

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Theodor Müller

Claim Number: 751425/RT¹

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Philipp Ludwig Müller.² This Award is to the published account of Theodor Müller (the “Account Owner”) at the Geneva branch of the [REDACTED] (the “Bank”).

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 ATAG Ernst and Young claim form in 1998 identifying the Account Owner as her father, Hans Theodor Müller, who was born on 25 January 1914 in Neu-Isenburg, Germany to [REDACTED] and [REDACTED]. The Claimant stated that her grandfather, [REDACTED], was killed during the First World War and that his widow, [REDACTED], who was Jewish, then married [REDACTED]. The Claimant indicated that her father was considered to be Jewish (“*Mischling*”) by the Nazis because his mother was Jewish. According to the Claimant, [REDACTED] and [REDACTED] fled Germany for Bogotá, Colombia in 1938. The Claimant stated that her grandfather’s brother, [REDACTED], who was born 29 [REDACTED] 1898 and was married to [REDACTED], née [REDACTED], was a merchant and manufacturer

¹ Renate Walter (the “Claimant”) did not submit a CRT Claim Form. However, in 1998 she submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-K-80-205-084-429, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 751425.

² The CRT will treat the claim to this account in a separate determination.

and, having no children of his own, opened a bank account in her father's name. According to the Claimant, the account was protected by a password that was only known to her father's uncle. The Claimant explained that, after her great-uncle died unexpectedly in 1961, her great-aunt suggested that her father try to access the account, but he was denied access because he could not provide the account's password. The Claimant indicated that her father died on 3 August 1983.

In support of her claim, the Claimant submitted copies of her birth certificate, issued in 1947, indicating that her parents were Hans Theodor Müller and [REDACTED], née [REDACTED], and her parents' marriage certificate, indicating that Hans Theodor Müller and [REDACTED] were married on 7 April 1945.

The Claimant indicated that she was born on 11 February 1938 in Viernheim.

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") submitted a printout from a database prepared by themselves of accounts blocked in the 1945 freeze of assets held in Switzerland by citizens of Germany and of the territories incorporated into the Third Reich (the "1945 Freeze"). Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). The Bank provided the CRT with an additional document. This document is an excerpt of a list of assets blocked in the 1945 Freeze, which was prepared by the Swiss Clearing Office.

According to these records, the Account Owner was Theodor Müller, who resided in Germany. These records indicate that the Account Owner held an account, the type of which is not indicated. The balance of the account as of 17 February 1945 was 1,251.00 Swiss Francs ("SF"). These records further indicate that the freeze of the account was lifted. The auditors who carried out 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 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 father's name matches the published name of the Account Owner. The CRT notes that the records pertaining to the account only indicate the name Theodor as the first name of the Account Owner, while the Claimant stated that her father's first name was Hans and that his middle name was Theodor. However, the CRT also notes that it is possible that the

Claimant's father's uncle, [REDACTED], opened the account using the middle name and surname of the Claimant's father and therefore concludes that this discrepancy does not materially affect the Claimant's identification of the Account Owner. The Claimant also identified the Account Owner's country of residence, which matches unpublished information about the Account Owner. In support of her claim, the Claimant submitted documents, including her parents' marriage certificate, indicating that Hans Theodor Müller resided in Viernheim, and the Claimant's birth certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same country recorded in the records pertaining to the account as the name and country of residence of the Account Owner. The CRT also notes that the name Theodor Müller appears only once on the January 2005 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution. The CRT further notes that the Claimant filed an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by [REDACTED], prior to the publication in January 2005 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"), stating that this account was opened in favor of his nephew Theodor Müller. This indicates that the Claimant 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 the Claimant 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 the Claimant. Finally, the CRT notes that the other claims to this account were disconfirmed because these claimants provided different countries of residence than the country of residence 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 indicated that her father was considered by Nazi racial laws to be Jewish because his mother was Jewish. The Claimant stated that her paternal grandmother fled Germany for Columbia in 1938 and that the Account Owner resided in Nazi Germany during the Second World War.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was her father. These documents include the Claimant's birth certificate, indicating that Hans Theodor Müller was her father.

The Issue of Who Received the Proceeds

Given that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; 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 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 father, 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.

Amount of the Award

In this case, the Account Owner held one account, the type of which is not indicated. The records pertaining to the account indicate that its value as of 17 February 1945 was SF 1,251.00. 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. 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 49,375.00.

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
9 November 2006