

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Ronald Fleischer,
also acting on behalf of Liselotte Fleischer and Maurice Goldhaber¹

in re Account of Otto Scharff

Claim Number: 500402/AX

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of Ronald Fleischer (the “Claimant”) to the published account of Otto Scharff (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his maternal grandfather, Otto Scharff, who was born on 26 February 1884 in Landau-Pfalz, Germany, and was married to Nelly Scharff, née Steinharter. The Claimant indicated that the couple had two daughters: Gertrude and the Claimant’s mother, Liselotte. The Claimant stated that his grandfather was the owner of a company named *H. Scharff & Söhne*, which was located at Orleanstrasse 6 in Munich, Germany. The Claimant further stated that his grandfather lived at Wiedermayerstrasse 45 in Munich until 1930, and then moved to Wasserburgerstrasse 6 in Munich, where he resided until 1941. According to the Claimant, his grandfather, who was Jewish, was arrested and deported to Lithuania with his wife in 1941. The Claimant indicated that his grandparents perished on 25 November 1941 in Kaunas, Lithuania. In support of his claim, the Claimant submitted documents, including his grandfather’s passport, which identifies his grandfather as Otto Scharff of Munich; his grandmother’s passport which identifies her as the wife of Otto Scharff and her place of residence as Munich; his mother’s school report card, dated 1932, which identifies her father as Otto Scharff of Munich; his mother’s passport and marriage certificate which identify her parents as Otto and Nelly Scharff; an extract from the birth registry

¹ The CRT notes that the Claimant submitted a Claim Form stating that he is representing his aunt, Gertrude Goldhaber, who is deceased, but that the Power of Attorney form is signed by Gertrude Goldhaber’s husband, Maurice Goldhaber.

of Mannheim, Germany, recording his mother's birth and identifying her parents as Otto and Nelly Scharff, née Steinharter; and the Claimant's passport, which indicates his mother's name is Liselotte Fleischer Scharff. The Claimant stated that he was born on 11 January 1944 in Rio de Janeiro, Brazil. The Claimant is representing his mother, Liselotte Fleischer, née Scharff, who was born on 17 January 1913 in Mannheim, and Maurice Goldhaber, who was born on 18 April 1911 in Lemberg, Austria, and was the husband of the Claimant's late aunt, Gertrude Goldhaber, née Scharff, who was born on 14 July 1911 in Mannheim, and who died on 2 February 1998 in Patchogue, New York, the United States.

Information Available in the Bank's Record

The Bank's record consists of a printout from the Bank's database. According to this record, the Account Owner was Otto Scharff, who resided in Munich, Germany. The Bank's record indicates that the Account Owner held one custody account, numbered 17137, which was opened on 19 November 1932 and was closed on 5 July 1935. The amount in the account on the date of its closure is unknown. There is no evidence in the Bank's record 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 grandfather's name and city of residence match the published name and city of residence of the Account Owner. In support of his claim, the Claimant submitted documents including his grandfather's passport, which identifies him as Otto Scharff from Munich; his grandmother's passport which identifies her as the wife of Otto Scharff and her place of residence as Munich; his mother's school report card, dated 1932, which identifies her father as Otto Scharff of Munich; and an extract from the birth registry of Mannheim, recording his mother's birth and identifying her parents as Otto and Nelly Scharff, née Steinharter, providing independent verification that the person who is claimed to be the Account Owner had the same name and city of residence recorded in the Bank's records as the name and city of residence of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Otto Scharff, and indicates that his date of birth was 26 February 1884 and that his place of birth was Landau-Pfalz, which match the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT further notes that the name Otto Scharff appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of victims of Nazi persecution. Finally, the CRT notes that there were no other claims to this account. Taking all 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 stated that the Account Owner was Jewish and was killed by the Nazis in 1941. As noted above, a person named Otto Scharff 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 documents demonstrating that the Account Owner was his grandfather. These documents include the Claimant's mother's passport, marriage certificate, and birth registry document, which indicate her name is Liselotte Scharff, and that her parents were Otto and Nelly Scharff, and the Claimant's own passport, which identifies his mother as Liselotte Fleisher Sharff.

The Issue of Who Received the Proceeds

Given that after coming to power in 1933 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 Germany until he was deported and perished on 25 November 1941, and would not have been able to repatriate his account to Germany without losing ultimate control over the proceeds; that there is no record of the payment of the Account Owner's account to him or to his heirs; that the Account Owner's 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 (a), (h), and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A) and Appendix C,² 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 his grandfather, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

² Appendix C appears on the CRT II website at www.crt-ii.org.

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 investigation carried out pursuant to the instructions of the ICEP (the "ICEP Investigation"), in 1945 the average value of a custody account was SF 13,000.00. 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 162,500.00.

Division of the Award

In this case, the Claimant is representing Liselotte Fleischer, née Scharff, the Claimant's mother, and Maurice Goldhaber, the husband of his late aunt, Gertrude Goldhaber, née Scharff. 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. Further, according to Article 23(1)(f), if a child of the Account Owner is deceased and that child's spouse but none of that child's descendants have submitted a claim, that child's spouse shall be considered a child of the Account Owner for the purposes of that article. Accordingly, Liselotte Fleischer, the Account Owner's daughter, and Maurice Goldhaber, the widower of the Account Owner's other daughter, have a better entitlement to the award than the Claimant, the Account Owner's grandchild. Consequently, Liselotte Fleischer and Maurice Goldhaber 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