the Bank, namely one safe deposit box, numbered 510, and one account, the type of which is not indicated.

According to the client card, safe deposit box number 510 was opened on 27 August 1938 and closed on 14 January 1939. The Bank's records also include a printout from the Bank's database of safe deposit box clients, which indicates that safe deposit box number 510 was opened on 24 August 1938 and closed on 18 January 1939. The records do not indicate the contents of the safe deposit box.

The Bank's records further indicate that Maria Jellinek-Drexler held an account of an unknown type that was reported by the Bank to the Swiss authorities following the 1945 Freeze; the records do not indicate when that account was opened. The Bank indicated that that account had a balance of 274,034.00 Swiss Francs ("SF") as of 6 February 1946. The Bank's records also contain a notation indicating that the Bank received a letter regarding this account on 27 July 1948.

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.

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 Maria Jellinek, numbered 34286.

These documents indicate that Maria Jellinek described herself as of 14 July 1938 as an “Aryan” (*Vollarierin*), as a widow, and as having no children. The records also indicate that Maria Jellinek was born on 27 February 1903, and that she resided in 1938 at Liechtensteinstrasse 39 in Vienna. The records contain a letter dated 9 December 1938 from Maria Jellinek to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle*) (“VVSt”). In the letter, Maria Jellinek indicated that she had also previously submitted a 1938 Census record on behalf of her deceased husband, lawyer [REDACTED]. In addition, she stated that the Josefstadt District Court had ruled on 3 August 1938 that she was the legitimate heir of [REDACTED]. Accordingly, Maria Jellinek indicated to the VVSt that the inheritance that she received from her deceased husband should no longer be considered to be in Jewish hands. (. . . [T]eile ich mit, dass dieser Nachlass laut Beschluss des Bezirksgerichtes . . . mir als Vollarierin eingewantwortet wurde, und daher seit diesem Zeitpunkte nicht mehr als jüdisches Vermögen anzusehen ist.)

In the records of the Austrian State Archive, there are also documents concerning the assets of [REDACTED], numbered 34287. That record indicates that it was completed and signed by Maria Jellinek on 14 July 1938 on behalf of her deceased husband. The record further indicates that [REDACTED] had been a lawyer, that he was born on 2 March 1884, that he had resided and worked at Liechtensteinstrasse 14 in Vienna, and that he had been married to Maria Jellinek, née Drexler, who was Catholic. The record also indicates that [REDACTED] had owned a Steyr 530 automobile, but that that automobile had been commandeered by the Gestapo on 12 March 1938.

Neither of these records make mention of assets held in Swiss bank accounts.

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 six claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant [REDACTED 1], Claimant [REDACTED 3], and Claimant [REDACTED 2] have plausibly identified the Account Owner. Those Claimants' relative's name and country of residence match the published name and country of residence of the Account Owner. Those Claimants also identified the Account Owner's city of residence, which matches unpublished information about the Account Owner contained in the Bank's records.

In support of his claim, Claimant [REDACTED 1] submitted documents, including the last will of [REDACTED]; an undated letter addressed to 'Maria' and signed [REDACTED]; the last will of Maria Sebastiani, née Drexler; minutes of attendance regarding the amendment of the last will of Mrs. Maria Sebastiani; a certificate of inheritance regarding the estate of [REDACTED]; a certificate of inheritance regarding the estate of Maria Sebastiani; the registry of death of Maria Friederike Karoline Sebastiani, née Drexler; extracts from the 1938 Census record of Maria Jellinek; and the death certificate of Maria Friederike Karoline Sebastiani, née Drexler.

In support of his claim, Claimant [REDACTED 3] submitted a copy of a handwritten letter signed 'Maria', and written on letterhead belonging to Maria Haas; and a detailed family tree.

The above documents provide 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 Bank's records as the name and city of residence of the Account Owner.

The CRT notes that the name Maria Jellinek-Drexler appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the "ICEP List").

The CRT notes that Claimant [REDACTED 4] did not identify the Account Owner. However, the CRT notes that Claimant [REDACTED 4] did identify the Account Owner's first husband [REDACTED], and that Claimant [REDACTED 4]'s failure to identify the Account Owner consequently does not adversely affect the plausibility of his claim.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different country of residence or maiden name than the country of residence and maiden name of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants indicated that the Account Owner was not Jewish, but that she was married to a Jewish man, namely [REDACTED]. The CRT notes that the Account Owner was required to register her assets pursuant to the 1938 Census. The Claimants stated that Maria Jellinek's husband, [REDACTED], was driven to suicide following the *Anschluss*. The CRT

notes that the Account Owner was also required to register her late husband's assets pursuant to the 1938 Census. In that asset declaration, the Account Owner noted that an automobile which her husband had stated was her property had been commandeered by the Gestapo.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant [REDACTED 1]'s father's cousin, Claimant [REDACTED 3] and Claimant [REDACTED 2]'s father's aunt by marriage, and Claimant [REDACTED 4]'s father's sister-in-law. These documents include the registry of death of [REDACTED], indicating that his spouse was Maria Jellinek, née Drexler, and that his father was [REDACTED], and that his siblings included [REDACTED]; a copy of the last will of Maria Sebastiani, née Drexler, indicating that among her heirs were [REDACTED 1] of Gars; minutes of attendance of lawyers at the amendment of the last will of Mrs. Maria Sebastiani, confirming that the testator designated [REDACTED 1] as one of her heirs; the death certificate of [REDACTED], indicating that his father was [REDACTED]; a declaration of inheritance regarding the estate of [REDACTED], indicating that he had three sons, including [REDACTED] and [REDACTED 4], and that [REDACTED] had two children, namely [REDACTED 2] and [REDACTED 3]; the birth certificate of [REDACTED 2], indicating that her father was [REDACTED]; the birth certificate of [REDACTED 3], indicating that his father was [REDACTED]; and the marriage certificate of [REDACTED], indicating that his father was [REDACTED].

The CRT notes that the Claimants indicated that they have other surviving relatives, but that because they are not represented in the Claimants' claims, the CRT will not treat their potential entitlement to the Account Owner's accounts in this decision.

The CRT further notes that the Claimants identified unpublished information about the Account Owner as contained in the Bank's records. 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 Claimants as a family member, and all of this information supports the plausibility that the Claimants are related to the Account Owner, as they have asserted in their Claim Forms.

The Issue of Who Received the Proceeds

The Bank's records indicate that the Account Owner held one safe deposit box, which was closed on 18 January 1939, and one account of unknown type, which the Bank's records indicate remained open in July 1948.

With regard to the safe deposit box, given that the Account Owner resided in Austria after the *Anschluss*, and that she had been married to a Jewish man; that she was forced to complete her own 1938 Census Record in July 1938; that her Jewish husband committed suicide in May 1938, and that the Austrian court ruled in August 1938 that the Account Owner was the heir of her Jewish husband's estate; that in December 1938, the Account Owner wrote to the VVSt to indicate that her husband's estate should "no longer be considered to be in Jewish hands"; that the safe deposit box was closed in January 1939; that there is no record of the payment of the

Account Owner's account to her; and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the safe deposit box 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.

With regard to the account of unknown type, the CRT notes that the Bank's records indicate that that account was open in July 1948, when the Bank received a letter from an unnamed individual regarding that account. Given that the Account Owner remained in Austria during and after the Second World War; that the Bank's records indicate that the Bank received a letter regarding the account in July 1948; and that the Account Owner actively managed her finances until her death on 26 June 1997, as shown by the fact that she sent monthly checks to the mother of Claimant [REDACTED 3] during her lifetime and by the fact that she met with lawyers and notaries to amend her will on 25 June 1997; and that neither this will nor any previous will or other document of which the CRT is aware indicates that she had assets at the Bank which she had not been able to access, the CRT concludes that the letter that the Bank received in July 1948 was written either by the Account Owner or her representatives, and that the Account Owner accessed and received the proceeds of the account of unknown type.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that he is an heir of the Account Owner according to the terms of her will, and that fact 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 safe deposit box account.

Further, the CRT notes that Claimant [REDACTED 1], who is listed in the Account Owner's will as one of her principal heirs and who, as a child of the Account Owner's cousin, is a descendant of the Account Owner's grandparents, has a better entitlement to the account than Claimant [REDACTED 2], Claimant [REDACTED 3], and Claimant [REDACTED 4], none of whom are mentioned in the Account Owner's will, and who are related to the Account Owner by marriage only.

Amount of the Award

In this case, the Account Owner held one safe deposit box. 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 safe deposit box was SF 1,240.00. 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 15,500.00.

Division of the Award

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. Accordingly, Claimant [REDACTED 1], who is listed as one of the principal heirs of the Account Owner in the Account Owner's will and certificate of inheritance, is entitled to the entire award amount. As noted above, Claimant [REDACTED 2], Claimant [REDACTED 3], and Claimant [REDACTED 4] are not entitled to share in the award.

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
25 November 2008