

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1]

and [REDACTED 2]

in re Account of Helene Rotter

Claim Numbers: 209795/AX; 210261/AX

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”), to the published account of Helene Rotter (the “Account Owner”), over which Elisabeth Rotter held power of attorney (the “Power of Attorney Holder”), 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 claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

The Claimants, who are cousins, each submitted a Claim Form, identifying the Account Owner as their great-aunt, Helene Rotter. The Claimants stated that Helene Rotter was married to their paternal grandfather’s brother, [REDACTED], and that the couple had one child, Elisabeth. The Claimants further stated that Helene Rotter and her family resided in Vienna, Austria. The Claimants explained that they had a relative, Dr. [REDACTED], who resided in Zurich, Switzerland. The Claimants indicated that Helene Rotter was Jewish, and that she and her daughter both perished in a concentration camp. The Claimants further indicated that they were children during the Second World War, and that most of their relatives, including their parents, perished in the Holocaust. As a result, the Claimants cannot recall any additional details about Helene Rotter. The Claimants each submitted their birth certificates indicating that their fathers were [REDACTED] and [REDACTED]. Claimant [REDACTED 2] indicated that he was born on 3 December 1930 in Brno, Czechoslovakia, and Claimant [REDACTED 1] indicated that he was born on 7 May 1931, also in Brno.

Claimant [REDACTED 1] previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his father, [REDACTED]. Claimant

[REDACTED 2] previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his father, [REDACTED].¹

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form, dated 17 September 1929, and printouts from the Bank's database. According to these records, the Account Owner was Helene Rotter, who resided at Johann Straussgasse 38 in Vienna IV, Austria, and the Power of Attorney Holder was Elisabeth Rotter. The Bank's records indicate that the Account Owner held a custody account that was opened no later than 17 September 1929.²

The Bank's records do not show when the account at issue was closed, or to whom it was paid, nor do these records 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 account 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 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 Helene Rotter, numbered 09852. These records indicate that Helene Rotter resided at Johann Straussgasse 38 in Vienna IV. According to these records, Helene Rotter, who was widowed, received an income from her deceased husband's pension. These records make no mention of assets held in a Swiss bank account.

¹ The CRT did not locate an account belonging to [REDACTED] or [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 their claims to determine whether an award may be made based upon the information provided by the Claimants or upon information from other sources.

² 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 she held such an account.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants' great-aunt's name and city of residence match the published name and city of residence of the Account Owner. The Claimants' cousin's name matches the published name of the Power of Attorney Holder. The Claimants indicated that they had a relative, Dr. [REDACTED], who resided in Zurich, Switzerland. This information is consistent with the location of the branch where the account was held. The CRT notes that the name Helene Rotter appears only once on the February 2001 published list of accounts determined by ICEP to be probably those of Victims of Nazi Persecution (the "ICEP List"). The CRT further notes that the Claimants each filed an Initial Questionnaire with the Court in 1999 asserting their entitlement to a Swiss bank account owned by each of their fathers, [REDACTED] and [REDACTED], prior to the publication in February 2001 of the ICEP List. This indicates that the Claimants have based their present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same family name as their relative, but rather on the prior knowledge of accounts owned by their family members. This supports the credibility of the information provided by the Claimants. The CRT further notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and that she and her daughter, the Power of Attorney Holder, perished in the Holocaust.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information, demonstrating that the Account Owner was their great-aunt, and that the Power of Attorney Holder was their cousin. The CRT further notes that the Claimants submitted a copy of their birth certificates indicating that their fathers' names were [REDACTED] and [REDACTED], which provides independent verification that the Claimant's relatives bore the same family name as the Account Owner, which supports the plausibility that the Claimants are related to the Account Owner, as they have asserted in their Claim Forms. There is no information to indicate that the Account Owner has surviving heirs other than the Claimants.

The Issue of Who Received the Proceeds

Given that the Account Owner and Power of Attorney Holder perished in the Holocaust; that there is no record of the payment of the Account Owner's account to her or her heirs, nor any record of a date of closure of the account; that the Account Owner's heirs would not have been able to obtain information about her 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 (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, or 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 account.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their great-aunt, and that relationship justifies an Award. Finally, 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 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.

Division of the Award

According to Article 23(1)(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23(1)(a-f) have submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity. Accordingly, the Claimants, as the great-nephews by marriage of the Account Owner, and as the only relatives who filed claims, are each entitled to one-half of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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
13 October 2004