

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED 1]
represented by [REDACTED]
also acting on behalf of [REDACTED 2]

in re Account of Kurt Mosbacher and Hans Clemens von Francken-Sierstorpf

Claim Number: 773665/KG¹

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED] (the “Claimant”) to the account of Kurt Mosbacher. This Award is to the published account of Kurt Mosbacher (“Account Owner Mosbacher”) and *Graf* (Count) Hans Clemens von Francken-Sierstorpf (“Account Owner Sierstorpf”) (together, the “Account Owners”), over which [REDACTED] and [REDACTED] (the “Power of Attorney Holders”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).²

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.

Information Provided by the Claimant

The Claimant submitted an Initial Questionnaire (“IQ”) identifying Account Owner Mosbacher as her father, Kurt Mosbacher. Following the Claimant’s death on 1 March 2004, the Claimant’s

¹ [REDACTED 1] did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered ENG 0130 016, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 773665.

² The CRT notes that Hans Clemens von Francken-Sierstorpf’s name was not published 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”), but was published by the Swiss Bankers’ Association on the list of dormant Swiss bank account owners in July 1997. The CRT further notes, that on the ICEP List, *Frau* (Mrs.) Sierstorpf is indicated as holding power of attorney over the account of Kurt Mosbacher. Upon careful review, the CRT concludes that *Frau* (Mrs.) Sierstorpf did not hold power of attorney over this account and that it was *Fräulein* (Miss) [REDACTED] and *Fräulein* (Miss) [REDACTED] who held power of attorney over this account.

children, [REDACTED] and [REDACTED 2], were appointed executors of her estate and provided the CRT with additional information and documents about the Claimant's claim. Mr. [REDACTED] indicated that Kurt Mosbacher was born on 28 December 1890 in Nuremberg, Germany, and that he married [REDACTED], née [REDACTED], on 18 January 1920. Mr. [REDACTED] further stated that Kurt Mosbacher fled Germany to England at the end of 1939 via Switzerland, and that the family later emigrated to the United States. Mr. [REDACTED] stated that Kurt Mosbacher died in approximately February 1973 in Los Angeles, California, the United States, and that [REDACTED] died in approximately 1976, also in Los Angeles.

Mr. [REDACTED] submitted documents in support of his mother's claim, including the Claimant's birth certificate, indicating that she was born on 5 August 1923 and that her parents were Dr. Kurt Mosbacher and [REDACTED], née [REDACTED]; Kurt Mosbacher's passport, indicating that he was born on 28 December 1890, that he held the title of doctor and lived in Munich; the Claimant's will, dated 6 December 1993, which bequeaths her trust estate in equal shares to her children, [REDACTED] and [REDACTED 2]; and the Claimant's death certificate, indicating that she passed away on 1 March 2004 and that her parents were Kurt Mosbacher and [REDACTED], née [REDACTED].

The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Graf Clemens von Francken-Sierstorff, whose name was published by the Swiss Bankers Association in July 1997, and over whose account Kurt Mosbacher held power of attorney. In this claim, the Claimant indicated that her father was an attorney and doctor of law and had maintained relations with Graf von Sierstorff as a client, business colleague and friend for many years. The Claimant stated that her father resided at Pienzenauerstrasse 2, Munich 27, Germany, and practised law at Maffeistrasse 4, Munich, until late 1938. The Claimant further indicated that, on 9 November 1938, her father, who was Jewish, was arrested and deported to the Dachau concentration camp but was released in early December 1938. According to the Claimant, her father fled Germany almost immediately following his release from Dachau.

The Claimant indicated that she was born on 5 August 1923 in Munich.

The Proceedings before the Claims Resolution Tribunal for Dormant Accounts in Switzerland ("CRT I")

As indicated above, the Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by *Graf* Clemens von Francken-Sierstorff, over whose account Kurt Mosbacher held power of attorney. On 14 July 2000, the Sole Arbitrator for CRT I (the "Sole Arbitrator") rendered a First Order concerning the safe deposit box, numbered 4228, held by *Graf* Clemens von Francken-Sierstorff, over which Kurt Mosbacher and *Gräfin* (Countess) Sierstorff both held power of attorney. The Sole Arbitrator ordered that the Claimant's claim be joined with other claims to that account. On 9 February 2001, the Sole Arbitrator rendered a Final Award. In the Final Award, the Sole Arbitrator determined that the Claimant was not entitled to the account as Kurt Mosbacher, whom she had

identified as her father, was only a power of attorney holder over the account, with no beneficial entitlement to the account.

Information Available in the Bank's Records

The Bank's records consist of documents relating to Account Owner Sierstorpf's safe deposit box; documents relating to the 1945 freeze of assets held in Switzerland by citizens of Germany and the territories incorporated into the Third Reich ("the 1945 Freeze"); a list of accounts prepared in course of an internal bank survey of dormant accounts conducted in 1959; a list of dormant accounts prepared in the course of 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 by Swiss banks pursuant to a Federal Decree of 1962 (the "1962 Survey"); letters from the Bank to the Account Owners; internal memoranda; a letter to [REDACTED], dated 19 June 1947; account statements; and printouts from the Bank's database.

According to these records, the Account Owners were Kurt Mosbacher and *Graf* (Count) Hans Clemens von Francken-Sierstorpf and the Power of Attorney Holders were *Fräulein* (Miss) [REDACTED], a Swiss citizen, who resided at Starenstrasse 35 in Basel, Switzerland, and *Fräulein* (Miss) [REDACTED], whose address is not indicated. The Bank's records indicate that Kurt Mosbacher gave the Bank two addresses in Munich, namely Maffeistrasse 4, Munich II and Pienzenauerstrasse 2, Munich II, Germany. The Bank's records indicate that by a letter, dated 18 January 1939, Account Owner Mosbacher notified the Bank of his new address, care of Dr. Daube, 29 Chesterton Hall Crescent, Cambridge, England, United Kingdom. The Bank's records further indicate that Account Owner Sierstorpf resided in *Schloss* (Castle) Zyrowa in Oberschlesien (Upper Silesia), Germany.

The Bank's records indicate that the Account Owners jointly held a demand deposit account, referred to as "*Gemeinschaftskonto Z*" (joint account "Z"). The Bank's records do not indicate the date of opening of the account, but show that since 30 December 1942 the fees for the rental of Account Owner Sierstorpf's safe deposit box were paid from the Account Owners' joint account. According to these records, the demand deposit account was frozen as part of the 1945 Freeze. The Bank's records further indicate that, as at 17 February 1945, the balance of the account was 1,012.00 Swiss Francs ("SF") and that the freeze of the account was lifted by 2 November 1954.

The Bank's records indicate that the last contact with Account Owner Mosbacher took place probably in 1944, and that the Bank tried to establish the whereabouts of the Account Owners after the Second World War. An internal memorandum in the Bank's records further indicates that, on 11 June 1947, one of the Power of Attorney Holders, [REDACTED], telephoned the Bank and stated that she had paid SF 10,000.00 to the account in 1944 and asked that the Bank pay her the remaining balance of the account. The memorandum contains notations indicating that [REDACTED] paid SF 10,000.00 to the account on 29 February 1944. This memorandum further indicates that the Bank had received unofficial word that Account Owner Sierstorpf had died in the United States. According to this memorandum, the balance of the account as of June 1947 was SF 917.00. This memorandum contains a recommendation that [REDACTED], who

was a Swiss citizen, should apply to the Swiss Clearing Office for an exemption from the 1945 Freeze. In response to this telephone conversation, on 19 June 1947 the Bank wrote to Power of Attorney Holder [REDACTED], informing her that the account had been frozen in the 1945 Freeze and that she should contact the Swiss Clearing Office with the necessary information and documents, in order to request that the freeze on the account be lifted.

The Bank's records indicate that the balance of the account was gradually reduced over the following 30 years as the Bank deducted fees for the rental of Account Owner Seirstorpf's safe deposit box.

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 the account was closed to the Bank's profit and loss account on 11 September 1975 due to its negative balance. The Bank's records indicate that the account had a negative balance of SF 1,611.00 as of September 1975.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's father's name and city and country of residence match the published name and city and country of residence of Account Owner Mosbacher. The Claimant also identified Account Owner Mosbacher's title and profession, as well as his private and business street addresses, which matches unpublished information about Account Owner Mosbacher contained in the Bank's records. The Claimant has also plausibly identified Account Owner Sierstorpf. The name of the Claimant's father's friend and client matches the unpublished name of Account Owner Sierstorpf.

In support of the Claimant's claim, her son submitted documents, including the Claimant's birth certificate, indicating that her father was Dr. Kurt Mosbacher; Kurt Mosbacher's passport, indicating that he held the title of doctor and lived in Munich; and the Claimant's death certificate indicating that her father was Kurt Mosbacher, providing independent verification that the person who is claimed to be Account Owner Mosbacher had the same name and title, and resided in the same city recorded in the Bank's records as the name and title and city of residence of the Account Owner.

The CRT notes that the Claimant did not identify the Power of Attorney Holders, [REDACTED] and [REDACTED]. However, given that the Bank's records state that the [REDACTED] were Swiss and lived in Switzerland, a country with which the Claimant, who was a minor in the 1930s when the account was opened, had no connection, and that there is no evidence to suggest that the Power of Attorney Holders were relatives of Account Owner Mosbacher, the CRT finds that this does not materially affect the Claimant's identification of the Account Owners.

The CRT notes that there are no other claims to this account.

Status of the Account Owners as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Mosbacher was a Victim of Nazi Persecution. The Claimant stated that Account Owner Mosbacher was Jewish, that he was deported to Dachau concentration camp in 1938 and that he fled Germany for England and eventually immigrated to the United States in 1939. As noted above, Account Owner Sierstorpf was not a Victim of Nazi Persecution.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to Account Owner Mosbacher by submitting specific information and documents, demonstrating that Account Owner Mosbacher was the Claimant's father. These documents include the Claimant's birth and death certificates, indicating that her father's name was Kurt Mosbacher. There is no information to indicate that Account Owner Mosbacher has heirs, other than the party whom the Claimant is representing and the party who represents the Claimant. The CRT notes that the Claimant, as the daughter of Account Owner Mosbacher, is more entitled to the account than her daughter, who is Account Owner Mosbacher's granddaughter.

The CRT notes that the Claimant is not related to Account Owner Sierstorpf.

The Issue of Who Received the Proceeds

The auditors who carried out the ICEP Investigation reported that the account was closed to the Bank's profit and loss account on 11 September 1975.

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 Governing the Claims Resolution Process, as amended (the "Rules"). Second, the Claimant has plausibly demonstrated Account Owner Mosbacher was her father and that relationship justifies an Award. Third, the CRT has determined that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owners held one demand deposit account. The Bank's records indicate that the value of the demand deposit account as of 17 February 1945 was 1,012.00 Swiss Francs ("SF"). In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 15.00, which reflects standardized bank fees charged to the demand deposit account in 1945. Consequently, the adjusted balance of the account at issue is SF 1,027.00. According to Article 29 of the Rules, if the amount in a demand deposit 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. 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 26,750.00.

Division of the Award

According to Article 25(2) of the Rules, in cases where a joint account is claimed by relatives of only one or some of the joint account owners, it shall be presumed that the account was owned as a whole in equal shares by the account owners whose shares of the account have been claimed. Accordingly, the CRT determines that the Claimant is entitled to the proceeds of the entire account.

In this case, the Claimant, who is the daughter of Account Owner Mosbacher, is representing her daughter, who is the granddaughter of Account Owner Mosbacher. According to Article 23(1)(c) of the Rules, if the spouse of the account owner 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. As noted above, the Claimant is more closely related to Account Owner Mosbacher than her daughter, and is entitled to the entire award amount. The Claimant's daughter 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
31 August 2005