

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 Accounts of Alfred Roth

Claim Number: 771051/SJ¹

Award Amount: 227,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (the “Claimant”) to the accounts of Alfred Roth and Harriet Anhauch Roth. This Award is to the published accounts of Alfred Roth (the “Account Owner”), over which Harriet Roth (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 her maternal grandfather, Alfred Roth, who was born in approximately 1877, and was married to Harriet Roth, née Anhauch.² The Claimant indicated that her grandparents lived in Vienna, Austria during the 1930s. The Claimant added that her grandfather, who was Jewish, was an engineer and that her grandmother’s family owned shoe factories and lumberyards in northern Hungary. Furthermore, the Claimant indicated that her grandparents had a daughter, [REDACTED] (the Claimant’s mother), who was born on approximately 15 December 1913, in or near Vienna. The Claimant stated that during the Second World War German troops entered her grandparents’ home and confiscated their belongings. The Claimant stated that her

¹ [REDACTED 1] (the “Claimant”) did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered ENG 0040 154, 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 that 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 771051.

² The CRT received certain information contained in this section as a result of telephone and email communication with the Claimant between 20 July 2005 and 22 July 2005.

grandparents eventually fled to Cuba until they were issued entry permits to the United States in the early 1940s. According to the Claimant, her grandparents had to leave almost all of their possessions when they fled to Cuba, and they hid monetary assets in hopes of later retrieving them. The Claimant indicated that her mother had made unsuccessful attempts to locate her parents' assets after the Second World War. Finally, the Claimant indicated that Alfred Roth died in Houston, Texas, the United States in 1953 and that Harriet Roth died in Houston in 1964. In support of her claim, the Claimant submitted her birth certificate, indicating that she is the daughter of [REDACTED], who was born in Vienna, Austria, and her mother's death certificate, indicating that she was born in Austria on 5 December 1913 to Alfred Roth and Harriet Anhauch.

The Claimant indicated that she was born on 31 August 1946 in Denver, Colorado, the United States. The Claimant is representing her sister, [REDACTED 2], née [REDACTED].

Information Available in the Bank's Records

The Bank's records consist of a registry of closed numbered accounts, a power of attorney form, and printouts from the Bank's database. According to these records, the Account Owner was *Ing.* (Engineer) Alfred Roth and the Power of Attorney Holder was Harriet Roth, the Account Owner's wife, both of whom resided at Brahmsplatz 3, Vienna IV, Austria, as of 28 July 1931, the date the power of attorney form was executed. Furthermore, the Bank's records indicate that the Account Owner held a numbered account of unknown type, which was held under the designation 60672, as well as a custody account.³ According to the Bank's records, account 60672 was closed on 31 March 1939. The Bank's records do not indicate when the custody account was closed, nor do they indicate its value. 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 the custody account in the Bank's system of open accounts, and they therefore presumed that it was closed.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of a safe deposit box registry card and a closure card. According to these records, on 21 May 1935 the Account Owner rented, under the designation of numbered account 60672, a safe deposit box numbered 1428. These documents indicate that the Account Owner ordered the Bank to record all his visits, and that the Account Owner's visits at the Bank took place on 3 June 1936, 5 June 1936, 16 July 1936, 15 July 1937, 10 January 1938, and 11 January 1938. The Bank's records further indicate that the safe deposit box rental contract expired on 31 March 1938, and that the Account

³ 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.

Owner's key to the safe deposit box was returned to the Bank on 7 April 1938. The contents of the safe deposit box or their value are not known.

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, 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 Alfred Roth, numbered 29460, Harriet Roth, numbered 29458 and [REDACTED], numbered 27307. These records indicate that Alfred Roth, who was born in 1874, was married to Harriet Anhauch, who was born in 1888, and that they had a daughter, [REDACTED], who was born on 5 December 1913. The records also indicate that Alfred Roth was an engineer and that he was a retired director of the company *Kabelfabrik und Drahtindustrie*. In a letter dated 20 December 1938 from Zurich, Switzerland, to Nazi authorities, Alfred Roth noted that he had paid flight tax (*Reichsfluchtsteuer*) on 22 July 1938 and that he left the country shortly thereafter. These records make no mention of assets held in a Swiss bank account.

The CRT notes that the signatures of Alfred Roth and Harriet Roth contained in the 1938 Census declarations match the signatures of the Account Owner and the Power of Attorney Holder contained in the Bank's records.

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, and the name and city and country of residence of her grandmother match the published name and city and country of residence of the Power of Attorney Holder. The Claimant identified the relationship between the Account Owner and the Power of Attorney Holder, which matches unpublished information about the Account Owner and the Power of Attorney Holder contained in the Bank's records. Furthermore, the Claimant identified her grandmother's maiden name, which matches further unpublished information contained in the 1938 Census declarations. In support of her claim, the Claimant submitted documents, including her mother's death certificate that indicates her father was Alfred Roth, 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 Claimant filed an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Alfred Roth, 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 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. The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided different cities and countries of residence, or different spouse's names than the city and country of residence and spouse's name of 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 that he fled Nazi-controlled Austria during the Second World War. Furthermore, the CRT notes that the Account Owner submitted a 1938 Census declaration, paid flight tax, and fled Austria in the summer of 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 the Claimant's grandfather. These documents include a copy of her birth certificate, indicating that she is the daughter of [REDACTED], and her mother's death certificate, indicating that she was born in Austria to Alfred Roth and Harriet Anhauch. But for the Claimant's sister, whom she represents in these proceedings, there is no information to indicate that the Account Owner has other surviving heirs.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records and as contained in the 1938 Census declarations filed in Austria. Furthermore, the CRT notes 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. 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 of this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Form.

The Issue of Who Received the Proceeds

With respect to the safe deposit box numbered 1428, the CRT notes that the Bank's records indicate that the safe's rental contract expired on 31 March 1938, and that the Account Owner's key to the safe deposit box was returned to the Bank on 7 April 1938. Given that after the *Anschluss*, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax- and other confiscatory

measures, including confiscation of assets held in Swiss banks; that the Account Owner remained in Austria until at least 22 July 1938, and would not have been able to repatriate his account without losing ultimate control over its proceeds; that there is no record of the payment of the Account Owner's account to him; 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; 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.

With respect to the custody account and the account of unknown type, numbered 60672, the Bank's records not indicate when the custody account was closed, but do indicate that the account of unknown type, numbered 60672, was closed on 31 March 1939, at which time, according to information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom this account, or the custody account, was closed; that the Account Owner fled his country of origin due to Nazi persecution; that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety; that the Bank's records do not contain a closure date for the custody account; that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 (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 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 accounts.

Amount of the Award

In this case, the Account Owner held one safe deposit box, one custody account, and one account of unknown type. 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 safe deposit box was 1,240.00 Swiss Francs (“SF”), the average value of a custody account was SF 13,000.00, and the average value of an account of unknown type was SF 3,950.00. As a result, the total 1945 average value of accounts held by the Account Owner was SF 18,190.00. 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 227,375.00.

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 her sister. Accordingly, the Claimant and her 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 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
23 February 2006