

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Eli Levisohn
also acting on behalf of Gerda Marcus-Levisohn

in re Account of Oskar Morgenstern

Claim Number: 400829/JW¹

Award Amount: 10,375.00 Swiss Francs

This Certified Award is based upon the claim of Eli Levisohn (the “Claimant”) to the published account of Oskar Morgenstern (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

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 Oskar (Oscar) Morgenstern, the cousin of his mother’s first husband, who was born on 19 January 1912 in Susice, Czechoslovakia (now Czech Republic). The Claimant indicated that Oskar Morgenstern’s mother was Sophie Morgenstern, née Kern.² The Claimant further indicated that Oskar Morgenstern, who was Jewish, resided in Susice and had family in Pilsen and Brno, Czechoslovakia (now Czech Republic). The Claimant further indicated that Oskar Morgenstern was deported to Theresienstadt and subsequently to another concentration camp on transport number DL 1408, and that he perished in approximately 1944. According to information provided by the Claimant, his mother’s first husband and his parents, as well as Sophie Morgenstern (Oskar Morgenstern’s mother) also perished in the Holocaust.

¹ The Claimant submitted an additional claim, which is registered under the Claim Number 400830. The CRT will treat this claim in a separate determination.

² Specifically, the Claimant indicated that Flora Brumlik, née Kern, was the sister of Sophie Morgenstern and that she was married to Otto Brumlik on 12 March 1899 in Iglau, Czechoslovakia (now Czech Republic). According to documents submitted by the Claimant, Flora and Otto Brumlik resided at Premyslovska 10 in Prague, Czechoslovakia (now Czech Republic). The Claimant indicated that the couple had one child, Kurt Brumlik, who was born on 1 July 1907 in Lobositz, Czechoslovakia (now Czech Republic), and was married to the Claimant’s mother, Gerda Brumlik, née Schustermann, on 12 December 1932 in Berlin, Germany. The Claimant indicated that Kurt Brumlik was his mother’s first husband, and that she remarried as a widow to his father, David Levisohn, after the Second World War.

In support of his claim, the Claimant provided copies of the following documents: (1) a page of testimony submitted to the Yad Vashem by Gerda Levisohn-Marcus (the Claimant's mother) on 7 October 1986, indicating that Oscar Morgenstern was born on 19 July 1912 in Susice, that his mother's name was Sophie Morgenstern, that he resided in Susice during the Second World War, and that the Claimant's mother was Oscar Morgenstern's cousin by marriage; (2) another page of testimony submitted to the Yad Vashem by the Claimant's mother on 7 October 1986, indicating that Sophie Morgenstern, née Kern, was born in Iglau, Czechoslovakia (now the Czech Republic), that she resided in Susice during the Second World War, and that she was the aunt of the Claimant's mother through marriage; (3) his mother's first husband's mother's birth certificate issued on 24 May 1950 in Prague, Czechoslovakia (now Czech Republic), indicating that Flora Kern was born on 16 January 1877 in Jihlava, Czechoslovakia (now Czech Republic); and (4) a declarative judgment issued on 15 September 1950 at the request of Gerda Brumlik (the Claimant's mother) by the Civil District Court of Prague regarding her first husband's mother, indicating that Flora Brumlikova (Brumlik), née Kernova (Kern), was deported to Theresienstadt and Treblinka, and determining that she died on 22 April 1943, and that her probable place of death was Treblinka.

The Claimant indicated that he was born on 24 October 1951 in Berlin, Germany. The Claimant is representing his mother, Gerda Markus-Levisohn, formerly Brumlik, née Schustermann, who was born on 28 February 1910 in Berlin.

Information Available in the Bank's Records

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 provide any Bank's records pertaining to the account of Oskar Morgenstern. These auditors indicated that the account was reported by the Bank in the survey of assets held in Switzerland by foreigners or stateless persons who were or who were believed to have been victims of racial, religious or political persecution, conducted pursuant to a Federal decree in 1962 (the "1962 Survey"). The ICEP auditors reported that the Account Owner was Oskar Morgenstern, who resided in Bucharest, Romania, and that he held one account with a balance of 490.00 Swiss Francs ("SF").

Information Available in the Swiss Federal Archive

In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the registration of assets belonging to Oskar Morgenstern. According to these records, the Account Owner was Oskar Morgenstern, who resided at Pragerstrasse 1 in Brünn (Brno), Czechoslovakia. These records indicate that, as of 1 September 1963, the Account Owner held a savings/passbook account with a value of SF 490.00 at the Bank. The records contain no further information regarding the subsequent disposition of the account.

The CRT's Analysis

Identification of the Account Owner

The name of the Claimant's mother's cousin by marriage matches the published name of the Account Owner. The Claimant identified the Account Owner's country of residence, which matches unpublished information about the Account Owner contained in the records from the Swiss Federal Archive.³ In support of his claim, the Claimant submitted documents, including a page of testimony submitted to the Yad Vashem by his mother, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the records from the Swiss Federal Archive as the name of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes information submitted by the Claimant's mother regarding a person named Oskar Morgenstern, and indicates that his date of birth was 19 July 1912 and place of birth was Susice, which matches the information about the Account Owner provided by the Claimant. This database also includes pages of testimony submitted by the Claimant's mother regarding persons named Kurt and Otto Brumlik (the Claimant's mother's first husband and his father). The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different country of residence and occupation than the country of residence and occupation of the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

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 he lived in Nazi-occupied Czechoslovakia, and was deported to Theresienstadt and subsequently to another concentration camp, where he perished in approximately 1944. As noted above, a person named Oskar Morgenstern was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's mother's cousin by marriage. These documents include pages of testimony submitted by the

³ The CRT notes that there is a discrepancy between the Account Owner's domicile as reported by the ICEP auditors and the domicile listed in the 1962 Survey records. Since the report of the ICEP auditors is based on the 1962 Survey records for the Account Owner, the CRT determines that the Account Owner's domicile to have been in Brno. Furthermore, the CRT notes that the Claimant indicated that his relative resided in Susice; however, the CRT further notes that the Claimant stated that Oskar Morgenstern had relatives in Brno, which was the domicile of the Account Owner. Given that the Claimant's relative had connections to Brno, the CRT determines that it is plausible that his relative would have listed Brno as his city of residence when opening a bank account.

Claimant's mother for Oskar and Sophie Morgenstern, and the Claimant's mother's first husband's mother's birth certificate. There is no information to indicate that the Account Owner has surviving heirs other than the party whom the Claimant is representing.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the records available in the Swiss Federal Archives, and also identified information which matches information contained in the Yad Vashem 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 Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his Claim Form.

The Issue of Who Received the Proceeds

Given that the Account Owner perished in 1944; 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 Presumption (h), 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 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.

Basis for the Award

The CRT has determined that an Award may be made in favor of represented party Gerda Marcus-Levisohn. 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 his mother's cousin by marriage, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Further, the CRT notes that represented party Gerda Marcus-Levisohn, as the Account Owner's cousin's wife, has a better entitlement to the account than the Claimant, the Account Owner's cousin's wife's child from a later marriage.

Amount of the Award

In this case, the Account Owner held a savings/passbook account. The records from the Swiss Federal Archive indicate that the value of the savings/passbook account as of 28 February 1964 was SF 490.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 315.00, which reflects standardized bank fees charged to the savings/passbook account between 1945 and 1964. Consequently, the adjusted balance of the account at issue is SF 805.00. According to Article 29 of the Rules, if the amount in a savings/passbook was less

than SF 830.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 830.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 10,375.00.

Division of the Award

According to Article 23(1)(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23(1)(a-f) has submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity. In this case, the Claimant is representing his mother, Gerda Marcus-Levisohn, who is the cousin of the Account Owner through her first marriage. As the cousin of the Account Owner, the represented party has a better entitlement than the Claimant, who is only related to the Account Owner through his mother's first marriage. Accordingly, represented party Gerda Marcus-Levisohn is entitled to the entire 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 his claim to determine whether there are additional Swiss bank accounts to which he 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