

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/LV

Award Amount: 325,000.00 Swiss Francs

This Certified Award is based upon the claim of Herta Josefina Goldsmith, née Lenz (the “Claimant”) to the unpublished accounts of Robert Lenz.¹ This Award is to the published accounts of Otto Lenz (the “Account Owner”), over which Hedy Lenz (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).

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. Three of those accounts were addressed in a previous Award issued to the Claimant. See *In re Accounts of Otto Lenz*, approved on 11 April 2005 (the “April 2005 Award”). 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. This Award addresses the fourth account and an additional account that was discovered as a result of additional records obtained from the Bank. 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*, which was also approved on 11 April 2005.

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

¹ The CRT did not locate an account belonging to the Claimant’s father, Dr. Robert 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.

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, Austria, and was married to Hedy Salczer. The Claimant stated that her uncle had two daughters: Erika Allen, née Lenz, and Katherine Levitan, née Lenz. In telephone conversations with the CRT, the Claimant's cousin, Erika Allen, stated that Otto Lenz, who was her father, resided at Andrassystrasse 13, Vienna, and that prior to 1938, he was a partner of a company named *Wartenberg & Co.*, which was confiscated in March 1938 after the incorporation of Austria into the German Reich (the *Anschluss*). According to Ms. Allen, her father, who was Jewish, fled from Austria in May or June 1938 to Switzerland and emigrated with his family to the United States six months later. She further stated that her father had a Swiss bank account but was unable to access it and that her mother therefore had to sell her jewelry to pay for the family's travel to the United States. In a fax dated 17 December 2004, Ms. Allen explained that her father was forced to turn over his foreign bank accounts to the Nazis in 1938. Ms. Allen further explained that her family changed their name from Löwy to Lenz, but did not specify when the name change took place. Finally, Ms. Allen stated that her father passed away at the age of 97 in the United States.

In support of her claim, the Claimant submitted the marriage certificate of Otto Lenz, indicating that he was married to Hedwig Salczer on 1 May 1927 in Vienna; and the birth certificates of Erika Allen and Katherine Levitan, indicating they were born in Vienna and identifying their parents as Otto and Hedwig Lenz, née Salczer.

The Claimant indicated 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, who were both born in Vienna on 8 November 1930 and 8 July 1933, respectively.

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 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 the "ICEP Investigation") reported that the Account Owner also held a savings/passbook account at the Bank, which held a balance of SF 6,980.00 as of 15 July 1938. This information was based on the records made available to the auditors from the Austrian State Archives. These accounts were awarded in the April 2005 award.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts ("Voluntary Assistance"). On 5 April 2005, the Bank provided the CRT with additional documents. These documents consist of correspondence from 1930 between the Account Owner and the Bank regarding his

savings/passbook account; a customer card; a list of Austrian account owners; a power of attorney form dated 27 October 1933, and a certificate of deposit of securities, dated 6 December 1933. According to these records, the Account Owner was Otto Lenz and the Power of Attorney Holder was Hedy Lenz, the Account Owner's wife. The Bank's records indicate that correspondence from the Bank was addressed to the Account Owner at *Firma Wartenberg, Co.*, which was located at Wallfischgasse 8, Vienna I. The Bank's records further indicate that no correspondence was sent to the Account Owner's address in Vienna as of 21 May 1937. The Bank's records indicate that the Account Owner held one custody account numbered 37039 and one numbered custody account held under the designation 66064. The Bank's records further indicate that 50 privileged shares of *Société Nationale des Chemins de fer Belges* were deposited into account 37039 on or before 14 December 1933. According to the Bank's records, account 37039 was closed on 31 December 1938 and account 66064 was closed as of 12 August 1938. The Bank's records do not show the value of these accounts. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder or their heirs closed the accounts numbered 37039 and 66064 and received the proceeds themselves.

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 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 the co-owner of a wholesale company, *Wartenberg & Co.* The records indicate that his real estate holdings included a house located on 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 on Walfischgasse in Vienna, and various stocks and bank accounts, including a savings account with a balance of 6,980.00 Swiss Francs ("SF") (equivalent to 3,993.00 Reichsmarks ("RM") at the "*Schweizerische Bank*" [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 "flight tax" (*Reichsfluchtsteuer*) of RM 61,388.00. The file further includes correspondence relating to the aryanization 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 dates reflected in these documents indicate 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 subsequent 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. The Claimant's aunt's name matches the published name of the Power of Attorney Holder.² The Claimant identified the Account Owner's business and the Account Owner's relationship to the Power of Attorney Holder, which match unpublished information about the Account Owner contained in the Bank's records.

In support of her claim, the Claimant submitted documents, including the marriage certificate of Otto Lenz, indicating that he was married to Hedwig Salczer on 1 May 1927 in Vienna, and the birth certificates of Erika Allen and Katherine Levitan, indicating they were born in Vienna and identifying their parents as Otto and Hedwig Lenz, née Salczer, 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 name and city of residence of the Account Owner. The documents submitted by the Claimant also verify that her uncle was married to a person bearing the same name as the person recorded in the Bank's records as the Account Owner's wife.

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, that his business was confiscated after the *Anschluss*, and that he fled Austria in May or June 1938.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she and her cousins, whom she represents, are 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 the Claimant's cousins. These documents include the birth certificates of her cousins, Erika Allen and Katherine Levitan, identifying their parents as Otto and Hedwig Lenz, née Salczer. There is no information to indicate that the Account Owner has surviving heirs other than the parties whom the Claimant is representing.

² 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 corresponds to the information about the Account Owner's 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 Issue of Who Received the Proceeds

The CRT notes that the Bank's records indicate that the accounts were closed on 12 August 1938 and on 31 December 1938, at which time, according to the information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the accounts were closed, that the Account Owner fled his country of origin due to Nazi persecution, that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety, that the Account Owner was unable to access his accounts in Switzerland; that the Account Owner and his heirs would not have been able to obtain information about his accounts 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 (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 accounts' 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 uncle, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

Further, the CRT notes that Claimant's cousins, as the Account Owner's daughters, have a 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 two custody accounts of unknown value. 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 SF 13,000.00. Thus, the total 1945 average value of the accounts at issue is SF 26,000.00. 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 325,000.00.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse had 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. As previously noted, the Claimant is representing her cousins Erika Allen and Katherine Levitan, who are the Account Owner's daughters. Accordingly, Erika Allen and Katherine Levitan are each entitled to one-half of the total award amount. The Claimant, who is the descendant of the Account Owner's parents, is not entitled to share in the 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
15 July 2005