

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Stephen Harnik

in re Account of Max Ostermann

Claim Number: 501523/TW

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published account of Max Ostermann (the “Account Owner”), over which Olga Ostermann (the “Power of Attorney Holder”) held power of attorney, at the Zurich 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 a Claim Form identifying the Account Owner as her father, Max Ostermann, who was born on 13 August 1886 in Tauroggen, Russia, and was married to Olga Ostermann, née Schön in Vienna, Austria in 1916. The Claimant indicated that she was the only child born of Max Ostermann and Olga Ostermann. According to the Claimant, her father worked as a physician in Vienna. The Claimant further stated that her parents fled from Vienna for Basel, Switzerland in July 1938, where her father worked as an editor at *Verlag Ars Medici* owned by *Ludin Company*. The Claimant indicated that after the death of her mother on 24 November 1940, her father married [REDACTED], née [REDACTED]. The Claimant indicated that her father died in Basel on 12 March 1967, and that his second wife, [REDACTED], née [REDACTED], died in the late 1990s in Basel.

In support of her claim, the Claimant submitted correspondence concerning Max Ostermann’s assets held in the files of the Austrian State Archive in connection with the 1938 Census of Jewish-owned assets. This correspondence names the Claimant as the child of Dr. Max Ostermann.

The Claimant indicated that she was born on 6 October 1917 in Vienna.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form and printouts from the Bank's database. According to these records, the Account Owner was Dr. Max Ostermann, residing at Spitalgasse 1^a, Vienna IX, Austria and the Power of Attorney Holder was *Frau* (Mrs.) Olga Ostermann, the Account Owner's wife. The Bank's records indicate that the Account Owner held a custody account.¹

The Bank's records indicate that, though no opening date is given, the account was open by 22 February 1928. The Bank's records do not show when the account at issue was closed nor do they indicate the value of this account.

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 records that the Account Owner, the Power of Attorney Holder or their heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of April 27 1938 (the "1938 Census"). In the Austrian State Archive there are records, numbered 60384, concerning the assets of Dr. Max Ostermann. These records, consisting of correspondence between various departments dealing with Jewish-owned assets, indicate that Dr. Max Ostermann, a physician, was born on 13 August 1886, that his last known address in Vienna was Colloredogasse 20, that by 28 October 1941 he was widowed, and that he had a daughter named [REDACTED], who was born on 6 October 1917. The records further indicate that Max Ostermann's medical practice, located at Spitalgasse 1^a, Vienna IX was sold to Dr. Hans Scheidl for 2,000.00 Reichsmark ("RM"), and that the purchase price was to be paid in twelve equal installments to the *Kreditanstalt Wiener Bankverein* starting 1 January 1939. Finally, the records include a confiscation order for all remaining assets of Dr. Max Ostermann and his daughter, dated 28 October 1941, together with notification of initiation of denationalization proceedings. The records make no mention of assets held in a Swiss bank account.

¹ The Bank's records contain a power of attorney form that references a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the CRT concludes that it is plausible that he held such an account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name, city and country of residence match the published name, city and country of residence of the Account Owner. The Claimant's mother's name matches the published name of the Power of Attorney Holder. In addition, the Claimant stated that Max and Olga Ostermann were married and that Max Ostermann used the professional title "Dr.," which match unpublished information contained in the Bank's records.

In support of her claim, the Claimant submitted documents, including 1938 Census records pertaining to Max Ostermann's assets, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner. Furthermore, the 1938 Census records contain the same address for Max Ostermann's medical practice as the address shown for the Account Owner in the Banks' records.

The CRT notes that the name Max Ostermann appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the "ICEP List").

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

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 Austria to Switzerland in July 1938.

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 1938 Census records pertaining to the assets of Max Ostermann, indicating that the Claimant was his daughter.

There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner fled from Austria for Switzerland in July 1938; 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, the Power of Attorney Holder, or their 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 Governing the Claims Resolution Process (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, the Power of Attorney Holder nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs ("SF"). The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 162,500.00.

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
31 March 2005