

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], [REDACTED 3]
and [REDACTED 4]

and to Claimants [REDACTED 5]

and [REDACTED 6]

in re Accounts of Ernst Mueller

Claim Numbers: 205063/SB;¹ 219925/SB; 300485/SB;² 700454/SB³

Award Amount: 98,750.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”), [REDACTED 5], née [REDACTED] (“Claimant [REDACTED 5]”) and [REDACTED 6], née [REDACTED] (“Claimant [REDACTED 6]”) (together the “Claimants”) to the published accounts of Ernst Mueller (the “Account Owner”) at the Biel and Kriens branches of the [REDACTED] (the “Bank”).⁴

¹ Claimant [REDACTED 1] submitted two additional claims to the accounts of [REDACTED] and [REDACTED], which are registered under the Claim Numbers 201534 and 201545 respectively. The CRT has previously awarded these accounts to Claimant [REDACTED 1]. See *In re Account of Georg Müller and Ernst Müller*, which was approved by the Court on 2 January 2003 and *In re Account of Johannes Müller*, which was approved by the Court on 28 May 2004. The CRT has also previously awarded Claimant [REDACTED 1] a separate account belonging to Ernst Müller. See *In re Account of Ernst Müller*, which was approved by the Court on 8 April 2004.

² In addition to submitting a Claim Form to the CRT, Claimant [REDACTED 6] also submitted an Initial Questionnaire (“IQ”), numbered CZE 0013 143, 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 Questionnaire Responses 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 700454.

³ Claimant [REDACTED 6] submitted five additional claims to the accounts of [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], which are registered under the Claim Numbers 300483, 300484, 300486, 300487 and 300488, respectively. The CRT will treat the claims to these accounts in separate decisions.

⁴ As discussed *infra*, the CRT has determined that for the purposes of this Award these accounts shall be treated as having been held by the same person, although the information in the Bank's records is so limited that a definite determination is impossible.

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 Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her paternal uncle, Ernst Müller (Mueller), who was born on 23 December 1891 in Berlin, Germany, and was married to [REDACTED] in 1920 in Berlin. Claimant [REDACTED 1] stated that her uncle, who was Jewish, was a cardiologist and worked in Berlin and Hamburg, Germany. Claimant [REDACTED 1] added that after the Nazis' rise to power her uncle was prevented from practicing medicine and that sometime prior to 1935 he fled Germany for the United States, settling in New York, where he died on 11 September 1971. Claimant [REDACTED 1] submitted (1) her birth certificate, which states that her father's name was [REDACTED]; (2) [REDACTED]'s birth certificate, which states that his mother's name was [REDACTED], née [REDACTED]; and (3) Ernst Müller's birth certificate, which states that his mother's name was [REDACTED], née [REDACTED].

Claimant [REDACTED 1] stated that she was born on 7 November 1927 in Berlin. Claimant [REDACTED 1] is representing her sister, [REDACTED 2], née [REDACTED], who was born on 26 September 1920 in Berlin, and her cousins, [REDACTED 3], née [REDACTED], who was born on 15 April 1925 in Neumark, Germany, and [REDACTED 4], née [REDACTED] who was born on 5 November 1928 in Halle, Germany.

Claimant [REDACTED 1] previously submitted an Initial Questionnaire ("IQ") with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by [REDACTED].

Claimant [REDACTED 5]

Claimant [REDACTED 5] submitted a Claim Form identifying the Account Owner as her father, Ernst Müller, who was born on 16 May 1880 in Vienna, Austria, and was married to [REDACTED] on 6 January 1918 in Biala, Poland. Claimant [REDACTED 5] stated that her father, who was Jewish, was a company director and resided in Vienna. Claimant [REDACTED 5] further stated that her father fled Austria in 1938 for Yugoslavia and then fled Yugoslavia in 1942 for Spain, ultimately emigrating to Venezuela in 1943. Claimant [REDACTED 5] stated that her father died on 4 June 1954 in Caracas, Venezuela. In support of her claim, Claimant [REDACTED 5] submitted her birth certificate, which shows that her father's name was Ernst Müller.

Claimant [REDACTED 5] indicated that she was born on 5 February 1920 in Vienna.

Claimant [REDACTED 6]

Claimant [REDACTED 6] submitted a Claim Form and an IQ identifying the Account Owner as her maternal uncle, Ernst (Arnost or Ernest) Müller, who was born on 15 March 1910 in Velka Bytca, Czechoslovakia, and was married to [REDACTED]. Claimant [REDACTED 6] stated that her uncle, who was Jewish, was a businessman and resided in Ostrava, Czechoslovakia (now Czech Republic) with his wife and daughter, [REDACTED]. Claimant [REDACTED 6] further stated that her uncle was deported to Terezin concentration camp on 26 September 1942 and was murdered by the Nazis in Dachau concentration camp on 8 February 1945. Claimant [REDACTED 6] submitted a copy of a registration card from the Register of the Federation of Jewish Communities in Prague, Czechoslovakia (now Czech Republic) for an [REDACTED], which indicates his date of birth, place of residence and date of death.

Claimant [REDACTED 6] indicated that she was born on 6 April 1941 in Ostrava.

Claimant [REDACTED 6] previously submitted five IQs with the Court in 1999, asserting her entitlement to Swiss bank accounts owned by [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].⁵

Information Available in the Bank's Records

Biel Branch of the Bank

The Bank's record at the Biel branch of the Bank consists of a printout from the Bank's database. According to this record, the Account Owner was Ernst Mueller. The Bank's record does not indicate the Account Owner's domicile. The Bank's record indicates that the Account Owner held one account, numbered 17441, the type of which is not indicated. According to the Bank's record, the last contact with the Account Owner took place on 20 January 1941. The Bank's record indicates that the account was transferred to the Bank's suspense account for dormant assets on 25 November 1986 and that the balance of the account as of the date of the transfer was 35.50 Swiss Francs ("SF"). The account remains in the Bank's suspense account.

Kriens Branch of the Bank

The Bank's record at the Kriens branch of the Bank also consists of a printout from the Bank's database. According to this record, the Account Owner was Ernst Mueller. The Bank's record does not indicate where the Account Owner resided. The Bank's record indicates that the Account Owner held one account, numbered 719, the type of which is not indicated. The Bank's

⁵ As stated above, the CRT will treat the claims to these accounts in separate decisions.

record further indicates that the account was considered dormant by the Bank and was transferred to the Bank's suspense account on 17 December 1987. The balance of the account on the date of the transfer was SF 16.80. The account remains in the Bank's suspense account.

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 Ernst Müller, numbered 6348. These records indicate that Ernst Müller was a businessman born on 16 May 1880 and was married to [REDACTED]. These records further indicate that Ernst and [REDACTED] Müller resided in Vienna at Döbl. Hauptstrasse 66. According to the 1938 Census record, Ernst Müller owned a trading agency worth 13,766.37 Reichsmark ("RM"), securities worth RM 4,396.00 and insurance policies worth RM 5,235.24. These records make no mention of assets held in a Swiss bank account.

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 four claims of the Claimants in one proceeding.

Identification of the Account Owner

The names of Claimant [REDACTED 1]'s uncle, Claimant [REDACTED 5]'s father and Claimant [REDACTED 6]'s uncle each match the published name of the Account Owner. The CRT notes that the Bank's record does not contain any specific information about the Account Owner other than his name. The CRT also notes that there is insufficient information in the bank records to conclude definitively that the owner of the account at the Biel branch is the same person as the owner of the account at the Kriens branch. For the purposes of this decision, the CRT is treating the accounts as being held by the same person.

In support of their claims, Claimant [REDACTED 1] submitted Ernst Müller's birth certificate and Claimant [REDACTED 5] submitted her birth certificate, which indicates that her father's name was Ernst Müller, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank's records as the name of the

Account Owner. The CRT notes that the information provided by Claimant [REDACTED 5] matches the information about Ernst Müller contained in his 1938 Census declaration.

The CRT further notes that Claimant [REDACTED 6] filed an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Ernest Müller, prior to the publication in February 2001 of the list of accounts determined by Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that Claimant [REDACTED 6] has based her present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that Claimant [REDACTED 6] had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 6].

The CRT also notes that Claimant [REDACTED 1]’s relative, Claimant [REDACTED 5]’s relative and Claimant [REDACTED 6]’s relative are not the same person. However, given that the Claimants have identified all published information about the Account Owner that is available in the Bank’s records; that there is no additional information in the Bank’s records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that the other claim to this account was disconfirmed because that claimant provided information showing that the claimed account owner was previously known by a different name than that of the Account Owner, the CRT finds that Claimant [REDACTED 1], Claimant [REDACTED 5] and Claimant [REDACTED 6] have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Each of the Claimants has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish. Claimant [REDACTED 1] stated that the Account Owner fled Germany for the United States; Claimant [REDACTED 5] stated that the Account Owner fled Austria for Yugoslavia in 1938 and subsequently fled Yugoslavia for Venezuela in 1942; and Claimant [REDACTED 6] stated that the Account Owner was murdered by the Nazis in the Dachau concentration camp.

The Claimants’ Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant [REDACTED 1]’s uncle, Claimant [REDACTED 5]’s father and Claimant [REDACTED 6]’s uncle. Claimant [REDACTED 1] submitted her birth certificate, which states that her father’s name was [REDACTED]; Ernst Müller’s birth certificate, which states that his mother’s name was [REDACTED], née [REDACTED]; and [REDACTED]’s birth certificate,

which states that his mother's name was [REDACTED], née [REDACTED]. Claimant [REDACTED 5] submitted her birth certificate, which indicates that her father's name was Ernst Müller.

The CRT notes that Claimant [REDACTED 6] filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 6], prior to the publication in February 2001 of the ICEP List, and that she submitted a copy of a registration card from the Register of the Federation of Jewish Communities in Prague, Czechoslovakia, for an Arnost Müller. The CRT notes that it is plausible that this document is a document which most likely only a family member would possess, which supports the plausibility that Claimant [REDACTED 6] is related to the Account Owner, as she has asserted in her Claim Form. There is no information to indicate that the Account Owner has surviving heirs other than the parties whom Claimant [REDACTED 1] is representing.

The Issue of Who Received the Proceeds

The Bank's records indicate that the accounts were transferred to the Bank's suspense accounts, where they remain.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was Claimant [REDACTED 1]'s uncle, Claimant [REDACTED 5]'s father and Claimant [REDACTED 6]'s uncle, and those relationships justify an Award. Third, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held two accounts of unknown type. The Bank's records indicate that the value of these accounts, as of 25 November 1986 and 17 December 1987, was SF 35.50 and SF 16.80, respectively. In accordance with Article 31(1) of the Rules, these amounts are increased by an adjustment of SF 665.00 and SF 685.00, which reflects standardized bank fees charged to the accounts between 1945 and 1986 and 1987. Consequently, the adjusted balances of the accounts at issue are SF 700.50 and SF 701.80. According to Article 29 of the Rules, if the amount in an account of unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. Thus, the total 1945 average value of the two accounts at issue is SF 7,900.00. 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 98,750.00.

Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each Claimant has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1] and the parties she represents are collectively entitled to one-third of the total award amount, and Claimant [REDACTED 5] and Claimant [REDACTED 6] are each entitled to one-third of the total Award amount.

The CRT notes that Claimant [REDACTED 1] is representing her sister, [REDACTED 2], and her cousins [REDACTED 3] and [REDACTED 4]. According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. Therefore, Claimant [REDACTED 1], [REDACTED 2], [REDACTED 3] and [REDACTED 4] are each entitled to one-twelfth 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
13 May 2005