

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]

in re Account of Simon Rosenstein

Claim Number: 788402/AB¹

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the "Claimant") to the published account of Simon Rosenstein (the "Account Owner"), over which Elfriede Rosenstein (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 an Initial Questionnaire ("IQ") identifying the Account Owner as his maternal grandfather, Simon Rosenstein, who lived on Ottakringerstrasse in Vienna XVI, Austria. In telephone conversations with the CRT on 9 and 10 December 2004, the Claimant stated that his grandfather was born on 25 December 1872 and was married to Elfriede Rosenstein, née Bauer, who was born on 18 December 1877. The Claimant explained that his grandfather, who was Jewish, was an employee of the *Kuffner* company. The Claimant indicated that his grandparents had three children: his mother, [REDACTED], née [REDACTED], and another daughter and son whose names the Claimant did not identify. The Claimant did not indicate whether his mother's siblings had any children themselves. The Claimant stated that his maternal grandparents, Simon and Elfriede Rosenstein, were deported by the Nazis to a concentration camp, where they perished.

¹ [REDACTED 1] did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire ("IQ"), numbered ENG-0718-164, 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 788402.

The Claimant stated that he and his younger sister, [REDACTED 2], left Vienna in December 1938 as part of a "*Kindertransport*" to the United Kingdom, where they stayed until February 1940, at which time they both immigrated to New York, the United States. According to the Claimant, his surname was changed from [REDACTED] to [REDACTED] upon his arrival in the United States. The Claimant indicated that his father fled to the United States around 1941, and that his mother fled separately to Palestine, where she remained until she was able to immigrate to the United States in 1944. The Claimant further indicated that his mother and her siblings all are deceased. The Claimant stated that he was born on 14 May 1927 in Vienna. The Claimant represents his sister, [REDACTED 2], née [REDACTED], who was born on 31 January 1929 in Vienna.

In his IQ, the Claimant also asserted his entitlement to a Swiss bank account owned by his father, [REDACTED]. Moreover, the Claimant submitted another IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his father's sister, [REDACTED].²

Information Available in the Bank's Records

The Bank's records consist of an extract from a list of custody accounts belonging to clients domiciled in Austria that were closed; a letter dated 17 March 1938 from the Zurich branch of the Bank to the Bank's Head Office in Basel concerning a request to the branch to provide both a list of its liabilities to Austrian clients and the value of a securities it held on their behalf as well as a copy of an extract of the Austrian law gazette dated 23 March 1938 containing the law on the amendment and extension of the foreign currency regulation (Austrian foreign currency law). According to these records, the Account Owner was Simon Rosenstein, who resided in Vienna, Austria, and the Power of Attorney Holder was Elfriede Rosenstein, who also resided in Vienna. The Bank's records indicate that the Account Owner held a custody account, numbered 40869, and that the account was opened in 1937.

The Bank's records indicate that the account was closed on 18 October 1938, and that the balance of the account was transferred on 20 October 1938 to the Nazi-controlled *Länderbank Wien A.G.* in Vienna. The amount in the account on the date of its transfer was 3,250.00 Swiss Francs ("SF").

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 27 April 1938 (the "1938 Census"). In the records of the

² The CRT did not locate an account belonging to the Claimant's relatives, [REDACTED] and [REDACTED], in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (ICEP or ICEP Investigation), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the Rules). The Claimant should be aware that the CRT will carry out further research on his claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Simon Rosenstein, numbered 24717. These documents show that Simon Rosenstein was Jewish, that he was born on 25 December 1872, that he lived at Ottakringerstrasse 114 in the 16th district of Vienna, that he was married to Elfriede Rosenstein, née Bauer, and that he was an employee of the *Kuffner* company. According to these documents, as of 27 April 1938 Simon Rosenstein owned various Austrian and foreign securities valued at a total of 11,601.44 Reichsmarks ("RM"), as well as savings passbooks valued at RM 6,189.77 and other valuables valued at RM 50.00. Although some of the securities were Swiss bonds denominated in Swiss Francs, there is no indication that these securities or any other assets were held in a Swiss bank account. These documents also contain correspondence in which Simon Rosenstein reports to the Nazi authorities that on 10 November 1938 a number of functionaries of the local Nazi Party (N.S.D.A.P.) came to his apartment and confiscated financial assets worth RM 15,773.00, in addition to jewelry and other valuables.

The records of the Austrian State Archive also contain documents concerning the assets of Elfriede Rosenstein, numbered 24718. These documents show that Elfriede Rosenstein was Jewish, that she lived at Ottakringerstrasse 114 in the 16th district of Vienna, that she was born on 18 December 1877, and that she was married to Simon Rosenstein. According to these documents, Elfriede Rosenstein owned a lease on an allotment garden in the 13th district of Vienna, valued at approximately RM 5,000.00, as well as savings valued at RM 376.60 and other valuables valued at approximately RM 100.00. The documents make no mention of assets in a Swiss bank.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's maternal grandfather's name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant's maternal grandmother's name matches the published name of the Power of Attorney Holder. Moreover, the Claimant identified the name of the street where the Account Owner lived, the Account Owner's profession, and the relationship between the Account Owner and the Power of Attorney Holder, which match unpublished information about the Account Owner contained in the Austrian State Archive.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Elfriede Rosenstein, and indicates that her date of birth was 18 December 1877, and that her place of residence was Vienna, which matches the information about the Power of Attorney Holder provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the name Simon Rosenstein 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 CRT further notes that the Claimant filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Simon Rosenstein, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his 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.

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 that he and his wife were transported to a concentration camp, where they perished. As noted above, a person named Elfriede Rosenstein was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information, demonstrating that the Account Owner was the Claimant's maternal grandfather.

The CRT further notes that the Claimant identified unpublished information about the Account Owner; that the Claimant filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List; and that the Claimant also identified information which matches information contained in the Yad Vashem records. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all this information supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his IQ.

There is no information to indicate that the Account Owner has other surviving heirs other than the parties which the Claimant is representing.

The Issue of Who Received the Proceeds

The Bank's records indicate that the account was closed on 18 October 1938 and that it was transferred on 20 October 1938 to the Nazi-controlled *Länderbank Wien A.G.* The facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account

ultimately were confiscated by the Nazi regime; that the Account Owner lived in Austria until he was deported by the Nazis to a concentration camp, and therefore could not have repatriated the account without losing ultimate control over its proceeds; 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, as amended (the “Rules”). Second, the Claimant has plausibly demonstrated that the Account Owner was his maternal grandfather, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor 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 a custody account. The Bank’s records indicate that the value of the custody account as of 20 October 1938 was SF 3,250.00. According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00. 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. Consequently, the total award amount in this case is SF 162,500.00.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner’s spouse 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. In this case, the Claimant is representing his sister, [REDACTED 2]. Accordingly, the Claimant and his sister are each entitled to one-half of the total 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 his claim to determine whether there are additional Swiss bank accounts to which he 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
30 December 2004