

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]

and to Claimant [REDACTED 3]
also acting on behalf of [REDACTED 4]

in re Accounts of Else Schlomann, Benno Schlomann, and Salomea Oettinger

Claim Numbers: 400931/HB; 400940/HB; 400962/HB; 400968/HB

Award Amount: 487,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and the claims of [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published accounts of Salomea Oettinger (“Account Owner Oettinger”), Elsa Schlomann (“Account Owner Else Schlomann”),¹ and Benno Schlomann (“Account Owner Benno Schlomann”) (together the “Account Owners”) at the Basel branch and the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where claimants have requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owners, and the bank have been redacted.

Information Provided by the Claimants

The Claimants, who are cousins, submitted substantially similar Claim Forms, identifying Account Owner Benno Schlomann as their grandfather Benno (Benjamin) Schlomann (Sloman), who was born in 1863, and Account Owner Else Schlomann as their grandmother, Elsa (Else, Elze) Ette Schlomann (Sloman), née Oettinger, who was born in 1876, possibly in Breslau, Germany (now Wroclaw, Poland). According to the Claimants, their grandparents, who were Jewish, resided in Dahlem-Berlin, Germany until approximately 1934. The Claimants indicated

¹ The CRT notes that, on the List of Account Owners Published in 2005, the name Elsa Schlomann appears. Upon careful review, the CRT has concluded that the account owner herself used the name ‘Else’ Schlomann, and that the name ‘Elsa’ Schlomann was a typographical error made by the Bank in one of its records. The CRT notes that although the name ‘Elsa’ appears once in the Bank’s records, that name is written ‘Else’ every other time that it is mentioned in the Bank’s records. The CRT further notes that Account Owner Else Schlomann signed her own name exclusively ‘Else’ Schlomann. Accordingly, the CRT refers to this account owner as Account Owner Else Schlomann in this award.

that their grandfather was an attorney and notary who held the title *Justizrat*, an honorary title bestowed upon distinguished lawyers and notaries in Germany, and whose business office was located at Taubenstrasse 23 in Berlin; their grandmother was a pianist and was trained as a psychoanalyst.

The Claimants further indicated that their grandparents had three children: [REDACTED], née [REDACTED] (Claimant [REDACTED 3]'s mother), who was born on 22 December 1897 and died on 3 November 1989 in New York, the United States; [REDACTED] (Claimant [REDACTED 1]'s father), who was born on 25 October 1907 in Berlin, and died on 9 May 1965 in Sao Paulo, Brazil; and [REDACTED], née [REDACTED].

The Claimants also identified Account Owner Salomea Oettinger as their great-grandmother (Elsa Schlomann's mother), Salomea Oettinger, née Salomon (Solomon), who was born in Poland, and resided at Lietzenburger Strasse in Berlin. According to the Claimants, their great-grandmother, who was Jewish, transferred assets to Switzerland in 1933 or 1934, and died in Berlin in 1934.

The Claimants stated that in approximately 1934, their grandparents Elsa and Benno Schlomann fled Berlin for Prague, Czechoslovakia (now the Czech Republic); then for Merano, Italy; and subsequently for Vitznau, Switzerland. The Claimants indicated that their grandparents resided in Vitznau in the summer of 1937. Finally, the Claimants indicated that some time around 1938, their grandparents left Switzerland for New York. The Claimants further stated that their grandparents' other family members perished in the Holocaust. The Claimants indicated that both of their grandparents died in New York, with the Claimants' grandfather passing away in March 1941, and the Claimants' grandmother passing away in 1954.

In support of his claim, Claimant [REDACTED 1] submitted copies of:

- (1) his own birth certificate, indicating that [REDACTED 1] was born on 23 February 1957 in Sao Paulo, that his father was [REDACTED], and that his paternal grandparents were Benjamin and Else Ette Schlomann;
- (2) his brother's birth certificate, indicating that [REDACTED 2] was born on 30 October 1960 in Sao Paulo, that his father was [REDACTED], and that his paternal grandparents were Benjamin and Else Ette Schlomann;
- (3) his father's death certificate, indicating that [REDACTED]'s parents were Benjamin and Elze Etta Schlomann, and that his children were [REDACTED 1] and [REDACTED 2];
- (4) his father's school report card, indicating that [REDACTED], who was born on 25 October 1906 in Berlin, was the son of *Justizrat* Benno Schlomann of Berlin-Dahlem; and
- (5) a letter from the Ferncliff Cemetery Association in Hartsdale, New York, indicating that Benno Schlomann was born in 1863 and died in 1941, and that Elsa Schlomann was born in 1876 and died in 1954.

In support of his claim, Claimant [REDACTED 3] submitted copies of:

- (1) his own birth certificate, indicating that [REDACTED 3] was born on 19 November 1924 in Frankfurt am Main, Germany, and that his mother was [REDACTED], née [REDACTED];
- (2) his sister's birth certificate, indicating that [REDACTED 4] was born on 7 September 1933 in Berlin, and that her mother was [REDACTED], née [REDACTED], who resided in Berlin;
- (3) a letter written on his grandfather's business letterhead, indicating that *Justizrat* Benno Schlomann was a lawyer and notary, and that he had an office located at Taubenstrasse in Berlin;
- (4) an order from the Berlin-Moabit Finance Office (*Finanzamt Moabit-West*) dated 3 November 1939, indicating that as a result of a financial regulation dated 19 October 1939 which raised the amount of taxes payable by Jewish people, [REDACTED], who resided in New York, was assessed atonement tax (*Judenvermögensabgabe*) of 1,050.00 Reichsmark ("RM");
- (5) an order from the Berlin-Moabit Finance Office dated 4 November 1939, indicating that [REDACTED] was assessed atonement tax of RM 800.00; and
- (6) [REDACTED]'s last will and testament, indicating that her children, [REDACTED 4] and [REDACTED 3], were the heirs of the residue of her estate.

In addition, the Claimants both submitted copies of a number of family photographs, some of which are dated. The Claimants submitted a photograph of Elsa Schlomann that is dated May 1934 and stamped by a photographer from Merano, Italy. They also submitted a photograph of Elsa and Benno Schlomann together with, *inter alia*, Claimant [REDACTED 3] and represented party [REDACTED 4], which bears the inscription 'Colle Isarca 1935' on the reverse. Finally, the Claimants also submitted a photograph of Benno Schlomann, which the Claimants indicated was taken in Merano, Italy in 1939.

Claimant [REDACTED 1] indicated that he was born on 23 February 1957 in Sao Paulo, and Claimant [REDACTED 1] indicated that he was born on 19 November 1924 in Frankfurt am Main. Claimant [REDACTED 1] is representing his brother, [REDACTED 2], who was born on 30 October 1960 in Sao Paulo. Claimant [REDACTED 3] is representing his sister, [REDACTED 4], née [REDACTED], who was born on 7 September 1933 in Berlin.

Information Available in the Bank's Records

The Bank's records consist of three power of attorney forms and an acknowledgement form. According to these records, the Account Owners were *Frau* (Mrs.) Salomea Oettinger, née Halpern, who resided at *Pensione Maja* in Merano, Italy in November 1933; *Frau* Else Schlomann, née Oettinger, who resided in Berlin, Germany in December 1930, and in Merano in January 1935, and *Herr* (Mr.) *Justizrat* Benno Schlomann, who resided at *Pensione Maja* in Merano in November 1933, and at *Pension Neuhaus* in Merano in January 1935.

The Bank's records indicate that Account Owner Oettinger held one custody account numbered 36384 at the Basel branch of the Bank, which was opened on 3 December 1930. The Bank's records further indicate that Account Owner Else Schlomann and Account Owner Benno Schlomann held power of attorney over this account, and that on 3 January 1935, ownership of the account was transferred to Else Schlomann, and Benno Schlomann continued to hold power of attorney.

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. The Bank's records do not indicate the value of this account.

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 three power of attorney forms, two customer cards, and a bank account contract.

According to these records, Account Owner Benno Schlomann and Account Owner Else Schlomann were married, and they resided at Parkstrasse 96 in Berlin-Dahlem in 1930; at *Grand Hotel Gröbner* in Colle Isarco (Bolzano), Italy, in July and August 1935; and at *Pensione Fortuna* in Merano in December 1937. The Bank's records indicate that in addition to account numbered 36384, Account Owner Else Schlomann owned four other accounts, over three of which Benno Schlomann held power of attorney.

The Bank's records indicate that Account Owner Else Schlomann held a custody account numbered 39015 at the Zurich branch of the Bank, which was opened on 4 August 1935 and was closed on 20 December 1937. The Bank's records also indicate that *Justizrat* Benno Schlomann was the power of attorney holder over this account, and that he contacted the Bank in August 1935 and on 6 December 1937 regarding this account.

The Bank's records further indicate that Account Owner Else Schlomann held a demand deposit account numbered 39015 at the Zurich branch of the Bank, which was opened on 17 July 1935 and was closed on 4 October 1937. The Bank's records indicate that *Justizrat* Benno Schlomann was the power of attorney holder over this account.

The Bank's records indicate further that Account Owner Else Schlomann held a custody account² numbered 36058 at the Basel branch of the Bank, which was opened on 15 September 1930; *Justizrat* Benno Schlomann was the power of attorney holder over that account. The Bank's records do not indicate when this account was closed.

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 Account Owner Else Schlomann 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.

Finally, the Bank's records indicate that Account Owner Else Schlomann also held a custody account which was labeled 'P.D', and was not numbered, at an unknown branch of the Bank. That account was opened on an unknown date, and was closed on 5 August 1935; there is no indication that there was a power of attorney holder over that account.

In addition, the Bank's records indicate that Account Owner Benno Schlomann held one custody account³ numbered 36100 at the Basel branch of the Bank, which was opened on 28 September 1930; Else Schlomann held power of attorney over that account. The Bank's records do not indicate when this account was closed.

The Bank's records do not indicate the balance of any of the above accounts. There is no evidence in the Bank's records that the Account Owners, the Power of Attorney Holders or their heirs closed the accounts and received the proceeds themselves.

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 four claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The Claimants' relatives' names match the published names of the Account Owners. The Claimants also identified three of the Account Owners' cities of residence, the familial relationship between Account Owner Else Schlomann and Account Owner Benno Schlomann, the fact that Account Owner Oettinger was related to Account Owner Else Schlomann and Account Owner Benno Schlomann, Account Owner Else Schlomann's maiden name, and Account Owner Benno Schlomann's professional title, all of which match unpublished information about the Account Owners contained in the Bank's records.⁴

In support of their claims, the Claimants submitted documents, including a letter from the Ferncliff Cemetery Association, their grandfather's business letterhead, the birth certificates of Claimant [REDACTED 1] and represented party [REDACTED 2], Claimant [REDACTED 1]'s

³ The Bank's records for this account also contain a power of attorney form that references a "Titeldepot." As indicated in footnote 2, although this power of attorney form does not necessarily demonstrate that Account Owner Benno Schlomann 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.

⁴ The CRT notes that the Claimants indicated that Account Owner Salomea Oettinger's maiden name is Salomon (Solomon). However, the Bank's records indicate that Account Owner Salomea Oettinger's maiden name is Halpern. The CRT concludes that this minor discrepancy does not adversely affect the Claimants' identification of the Account Owners.

father's death certificate, and Claimant [REDACTED 1]'s father's school report card, providing independent verification that the persons who are claimed to be Account Owner Else Schlomann and Account Owner Benno Schlomann had the same names and resided in the same town recorded in the Bank's records as the names and one of the cities of residence of Account Owner Else Schlomann and Account Owner Benno Schlomann. In addition, these documents provide independent verification that the person who is claimed to be Account Owner Benno Schlomann had the same professional title recorded in the Bank's records as the professional title of Account Owner Benno Schlomann.

The CRT notes that the names Salomea Oettinger, Benno Schlomann, and Elsa Schlomann each appear only once on the List of Account Owners Published in 2005 (the "2005 List").

The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different maiden name and country of residence than the maiden name and country of residence of Account Owner Else Schlomann.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners were Jewish, that they resided in Nazi Germany, that Account Owner Oettinger died in 1934 in Berlin, that Account Owner Else Schlomann and Account Owner Benno Schlomann fled Germany in 1934, and that the Account Owners' relatives who remained in Europe perished in the Holocaust. Claimant [REDACTED 3] also submitted orders issued by the Berlin-Moabit Finance Office, indicating that [REDACTED], the daughter of Account Owner Else Schlomann and Account Owner Benno Schlomann, was ordered to pay at least two installments of atonement tax.

The Claimants' Relationships to the Account Owners

Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owners by submitting specific information and documents, demonstrating that Account Owner Else Schlomann and Account Owner Benno Schlomann were Claimant [REDACTED 1]'s paternal grandparents, and that Account Owner Salomea Oettinger was Claimant [REDACTED 1]'s paternal great-grandmother. These documents include Claimant [REDACTED 1]'s birth certificate, indicating that [REDACTED 1]'s father was [REDACTED], and that his paternal grandparents were Benjamin and Else Ette Schlomann; represented party [REDACTED 2]'s birth certificate, indicating that his father was [REDACTED], and that his paternal grandparents were Benjamin and Else Ette Schlomann; Claimant [REDACTED 1]'s father's death certificate, indicating that [REDACTED]'s parents were Benjamin and Elze Etta Schlomann, and that his children are [REDACTED 1] and [REDACTED 2]; and Claimant [REDACTED 1]'s father's school report card, indicating that [REDACTED] was the son of Benno Schlomann.

Claimant [REDACTED 3] has plausibly demonstrated that he is related to the Account Owners by submitting specific biographical information, demonstrating that Account Owner Else Schlomann and Account Owner Benno Schlomann were Claimant [REDACTED 3]'s maternal grandparents, and that Account Owner Salomea Oettinger was Claimant [REDACTED 3]'s

maternal great-grandmother. The CRT notes that Claimant [REDACTED 3] identified unpublished information about the Account Owners as contained in the Bank's records. The CRT further notes that Claimant [REDACTED 3] submitted copies of both his own birth certificate and that of his sister (represented party [REDACTED 4]), which provide independent verification that the mother of Claimant [REDACTED 3] and represented party [REDACTED 4] bore the same family name as Account Owner Benno Schlomann and Account Owner Else Schlomann, and that she resided in Berlin. Finally, the CRT notes that the foregoing information is of the type that family members would possess, and indicates that the Account Owners were well known to Claimant [REDACTED 3] as family members, and all of this information supports the plausibility that Claimant [REDACTED 3] is related to the Account Owners, as he has asserted in his Claim Forms.

There is no information to indicate that the Account Owners have surviving heirs other than the parties whom the Claimants are representing.

The Issue of Who Received the Proceeds

Accounts numbered 39015

The Bank's records indicate that Account Owner Else Schlomann held both a custody account and a demand deposit account numbered 39015. Those records indicate that both of those accounts were opened in 1935, that the custody account was closed on 20 December 1937, and that the demand deposit account was closed on 4 October 1937. The CRT notes that Account Owner Benno Schlomann contacted the Bank regarding custody account numbered 39015 on 6 December 1937, and indicated that he was residing at a *Pensione* in Merano, Italy. Given that the custody account was closed two weeks later, on 20 December 1937, the CRT concludes that Account Owner Else Schlomann received the proceeds of both the demand deposit account, which was closed in October 1937, and the custody account.

Account labeled 'P.D.'

The Bank's records indicate that the custody account labeled 'P.D.', which was held by Account Owner Else Schlomann, was closed on 5 August 1935. Given that the Bank's records regarding the accounts numbered 39015 indicate that Account Owner Else Schlomann and Account Owner Benno Schlomann resided in Colle Isarco, Italy, in July and August 1935, and that they contacted the Bank regarding the accounts numbered 39015 in July and August 1935, the CRT concludes that Account Owner Else Schlomann received the proceeds of the custody account labeled 'P.D.'

Accounts 36384, 36100 and 36058

The Bank's records indicate that beginning in December 1930, Account Owner Oettinger held one custody account numbered 36384, and that ownership of that account was transferred in January 1935 to Account Owner Else Schlomann.⁵ The Bank's records indicate that Account Owner Benno Schlomann opened custody account numbered 36100 on 28 September 1930, and

⁵ The CRT notes that the Claimants indicated that Account Owner Salomea Oettinger died in 1934.

that Account Owner Else Schlomann opened custody account numbered 36058 on 15 September 1930. The Bank's records do not indicate when or whether any of these accounts was closed, and do not indicate that there was any contact from those account owners regarding these accounts after they were opened.

Given that Account Owner Benno Schlomann and Account Owner Else Schlomann resided in Nazi Germany before fleeing in 1934; that there is no record of the payment of accounts 36384, 36100 or 36058 to the Account Owners, nor any dates of closure for any of the accounts; that there is no record of the account owners contacting the Bank regarding those accounts after they were opened; that the Account Owners and their heirs would not have been able to obtain information about these accounts 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 proceeds of accounts 36384, 36100 and 36058 were not paid to Account Owner Benno Schlomann or Account Owner Else Schlomann, 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 Claimants and the parties they represent. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that Account Owner Else Schlomann and Account Owner Benno Schlomann were their grandparents, and that Account Owner Oettinger was their great-grandmother, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of claimed accounts 36384, 36100 or 36058.

Amount of the Award

In this case, the CRT has determined that it is plausible that the Account Owners or their heirs did not receive the proceeds of three custody accounts, numbered 36384, 36100 and 36058. 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"). Thus, the combined 1945 average value for the three accounts at issue is SF 39,000.00. The current values 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 487,500.00.

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, Claimant [REDACTED 1], who is representing his brother [REDACTED 2], and Claimant [REDACTED 3], who is representing his sister, [REDACTED 4], are the grandchildren of Account Owner Else Schlomann and Account Owner Benno Schlomann, and the great-grandchildren of Account Owner Oettinger. Accordingly, Claimant [REDACTED 1], represented party [REDACTED 2], Claimant [REDACTED 3], and represented party [REDACTED 4], are each entitled to one-fourth 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
16 October 2008