

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]

and to Claimant [REDACTED 3]
represented by [REDACTED]

in re Accounts of Eduard Leser, Else Leser, Erwin Dzialoschinsky and Lotte Dzialoschinsky

Claim Numbers: 212142/TW; 212143/TW; 212144/TW; 212145/TW; 501077/TW

Award Amount: 812,625.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) to the published accounts of Eduard Leser, Else Leser, Erwin Dzialoschinsky and Lotte Dzialoschinsky, and upon the claim of [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published accounts of Erwin Dzialoschinsky. This Award is to the published accounts of Eduard Leser (“Account Owner Eduard Leser”) and Else Leser (“Account Owner Else Leser”), over which Erwin Dzialoschinsky (“Account Owner Erwin Dzialoschinsky”) and Lotte Dzialoschinsky (“Account Owner Lotte Dzialoschinsky”) (together the “Account Owners”) held power of attorney and the published accounts of Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky, over which Account Owner Eduard Leser held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).¹

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

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”), Account Owner Eduard Leser and Account Owner Else Leser are indicated as having four accounts and three accounts, respectively. Upon careful review, the CRT concludes that the Bank’s records evidence the existence of only four accounts, jointly held by Account Owner Eduard Leser and Account Owner Else Leser, and one other account held solely by Account Owner Eduard Leser. The CRT also notes that on the ICEP List, Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky are each indicated as having two accounts. Upon careful review, the CRT concludes that the Bank’s records evidence the existence of only three accounts, which were jointly held by Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted four Claim Forms identifying Account Owner Eduard Leser as his maternal grandfather, Eduard Leser, who was born on 19 September 1870 in Sanderhausen, Germany, and Account Owner Else Leser as his maternal grandmother, Else Leser, née Meyer. Claimant [REDACTED 1] indicated that his grandparents, who were Jewish, were married in Berlin, Germany. Claimant [REDACTED 1] identified Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky as his parents, Erwin Dzialoschinsky (Dallo), and Lotte Dzialoschinsky (Dallo), née Leser. Claimant [REDACTED 1] indicated that his mother was born on 29 March 1904 in Berlin and that his parents, who were Jewish, were married on 2 October 1928 in Berlin. Claimant [REDACTED 1] indicated that his parents had two children: Claimant [REDACTED 1] and his sister, [REDACTED 2], née [REDACTED].

Claimant [REDACTED 1] indicated that his grandparents and his parents lived in Berlin until 1937, where his grandfather and father owned and operated a business in Berlin named *J. Meierhof* (or *J. Meyerhof*) at 15/17 Schutzenstrasse. Claimant [REDACTED 1] indicated that his grandparents and his parents fled to Zurich, Switzerland in 1937 where they resided until 1938, when they emigrated to the United States. Claimant [REDACTED 1] stated that, his family changed their name from [REDACTED] to [REDACTED]. Claimant [REDACTED 1] indicated that his grandfather died on 16 March 1939 in Zurich, and that in 1940 his grandmother emigrated to New York, the United States, where she died on 16 August 1947. Claimant [REDACTED 1] indicated that his father died in Chur, Switzerland, in August 1949 and that his mother died on 20 April 1980 in New York.

In support of his claim, Claimant [REDACTED 1] submitted a copy of a joint inheritance certificate, dated 11 June 1951, indicating that Eduard Leser's last residence was in Zurich, that he was a merchant and that his heirs were his wife Else Leser, née Meyer, and his daughter Lotte Dallo (Dzialoschinsky), née Leser; a copy of a joint inheritance certificate of Lotte Dallo, née Leser, dated 18 June 1993, indicating that she died in New York, and that her heirs were the Claimant and his sister, [REDACTED 2], née [REDACTED].

Claimant [REDACTED 1] indicated that he was born on 2 January 1930 in Berlin, Germany. Claimant [REDACTED 1] represents his sister, [REDACTED], née [REDACTED], who was born on 7 May 1932 in Berlin.

Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted a Claim Form identifying Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky as his paternal uncle and aunt, who were married in Germany, and who eventually emigrated to New York where they changed their name from Dzialoschinsky to Dallo. Claimant [REDACTED 3] stated that Lotte Dzialoschinsky's maiden name was Leser. Claimant [REDACTED 3] indicated that his father, [REDACTED], was the brother of Erwin Dzialoschinsky. Claimant [REDACTED 3] stated that Claimant [REDACTED 1] is the son of Erwin and Lotte Dzialoschinsky.

In support of his claim, Claimant [REDACTED 3] submitted a certificate issued by the Department of Finance in Berlin-Schöneberg, dated May 1939, certifying that his father, [REDACTED] had paid in full flight tax and other taxes he owed, and which indicated that his two children were Claimant [REDACTED 3] and [REDACTED]; correspondence dated April 1940 between his father and Erwin Dzialoschinsky; a letter from Claimant [REDACTED 1] addressed to [REDACTED] dated 25 August 1949, informing his uncle of his father's death; and the obituary of his paternal grandmother, [REDACTED], née [REDACTED], indicating that her children were [REDACTED], [REDACTED], Erwin, [REDACTED] and [REDACTED], and that Erwin Dzialoschinsky was married to Lotte Leser.

Claimant [REDACTED 3] indicated that he was born on 1 April 1928.

Information Available in the Bank's Records

Account Owners Eduard Leser and Else Leser

The Bank's records consist of a customer card, a joint account opening contract, an extract from a register of closed numbered accounts, and a printout from the Bank's database. According to these records, Account Owners Eduard and Else Leser were Eduard Leser and his wife, Else Leser, both of whom initially resided at Hubertus Allee 23 in Berlin-Grünwald, Germany, and then in Zurich, Switzerland. The Bank's records indicate that Account Owners Eduard and Else Leser jointly held two custody accounts, one numbered 61646 and the other numbered 41267; one demand deposit account associated with custody account 41267; and one account numbered 60092, the type of which is not indicated. The Bank's records further indicate that Account Owner Eduard Leser held a custody account numbered 21250, over which Account Owner Else Leser, Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky held power of attorney.

The Bank's records indicate that custody account 41267 and the demand deposit account associated with that account were opened on 12 July 1937 in Zurich and were closed on 7 March 1938. The Bank's records further indicate that custody account 61646 was balanced out (*ausgeglichen*) and closed on 20 January 1939. According to the Bank's records, account 60092 was closed on 23 January 1939 by payment (*per Kassa*). The amounts in the accounts on the date of their closure are not known. There is no evidence in the Bank's records that Account Owner Eduard Leser, Account Owner Else Leser closed the accounts and received the proceeds themselves.

With regard to custody account 21250 held by Account Owner Eduard Leser, the Bank's records indicate that it contained German and American securities; that the American securities were held at the *Guarantee Trust Company* of New York, New York, the United States; and that the German securities were held at the *Dresdner Bank* in Berlin. The Bank's records further indicate that on 10 May 1933, the Bank noted that pursuant to Account Owner Eduard Leser's orders, they would honor requests for information sent by him from Germany. However, at some later date he ordered all correspondence to be held in Zurich. Furthermore, the records contain an

internal note regarding a communication from the Dresdner Bank, dated 2 June 1936, asking that transfers of assets from the custody account of Eduard Leser in future be addressed to “Zentrale” and “for our account”. The Bank's records indicate that custody account 21250 was closed on 17 July 1937. The amount in the account on the date of its closure is not known. There is no evidence in the Bank's records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

Account Owners Erwin Dzialoschinsky and Lotte Dzialoschinsky

The Bank's record consists of a customer card. According to this record, Account Owners Erwin Dzialoschinsky and Lotte Dzialoschinsky were Erwin Dzialoschinsky and *Frau* (Mrs.) Lotte Dzialoschinsky. The Bank's record indicates that Account Owner Erwin Dzialoschinsky gave his address as being in care of *Fa. J. Meyerhof* at Schützenstrasse 15/17, Berlin, Germany. The Bank's record further indicates that Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky also had an address in Zurich, Switzerland. The Bank's record also indicates that Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky jointly held one custody account numbered 31595, which was opened on 23 January 1931, one time deposit account (“*Festgeldkonto*”) and one demand deposit account, and that Account Owner Eduard Leser held power of attorney over these accounts.

The Bank's record indicates that custody account 31595 was closed on 14 January 1935, and that the time deposit account and the demand deposit account were closed no later than 14 January 1935. The amounts in the accounts on the date of their closure are not known.

There is no evidence in the Bank's record that Account Owner Erwin Dzialoschinsky, Account Owner Lotte Dzialoschinsky, Account Owner Eduard Leser, or their heirs closed the accounts and received the proceeds themselves.

In addition, 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”) reported that they found records pertaining to a savings account that was related to the accounts held by the Account Owners. This savings account was excluded from the ICEP Investigation pursuant to instructions to exclude savings accounts whose balances were lower than SF 250.00 or unknown. Therefore, no information as to the ownership or disposition of the savings account is available.

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 five claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. Claimant [REDACTED 1]'s grandparents' and parents' names, city and country of residence match the published names, city and country of residence of the Account Owners. Claimant [REDACTED 3]'s aunt and uncle's names, city and country of residence match the published names, city and country of residence of Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky.

Claimant [REDACTED 1] identified the fact that his relatives resided in Berlin and then fled to Zurich, Switzerland, and that his grandfather and father owned the company *J. Meyerhof and Co.* located at Schutzenstrasse in Berlin, which matches unpublished information about the Account Owners contained in the Bank's records.

In support of his claim, Claimant [REDACTED 1] submitted joint inheritance certificates issued in Berlin-Schöneberg, indicating that Eduard Leser's last residence was in Zurich, that his heirs were his widow Else Leser and his daughter, Lotte Dallo, and that Lotte Dallo's heirs were the Claimant and his sister, [REDACTED 2], née [REDACTED]. Claimant [REDACTED 3] submitted correspondence dated April 1940 between his father, [REDACTED] and Erwin Dzialoschinsky, as well as his grandmother's obituary, indicating that one of her sons was Erwin Dzialoschinsky, and that he was married to Lotte Leser. These documents provide independent verification that the persons who are claimed to be the Account Owners had the same names and resided in the same cities recorded in the Bank's records as the names and cities of residence of the Account Owners.

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

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners were Jewish and that they lived in Nazi Germany before fleeing to Switzerland in 1937.

The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were Claimant [REDACTED 1]'s grandparents and parents, and that Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky were Claimant [REDACTED 3]'s uncle and aunt. These documents include inheritance certificates issued in Berlin indicating that Eduard Leser's wife was Else Leser, and that his daughter was Lotte Dallo, and that Lotte Dallo's children were Claimant [REDACTED 1] and his sister, [REDACTED 2]; the obituary of Claimant [REDACTED 3]'s paternal grandmother, [REDACTED], indicating that among her children were Erwin Dzialoschinsky, who was married to Lotte Leser, and [REDACTED]; and a certificate issued by the authorities in Berlin, indicating that [REDACTED] had paid his flight and other taxes in full, and that Claimant [REDACTED 3] was his son.

There is no information to indicate that the Account Owners have surviving heirs, other than the party represented by Claimant [REDACTED 1].

The Issue of Who Received the Proceeds

With respect to the custody accounts numbered 61646 and 41267, the demand deposit account, and the account of unknown type numbered 60092 jointly held by Account Owner Eduard and Account Owner Else Leser, and the custody account numbered 21250 held by Account Owner Eduard Leser, the CRT notes that the Bank's records indicate that these accounts were closed between 1937 and 1939, at which time, according to information provided by Claimant Dallo, Account Owner Eduard Leser and Account Owner Else Leser were outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the accounts were closed, that there is a communication from the Dresdner Bank requesting that assets transferred from Eduard Leser's custody account be addressed to the Bank's "Zentrale" and "for our account," that Account Owner Eduard Leser and Account Owner Else Leser fled their country of origin due to Nazi persecution, that Account Owner Eduard Leser and Account Owner Else Leser may have had relatives remaining in their country of origin and that they may therefore have yielded to Nazi pressure to turn over their accounts to ensure their safety, that Account Owner Eduard Leser and Account Owner Else Leser and their heirs would not have been able to obtain information about their 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 account proceeds were not paid to Account Owner Eduard Leser, Account Owner Else Leser, or to Account Owner Erwin Dzialoschinsky or Account Owner Lotte Dzialoschinsky, who held power of attorney over these accounts, 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.

With respect to the custody account numbered 31595, the time deposit account, and the demand deposit account, which were jointly held by Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky and which were closed on or before 14 January 1935, given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory taxes and other confiscatory measures, including confiscation of assets held in Swiss banks; that Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky remained in Germany until fleeing to Switzerland in 1937, and would not have been able to repatriate their accounts to Germany without losing ultimate control over their proceeds; that there is no record of the payment of Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky's account to them; that Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky and their heirs would not have been able to obtain information about their 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 (a), (h) and (j), as provided in Article 28 of the Rules (see Appendix A) and Appendix C,² the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Erwin Dzialoschinsky or Account Owner Lotte Dzialoschinsky, or to Account Owner Eduard Leser, who held power of attorney over this account, or to their heirs.

With respect to the savings account reported by the auditors who carried out the ICEP Investigation, given that the Account Owners fled Germany to Switzerland in 1937, that there is no record of the payment of the Account Owners' accounts to them, nor any record of a date of closure; 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 account proceeds were not paid to the Account Owners or their heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1] and his sister, [REDACTED 2]. 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 Account Owners Leser were his grandparents, and that Account Owners Dzialoschinsky were his parents, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Further, the CRT notes that Claimant [REDACTED 1] and his sister, as the Account Owners' grandchildren and children, have a better entitlement to the accounts than Claimant [REDACTED 3], who is Account Owner Erwin Dzialoschinsky's nephew.

Amount of the Award

In this case, Account Owner Eduard Leser and Account Owner Else Leser jointly held two custody accounts, one account of unknown type, and one demand deposit account; Account Owner Eduard Leser held one custody account, and Account Owner Erwin Dzialoschinsky and Account Owner Lotte Dzialoschinsky held jointly one custody account, one demand deposit account and one time deposit account, which, for the purposes of this award, is valued as an unknown type of account. Additionally, the auditors who carried out the ICEP Investigation reported one savings account related to the accounts held by the Account Owners.

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 investigation carried out pursuant to the instructions of ICEP, in 1945 the average value of a custody account was SF 13,000.00; an account of unknown type was SF 3,950.00; the average value of a demand deposit account was SF 2,140.00; and the average value of a savings account was SF 830.00. Thus, the total 1945 average value of four custody accounts, two demand deposit accounts, two accounts of unknown type, and one savings account is SF 65,010.00. The current value of these amounts is calculated

² Appendix C appears on the CRT II website - www.crt-ii.org.

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 812,625.00.

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. Further, according to Article 23(2)(c) of the Rules, if none of the named beneficiaries has filed a claim, the CRT shall make an award to any claimant who has submitted an unbroken chain of wills or other inheritance documents pertaining to the Account Owner. Claimant [REDACTED 1] has submitted the inheritance certificate of Account Owner Eduard Leser, indicating that his heirs were Else Leser and Lotte Dallo, and the inheritance certificate of Account Owner Lotte Dzialoschinsky, indicating that her heirs, in equal shares, are Claimant [REDACTED 1] and his sister.

With regard to Account Owner Else Leser and Account Owner Erwin Dzialoschinsky's accounts, 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. Claimant [REDACTED 1] is representing his sister, [REDACTED 2]. Accordingly, the Claimant and his sister are each entitled to one-half 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
12 January 2005