

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Herta Josefina Goldsmith
also acting on behalf of Erika Allen and Katherine Levitan

in re Accounts of Otto Lenz

Claim Number: 208172/CC/AH

Award Amount: 114,000.00 Swiss Francs

This Certified Award is based upon the claim of Herta Josefina Goldsmith, née Lenz (“the Claimant”) to the account of Robert Lenz and Janka Lenz.¹ This Award is to the published accounts of Otto Lenz (“the Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).²

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 paternal uncle, Otto Lenz, who was born in Vienna and was married there to Hedy Salczer.³ The Claimant stated that

¹ The CRT did not locate an account belonging to the Claimant’s parents, Dr. Robert Lenz or Janka Lenz, 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 her claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

² The CRT notes that 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”), Otto Lenz is indicated as having four accounts. This Award is to three of those accounts. Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about the remaining account. On 5 April 2005, the Bank provided the CRT with additional documents. The CRT will address the fourth account in a separate decision. The CRT further notes that, in a separate decision, the CRT awarded the published accounts of Olga Salzer, over which Robert Lenz, Alexius Salzer and Lilly Salzer held power of attorney, to the Claimant. *See In re Accounts of Olga Salzer*, approved in March 2005.

³ The CRT notes that in certain documents, the Claimants’ relative name is spelled “Salczer,” while bank records and other documents pertaining to this person indicate that her name was spelled “Salzer.” Given that the information provided by the Claimant overwhelmingly corresponds to the information about the Account Owner’s

her uncle had two daughters: Erika Allen, née Lenz, and Katherine Levitan, née Lenz. In telephone conversations conducted on behalf of the CRT with the Claimant and her cousin, Erika Allen, Ms. Allen stated that her family, who is Jewish, resided at Andrassystrasse 13, Vienna, and that prior to 1938, her father was a partner in the company *Wartenberg & Co.* According to Ms. Allen, in May or June of 1938 her father fled Austria after its incorporation into the Reich in March 1938 (the “*Anschluss*”) to Switzerland and that he emigrated with his family six months later to the United States. Ms. Allen further stated that that her father owned a Swiss bank account but was unable to access it, and that her mother was therefore forced to sell her jewelry in order to finance the family’s travel to the United States. In a fax dated 17 December 2004, Ms. Allen explained that in 1938 her father was forced to turn over his foreign bank accounts to the Nazis. Ms. Allen stated that her father died at the age of 97 in the United States. The Claimant indicated that her family changed its name from Löwy to Lenz at some point, but did not specify when the name change took place.

In support of her claim, the Claimant submitted the birth certificate of Katherine Levitan’s mother, which indicates that Hedwig Salczer was the daughter of Elek Salczer and Olga Salczer, née Schmeier, and that she was born in Vienna on 23 May 1904; the marriage certificate of Otto and Hedwig Lenz, which indicates that they were married in Vienna on 1 May 1927; and the birth certificates of Erika Allen and Katherine Levitan, which indicate that they are the children of Otto Lenz and Hedwig Lenz, née Salczer; that Erika Allen was born on 8 November 1930 in Vienna; and that Katherine Levitan was born on 8 July 1933 also in Vienna.

The Claimant stated that she was born on 22 September 1921 in Vienna. The Claimant is representing her cousins, Erika Allen, née Lenz, and Katherine Levitan, née Lenz.

Information Available in the Bank’s Records

The Bank’s records consist of a list of closed accounts belonging to Austrian customers and extracts from the Bank’s opening and closing register of numbered accounts. According to these records, the Account Owner was Otto Lenz, who resided in Vienna, Austria. The Bank’s records indicate that the Account Owner held a numbered demand deposit account, held under the designation 66064, and another numbered account, the type of which is not identified, held under the designation 61541.

The Bank’s records indicate that the demand deposit account was opened on 28 March 1938. The Bank’s records further indicate that the balance of the account of 1,547.50 Swiss Francs (“SF”) was transferred to the *Merkurbank* in Vienna on 12 April 1938, and that the account was closed on 15 July 1938. There is no evidence in the Bank’s records that the Account Owner or his heirs closed this account and received the proceeds themselves.

The Bank’s records indicate that the account of unknown type was closed on 5 January 1938. The amount in the account on the date of its closure is not known.

family contained in the Bank’s records, and given the fact that the spelling of names may have changed over time, the CRT finds this discrepancy to be inconsequential.

The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”) reported that the Account Owner also held a savings/passbook account at the Bank. This information was based on the records made available to the auditors from the Austrian State Archives, as discussed below. According to these records, and as discussed below, the balance of this account on 15 July 1938 was SF 6,980.00.

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 Otto Lenz, numbered 18532. These documents indicate that Otto Lenz, formerly Löwy, was born on 3 May 1891 and resided at Dionysius Andrassystrasse 13, Vienna. The records further indicate that Otto Lenz was married to Hedwig Lenz, née Salzer, who was born on 23 May 1904. Correspondence in this file indicates that Otto and Hedwig Lenz had two daughters, Eveline Erika, who was born on 8 November 1930 in Vienna, and Katharina Saisy, who was born on 8 July 1933, also in Vienna. According to the records, Otto Lenz owned a considerable amount of real estate and financial assets and was a part-owner of a wholesale company, *Wartenberg & Co.* The records indicate that his real estate holdings included the house at Dionysius Andrassystrasse, 50 percent of a small apartment building at Diesterwegg 13, Vienna and a 50 percent share of a factory building at Dammstrasse 37, Vienna. In addition, the records indicate that Otto Lenz owned a 50 percent share in the company *Wartenberg & Co.*, located in Walfischgasse, Vienna, and various stocks and bank accounts, including a savings account with a balance of SF 6,980.00 (equivalent to 3,993.00 Reichsmark (“RM”)) at the “[REDACTED]” [sic].

The file includes a notification from the emigration tax authorities (*Reichsfluchtsteuerstelle*) dated 18 February 1939, which valued Otto Lenz’s assets at 245,551.00 RM and assessed a flight tax (*Reichsfluchtsteuer*) of RM 61,388.00. The file further includes correspondence relating to the aryianization of Otto Lenz’s real estate and partnership assets, as well as a listing of expenditures reducing the amount of assets reported in the 1938 Census declaration, which relate in large part to the family’s emigration. The dating of these documents shows that the family emigrated to North America before 6 December 1938. A confiscation order, dated 16 July 1941, refers to the initiation of denationalization proceedings and the consequent seizure of the remaining assets of Otto Lenz and his family.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant’s uncle’s name and city and country of residence match the published name and city and country of residence of the

Account Owner. Additionally, the Claimant identified information about her uncle contained in the Austrian census record including the name of his spouse, his city of residence, and the company in which he was a partner. The Claimant is representing her cousins, whose names are mentioned in the Austrian census record as the daughters of Otto Lenz.

In support of her claim, the Claimant's cousins submitted their parents' marriage certificate and their birth certificates 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 records as the names and city of residence of the Account Owner.

The CRT notes that there are no other claims to these accounts.

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 after the *Anschluss* he fled from Austria to the United States via Switzerland. The CRT notes that according to the 1938 Census files, a confiscation order was issued on 16 July 1941 for the seizure of all remaining assets of the Account Owner.

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 the Claimant's uncle and the father of Claimant Goldsmith's cousins, whom she represents. These documents include the birth certificates of Erika Allen, née Lenz, and Katherine Levitan, née Lenz, which indicate that they are the daughters of the Account Owner. There is no information to indicate that the Account Owner has surviving heirs other than the parties whom the Claimant represents.

The Issue of Who Received the Proceeds

With respect to the demand deposit account, given that the Bank's record indicates that the account was transferred to the *Merkurbank*, which cooperated closely with Nazi authorities in the confiscation of Jewish assets in Austria, in Vienna after the *Anschluss*; that the Account Owner fled Austria due to Nazi persecution 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, even for the stated purpose of obtaining indemnification from the German authorities, 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 (a)(ii), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process (the "Rules"), as amended (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to 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.

With respect to the savings/passbook account, the facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the Austrian census record, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. In this case, according to the Claimant's cousin, her father was forced to turn over his Swiss bank accounts to Nazi authorities. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that the Account Owner reported the account in his 1938 Census record; that the Account Owner lived in Austria until he fled in May or June of 1938, and therefore could not have repatriated the account without losing ultimate control over its proceeds; and given the application of Presumptions (a)(ii), (d), (h) and (j), as provided in Article 28 of the Rules (See Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs.

With respect to the account of unknown type, the Bank's records indicate that the account was closed on 5 January 1938, prior to the Nazi incorporation of Austria into the Reich in March 1938. Therefore, the CRT concludes that the Account Owner closed the account and received the proceeds himself.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant's cousins, Erika Allen and Katherine Levitan. 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 the father of her cousins, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that the Account Owner, and his heirs did not receive the proceeds of the demand deposit account and the savings/passbook account.

Further, the CRT notes that the Claimant's Goldsmith's cousins, as the Account Owner's daughters, have better entitlement to the accounts than the Claimant, who is the Account Owner's niece.

Amount of the Award

In this case, the Account Owner held one demand deposit account and one savings/passbook account.

With respect to the demand deposit account, the Bank's records indicate that the value of the account as of 15 July 1938 was SF 1,547.50. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00 and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00.

With respect to the savings account, the 1938 Census records indicate that the value of the account as of 15 July 1938 was SF 6,980.00.

Accordingly, the total historic value of the accounts at issue is SF 9,120.00. The current value of the amount of the award is calculated by multiplying the historical value by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 114,000.00.

Division of the Award

As noted above, the Claimant is representing her cousins, Erika Allen and Katherine Levitan. 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, Katherine Levitan and Erika Allen, who are the daughters of the Account Owner, are better entitled to the award amount than the Claimant, who is the Account Owner's niece, and are each entitled to one-half of the total award amount.

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