

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Kyoko Nakamura
represented by Mimi Müller

in re Account of Hans Muller

Claim Number: 220934/PY

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of Kyoko Nakamura (the “Claimant”) to the account of Henriette Müller.¹ This Award is to the account of Hans Muller (the “Account Owner”) at the Basel 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 who was Jewish as her husband, Hans Kurt Müller, who was born on 13 January 1915 in Düsseldorf, Germany, and was married to the Claimant on 28 July 1949 in Tianjin, China. In a telephone conversation on 5 July 2002 with the Claimant’s representative, who is the daughter of the Claimant and Hans Kurt Müller, the Claimant’s representative stated that her father resided in Düsseldorf with his parents, Simon and Henriette Müller, until 1933, when he went to Basel, Switzerland, to pursue his medical studies. The Claimant’s representative also stated that it was likely that her father opened a Swiss bank account while he was studying in Basel. The Claimant’s representative indicated that her father remained in Switzerland until 1939 when he was required to leave Switzerland, and then fled to China. According to the Claimant, her husband remained in China until his death in Beijing on 4 December 1994. In support of her claim, the Claimant submitted her husband’s birth certificate, which indicates that he was born in Düsseldorf, as well as his death certificate. The Claimant also submitted her marriage certificate, which indicates that her husband was Hans Kurt Müller, as well as a copy of her husband’s German passport, which was stamped by the German consulate in Basel in 1938. The Claimant stated that she was born on 1 March 1931 in Fukuoka, Japan.

¹ The CRT will treat the claim to this account in a separate decision.

Information Available in the Bank's Record

The Bank's record consists of a printout from the Bank's database. According to this record, the Account Owner was Hans Muller who gave the Bank a mailing address at Wiedenhofstrasse 85 in Krefeld, Germany. The Bank's record indicates that the Account Owner held an account of unknown type. The Bank's record does not show when the account at issue was closed, or to whom it was paid. The account was registered in 1945 pursuant to the Swiss Freeze of German Assets, and its balance on 16 February 1945 was recorded as 30.00 Swiss Francs. The Bank's record further shows that the assets were unfrozen on 30 August 1947.

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 find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the Bank's record that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant's husband's name matches the unpublished name of the Account Owner. In addition, the Claimant's representative stated that her father studied in Basel, Switzerland, which matches unpublished information about the location of the Bank branch contained in the Bank's record. The Claimant's representative also stated that it was likely that her father opened a Swiss bank account while he was studying in Basel, and in fact, the Account Owner's account was opened at the Bank's Basel branch. In support of her claim, the Claimant submitted her husband's birth certificate, which indicates that he was born in Düsseldorf, Germany, and she noted that he had lived with his parents in Düsseldorf. While the Bank's record indicates a mailing address in Krefeld, Germany, the CRT notes that Krefeld is situated approximately only twenty kilometers from Düsseldorf, making it plausible that given the close proximity of the two locations, the person identified by the Claimant as the Account Owner, and the Account Owner identified in the Bank's records, are the same person. The Claimant also submitted her marriage certificate, identifying the claimed Account Owner as her husband, as well as a copy of her husband's German passport, which was stamped by the German consulate in 1938 in Basel, Switzerland. The CRT further notes that the other claims to this account were disconfirmed due to inconsistent country and city of residence information provided by the other claimants. 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 and fled from Europe to China in 1939 to avoid Nazi persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting her marriage certificate, which indicates that she was married to the Account Owner.

The Issue of Who Received the Proceeds

Given that the account survived the Second World War; that the Account Owner lived in Communist China from 1939 to his death in 1994, and living in this country during that period of time would not have had access to his funds in Switzerland without their probable confiscation; 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 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 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 husband, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible 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 one account of unknown type. The Bank's record indicates that the value of the account of unknown type as of 16 February 1945 was 30.00 Swiss Francs. According to Article 29 of the Rules, if the amount in an account of unknown type was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 Swiss Francs. 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 49,375.00 Swiss Francs.

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
August 20, 2003