

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

to Claimant [REDACTED 2]

to the Estate of Claimant [REDACTED 3]¹

to Claimant [REDACTED 4]
represented by [REDACTED]

to Claimant [REDACTED 5]
represented by [REDACTED]

to Claimant [REDACTED 6]
represented by [REDACTED]

and to Claimant [REDACTED 7]
represented by S. M. Traum

in re Account of Josef Schmidt

Claim Numbers: 004376/AZ; 221034/AZ719033/AZ;² 500051/AZ; 751910/AZ;³ 208812/AZ;
209298/AZ; 209300/AZ; 223201/AZ; 708961/AZ⁴

Award Amount: 15,500.00 Swiss Francs

¹ In a telephone conversation with the CRT on 12 December 2005, Claimant [REDACTED 3]'s husband indicated that Claimant [REDACTED 3] died in 2005 and forwarded a copy of her will and death certificate to the CRT.

² Claimant [REDACTED 3] did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire ("IQ"), numbered HEB-0213069, 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 719033.

³ Claimant [REDACTED 5] ("Claimant [REDACTED 5]") did not submit a CRT Claim Form. However, in 1998 he submitted an ATAG Ernst & Young claim form ("ATAG Form"), numbered C-BSL-U-80-210-090-108, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland ("CRT I"), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons ("ICEP"), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the "CRT") as defined in the Rules Governing the Claims Resolution Process, as amended (the "Rules"). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). Claimant [REDACTED 5]'s ATAG Form was forwarded to the CRT and has been assigned Claim Number 751910.

⁴ In 1999, Claimant [REDACTED 7] ("Claimant [REDACTED 7]") submitted an IQ, numbered GER-0017159, to the Court in the United States. The IQ was forwarded to the CRT and has been assigned claim number 708961.

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”), [REDACTED 2], née [REDACTED] (“Claimant [REDACTED 2]”), [REDACTED 3], née [REDACTED 3] (“Claimant [REDACTED 3]”), and [REDACTED 4], née [REDACTED] (“Claimant [REDACTED 4]”), to the account of Joseph Schmidt; the claim of [REDACTED 5] (“Claimant [REDACTED 5]”) to the account of Itschak Schmidt;⁵ the claims of [REDACTED 6], née [REDACTED] (“Claimant [REDACTED 6]”), to the published accounts of Joseph Schmidt and Josef Schmidt-Devries;⁶ and the claims of [REDACTED 7] (“Claimant [REDACTED 7]”) (together the “Claimants”) to the accounts of Joseph Schmidt and Leo Engel.⁷ This Award is to the unpublished account of Josef Schmidt (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).⁸

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 Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her maternal grandfather’s half-brother, Josef (Joseph) Schmidt, who was born in 1904 in Romania. Claimant [REDACTED 1] indicated that her great-uncle, who was Jewish, was a famous opera singer, who lived in Berlin, Germany, and later fled to France and then to Switzerland. According to Claimant [REDACTED 1], her great-uncle was detained upon his entry into Switzerland and sent to a refugee camp called Girenbad, where he died on 16 November 1942.

In support of her claim, Claimant [REDACTED 1] submitted copies of documents, including: 1) a sworn statement by [REDACTED], dated 1954, stating that Josef Schmidt was a famous singer, who was born in Romania and died in a camp near Zurich, Switzerland, and that among his siblings was a half-brother, [REDACTED], from his father [REDACTED]’s previous marriage; 2) a sworn statement by Yaakov Lauper, dated 1954, indicating that Josef Schmidt was a famous opera singer who was born in 1904, who had a half-brother named [REDACTED] from his father’s previous marriage; 3) a court order, dated 6 February 1969, regarding her grandfather’s estate, indicating that [REDACTED] was [REDACTED]’s daughter and sole heir; 4) and a court order, dated 8 July 1981, relating to her mother’s estate, indicating that

⁵ The CRT did not locate an account belonging to Itschak Schmidt in the Account History Database prepared pursuant to the ICEP investigation (“ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules.

⁶ The CRT will treat the claim to the account of Josef Schmidt-Devries in a separate determination.

⁷ The CRT did not locate an account belonging to Leo Engel in the Account History Database prepared pursuant to the ICEP investigation.

⁸ The CRT notes that on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), the name Joseph Schmidt appears three times. Upon careful review, the CRT has determined that the individuals named Joseph Schmidt that were published on the ICEP List are not the same person addressed in this decision and, consequently, the Claimants did not identify these other account owners as their relative.

[REDACTED 1] is [REDACTED 1]'s daughter and sole heir. Claimant [REDACTED 1] indicated that she was born on 21 June 1950 in Romania.

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as her maternal grandfather's cousin, Joseph Schmidt (Claimant [REDACTED 2]'s great-grandfather and Joseph Schmidt's father were brothers), who was born in 1904 in Romania. Claimant [REDACTED 2] stated that her cousin, who was Jewish, was a famous opera singer and that he was unmarried and had no children. Claimant [REDACTED 2] further stated that her cousin lived in Davideni and Cernauti (Czernowitz), Romania (now the Ukraine), where he was a cantor, until 1933, but that he studied in Berlin from 1924 until 1929. Claimant [REDACTED 2] indicated that her cousin lived in Vienna, Austria, from 1933 to 1940, and that he lived in Paris, France, and New York, the United States, from 1941 to 1942. According to Claimant [REDACTED 2], after her cousin returned to France from the United States in 1942, he fled to Switzerland to escape Nazi persecution; however, he was detained in a refugee camp in Girenbad, Switzerland, where he died of a heart attack on 16 November 1942.

Claimant [REDACTED 2] indicated that she was born on 3 March 1957 in Tirgu-Mures, Romania. Claimant [REDACTED 2] previously submitted an Initial Questionnaire to the Court in 1999, asserting her entitlement to a Swiss bank account owned by her mother's uncle, Joseph Schmidt.⁹

Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted an Initial Questionnaire identifying the Account Owner as her father's brother, Josef Schmidt, who was born on 4 March 1904. Claimant [REDACTED 3] indicated that her uncle, who was Jewish, was a famous opera singer who lived throughout Europe and sang on the radio and acted in movies in Vienna. Claimant [REDACTED 3] further indicated that her uncle fled to Switzerland to escape Nazi persecution, but that he was arrested and abused by Swiss officers, and was sent to Girenbad refugee camp, where he lived in poor conditions for approximately two months. Finally, Claimant [REDACTED 3] indicated that her uncle contracted pneumonia in Girenbad, where the camp doctor ignored his condition, and by the time he received proper medical care it was too late to save his life. Claimant [REDACTED 3] indicated that her uncle died on 16 November 1942.

In a telephone conversation with the CRT, on 12 December 2005, Claimant [REDACTED 3]'s husband, [REDACTED], stated that Claimant [REDACTED 3] had died and that Claimant [REDACTED 6] was her cousin. In additional conversations with the CRT on 4 May 2006 and 17 May 2006, Claimant [REDACTED 3]'s husband stated that his late wife's paternal grandfather, [REDACTED], was married twice, that her father [REDACTED] was Josef

⁹ The CRT notes that in 1999, Claimant [REDACTED 2]'s mother, [REDACTED], née [REDACTED], submitted an Initial Questionnaire regarding non-Deposited Asset claims relating to Joseph Schmidt. Because that IQ referred to non-Deposited Assets claims, it was not treated in these proceedings. The CRT notes, however, that, as discussed below, Claimant [REDACTED 2] is not entitled to share in the award amount, and her mother, [REDACTED], née [REDACTED], would also not have been entitled to share in the award amount.

Schmidt's younger brother, and that Claimant [REDACTED 3]'s father and Josef Schmidt had the same mother, [REDACTED], née [REDACTED]. Claimant [REDACTED 3]'s husband further stated that the children of [REDACTED] and his first wife were [REDACTED] and [REDACTED] and that the children of [REDACTED] and [REDACTED] were [REDACTED], [REDACTED], Josef, and [REDACTED]. Finally, Claimant [REDACTED 3]'s husband stated that [REDACTED] and his family lived in Davideni, near Czernowitz, in the Bukowina district of Romania (now the Ukraine).

In support of Claimant [REDACTED 3]'s claim, her husband submitted copies of documents including: 1) her father's death certificate, dated 28 August 1971, indicating that [REDACTED], who was Jewish, was born on 22 February 1906 and that his parents were [REDACTED] and [REDACTED]; 2) Claimant [REDACTED 3]'s will, dated 21 October 2003, bequeathing all of [REDACTED 3]'s assets to her husband [REDACTED], and in the event that her husband predeceased her, to their two children [REDACTED] and [REDACTED]; 3) her death certificate, dated 31 August 2005, indicating that [REDACTED 3] was Jewish, that she was born on 21 June 1950, and that her parents' first names were [REDACTED] and [REDACTED]; and 4) a court order, dated 8 November 2005, stating that [REDACTED 3]'s will, dated 21 October 2003, was valid. Claimant [REDACTED 3] indicated that she was born on 21 June 1950 in Romania.

Claimant [REDACTED 4]

Claimant [REDACTED 4] submitted a Claim Form identifying the Account Owner as a family friend, Josef (Joseph) Schmidt. Claimant [REDACTED 4] explained that Josef Schmidt was not a relative but owed her family money for unpaid room and board. Claimant [REDACTED 4] indicated that her family friend was a Romanian Jew who lodged with her family rent-free in Antwerp, Belgium, in approximately 1939, and that he later became a famous opera singer. Claimant [REDACTED 4] further indicated that her family friend got into trouble with the Nazi regime for his singing and that he fled Belgium after the beginning of the Second World War. Claimant [REDACTED 4] indicated that she was born on 29 April 1922 in Antwerp.

Claimant [REDACTED 5]

Claimant [REDACTED 5] submitted an ATAG Ernst & Young claim form identifying the Account Owner as his paternal grandfather's cousin, Joseph Schmidt. Claimant [REDACTED 5] stated that his cousin, who was Jewish, was a famous singer and cantor, who died in 1942 in Switzerland, where he had fled to escape Nazi persecution. Claimant [REDACTED 5] indicated that he was born on 12 March 1955.

Claimant [REDACTED 6]

Claimant [REDACTED 6] submitted Claim Forms identifying the Account Owner as her mother's brother, Josef (Joseph) Schmidt, who was born on 4 March 1904 in Davideni, Bukowina, Romania (now the Ukraine). Claimant [REDACTED 6] indicated that her uncle, who was Jewish, was a famous opera singer and that he was unmarried and had no children. Claimant [REDACTED 6] further indicated that her uncle lived in Davideni and Cernauti (Czernowitz), Romania (now the Ukraine), until 1929, when he moved to Berlin, Germany,

where he lived until 1934. Claimant [REDACTED 6] indicated that her uncle then lived in Vienna from 1934 to 1938, in Antwerp and Brussels, Belgium, from 1938 to 1939, and in Paris and La Bourboule, France, from 1939 to 1942. Claimant [REDACTED 6] additionally indicated that her uncle gave many concerts in Switzerland from 1934 to 1940. Finally, according to Claimant [REDACTED 6], her uncle crossed the border from France to Switzerland on 27 September 1942 and was captured and interned in a Swiss detention camp, Girenbad, where he died on 16 November 1942.

In a telephone conversation with the CRT, on 4 May 2006, Claimant [REDACTED 6]'s son [REDACTED], who represents her, stated that Josef Schmidt's parents were [REDACTED] and [REDACTED], née [REDACTED], who were married in approximately 1897, and that their first child, Claimant [REDACTED 6]'s mother [REDACTED] (who was known as [REDACTED]), was born in 1898. [REDACTED] further stated that [REDACTED] and [REDACTED] had three other children, including two daughters who died without issue and one son, [REDACTED], who changed his name to [REDACTED] and who had one child, [REDACTED 3], née [REDACTED]. Finally, [REDACTED] stated that Josef Schmidt's mother's brother, [REDACTED], who died in Brussels, was his manager-impresario.

Claimant [REDACTED 6] submitted copies of documents in support of her claim, including: 1) her mother's birth certificate, indicating that [REDACTED] was born on 14 February 1898 in Davideni, Romania, and that her parents were [REDACTED] and [REDACTED]; 2) her uncle's Romanian passport, indicating that Josef Schmidt was a professional singer and that he entered Switzerland for a performance in February 1940; 3) her own birth certificate, indicating that [REDACTED 6] was born on 30 July 1934 in Frasin, Romania and that her mother was [REDACTED]; 4) her maternal grandmother's Romanian identity card, issued in 1942 and embossed with a Jewish star, indicating that [REDACTED] lived in Romania and was Jewish; 5) her uncle's death certificate, indicating that Joseph Schmidt was born on 4 March 1904, that his mother's name was [REDACTED], née [REDACTED], that he was a Romanian citizen, that he lived in La Bourboule, and that he died in Girenbad in November 1942; 6) her own marriage certificate, indicating that she was married to [REDACTED] in 1962; and 7) three photographs: one of her uncle's gravestone, inscribed with a Jewish star and Hebrew writing, indicating that Joseph Schmidt was a chamber singer and that he was born in 1904 and died in 1942; one of her mother's gravestone, indicating that [REDACTED], who was born on 14 February 1898 and died on 31 December 1966, was the sister of the chamber singer Joseph Schmidt; and a photograph of her uncle and herself as a young child, bearing the caption: "with his sister [REDACTED]'s daughter [REDACTED 6] on piano."

Claimant [REDACTED 6] indicated that she was born in July 1934 in Frasin. Claimant [REDACTED 6] previously submitted Initial Questionnaires to the Court in 1999 and an ATAG Ernst & Young claim form in 1997, asserting her entitlement to a Swiss bank account owned by her uncle, Josef (Joseph) Schmidt.

Claimant [REDACTED 7]

Claimant [REDACTED 7] submitted a Claim Form and Initial Questionnaire identifying the

Account Owner as his cousin, Joseph Schmidt, the son of his father's sister [REDACTED], née [REDACTED]. Claimant [REDACTED 7] indicated that his cousin, who was Jewish, was a famous opera singer, and that he lived in hotels in Vienna from 1933 to 1938, after which he lived in Brussels. Claimant [REDACTED 7] further indicated that his cousin died in a refugee camp called Gyrenbach, located near Zurich Switzerland, on 16 November 1942. Claimant [REDACTED 7] also indicated that his father's brother, [REDACTED], was Joseph Schmidt's uncle and impresario, and also lived in Brussels.

In support of his claim, Claimant [REDACTED 7] submitted documents, including: 1) his own birth certificate, indicating that [REDACTED 7] is the son of [REDACTED]; 2) the order of a court in Israel, dated 9 December 1946, relating to the estate of his uncle, indicating that [REDACTED] died on 10 January 1943 and that [REDACTED], [REDACTED], née [REDACTED], and two other individuals were each entitled to one-quarter of his estate; 3) a sworn statement from Avram Matiyahu Rend, dated 11 November 1946, indicating that [REDACTED] was Jewish and that his heirs were three living siblings, including [REDACTED], from Romania, as well as [REDACTED], the only child of his deceased sibling [REDACTED]; and 4) a sworn statement from attorney Josef Ebner, dated 18 November 1946, indicating that in accordance with Romanian law, the heirs of [REDACTED] were his three living siblings and one child of a deceased sibling.

Claimant [REDACTED 7] indicated that he was born on 17 June 1924 in Glewitz, Germany. Claimant [REDACTED 7] previously submitted an Initial Questionnaire to the Court in 1999, asserting his entitlement to Swiss bank accounts owned by Josef Schmidt and Leo Engel.¹⁰

Information Obtained by the CRT

One biographer has stated of the Account Owner that “[f]ew tenors of his era evoked as much affection as Joseph Schmidt, the tiny tenor who in spite of his diminutive stature, became a beloved figure in both German opera and cinema.”¹¹ Schmidt, who began his career as a cantor

¹⁰ As noted above, the CRT did not locate an account belonging to Leo Engel in the Account History Database prepared pursuant to ICEP Investigation.

¹¹ See <http://www.chazzanut.colm/Schmidt.html> (last viewed 23 January 2007). The website is dedicated to Jewish liturgical music and contains a biography of Joseph Schmidt written by Kathryn Cole. Schmidt, who was “born in 1904 in the small Romanian provincial town of Davidende,” received his “first vocal training ... as a classic Hebrew singer in the local synagogue in Cernowitz At twenty he was sent to Berlin, where he studied both piano and voice” and later was “conscripted for military service from 1926 until 1929.” After his service he “accepted a position as cantor at the synagogue in Cernowitz, soon establishing a reputation that attracted the attention of Cornelius Bronsgeest, a renowned Baritone,” thus beginning his international career. “Ironically, his popularity was at its zenith at the same time the Nazis were taking control of the Government and instituting cultural bans on Jewish artists, writers and performers. Richard Tauber did his best to shield Schmidt and scheduled a series of concerts with Tauber as conductor.” After touring the United States in 1937 (where he performed at Carnegie Hall among other places), Schmidt later returned to Cernowitz in 1939 “for a final visit with his recently widowed mother. As war erupted he tried to make his way to America, but made it only as far as a Swiss refugee camp in Gyrenbad.” *Id.* See also Herbert F. Peyser, *The Festival Weeks in Vienna*, New York Times, July 15, 1934, at X4 (“... Schmidt is an artist to rejoice the soul of the most exigent musician. His voice suffers from a slight veiling huskiness, due to some trouble of the vocal cords. Yet for exquisite taste, for beauty of phrasing, for sense of style I can scarcely name his peer in Europe today.... A kind of Jewish John McCormack, Joseph Schmidt has a vast

and became an internationally known opera star and recording artist, died at the age of 38 in Switzerland, where he had fled as a refugee and had been interned in the Gyrenbad refugee camp. As described in a seminal work on Swiss refugee policies, “The Lifeboat is Full” (*Das Boot ist Voll*):

The fate of Joseph Schmidt, the singer, cannot be forgotten. The sudden death of this internationally known and loved artist, who starred in the film *A Song Goes Round the World* (*Ein Lied Geht um die Welt*), among many others, was reported at the end of November 1942 by Dr. Fritz Heberlein in *Die National-Zeitung*, *Das St.-Gallen Tagblatt*, *Die Glarner Nachrichten*, and other newspapers. Joseph Schmidt was removed on October 27, 1942, from the Gyrenbad camp to the cantonal hospital in Zürich, where his illness was diagnosed as a minor laryngitis and tracheitis. He was then discharged as cured, although he complained of chest pains. He was very fearful at the thought of returning to the camp, because he dreaded -- and certainly not without reason -- the serious damage to his most precious asset, his voice, that might result from the extremely bad hygienic conditions and the dust of the straw pallets in Gyrenbad. A private physician was prepared to accept him into his own clinic after his release from the hospital, give him a thorough examination, and treat him. But the camp authorities, without any malevolence, refused permission – in fact, on the ground of democracy – because even refugees of means were supposed to be treated only in cantonal hospitals. So the thirty-eight-year-old singer finally went back to the camp. As a concession, the camp commander billeted him in the inn that adjoined the camp.

The next morning Schmidt died of a heart attack.

Granted that his death cannot be simply ascribed to the functionaries. But if they had been somewhat less bureaucratic and thus avoided agitating the singer, at least they would not have been vulnerable to the charge of contributing to his death.

The story did not end with Schmidt’s death. Dr. Heberlein wrote a newspaper eulogy of the singer, in which he described the circumstances surrounding his tragic death, and sent a copy of it to

following in Vienna and boasted quite as large a one in Germany before he was forced to leave there”); *Reich Bars Jews from Film Field - New Law Issued by Ministry of Propaganda Allows Them No Part in Production*, *New York Times*, July 1, 1933, at 16 (“It is to be recalled that the stars of the two most successful films in Germany this year were a Jewish and Polish singer -- Joseph Schmidt and Jan Kiepura”); Will Crutchfield, *Beautiful Music from a Twisted Time*, *New York Times*, August 28, 1998, at H1 (“The ‘Raucheisen Lied Edition’ - German State Radio’s unprecedented project to document in sound the whole corpus of German lieder -- is now being published in comprehensive form by Acanta Listening to these hundreds of wartime performances of Schubert, Wolf, Strauss, Loewe, Brahms, Beethoven and others, one thinks not just of Mendelssohn and Mahler (excluded, of course), but of Joseph Schmidt, once a star broadcaster who might have done many of the songs wonderfully, who fled for his life and lost it to typhus in a refugee camp”).

Privy Councilor Robert Briner of Zürich with a request that the conditions in Gyrenbad, which Heberlein did not of course know personally but of which he had had highly unfavorable reports, be thoroughly investigated. Privy Councilor Briner sent the eulogy and the letter to Territorial Commando 4 for further clarification. What followed was not an investigation of the conditions in the Gyrenbad camp but a summons to Dr. Heberlein to appear before Lieutenant Colonel H and Major B. They then informed him that his eulogy and his letter fell within the definition of punishable rumor-mongering and it was possible that his eulogy of Joseph Schmidt might be injurious to Switzerland's reputation in the United States!

In his written account of this conversation, Dr. Heberlein retorted: "If in fact there was anything that might damage Switzerland's reputation in the United States, it was certainly not a newspaper article but the terrible things that take place on our borders; the exclusion of refugees who seek asylum here because they believe in Switzerland and are turned back."

Since Heberlein's "offense," however, was not so serious, he was to have been penalized with only a brief stay in prison. Finally this too was waived after a "correction" of Heberlein's article had been published.¹²

Joseph Schmidt's fate also was noted in the Independent Commission of Experts Switzerland Second World War (the "Bergier Report") monograph, "Switzerland and Refugees in the Nazi Era," in its discussion of the obligation of refugees to work in Switzerland and the conditions in Swiss refugee camps.¹³ According to this report, the principle put forth by the central administration of the Swiss work camps (*Zentralleitung der Arbeitslager*) of treating all refugees equally meant that, "by assigning specialized tradesmen or musicians to hard physical labor, it accepted that refugees could be injured in ways that might prevent them from later returning to their former careers." The report states that the death of Joseph Schmidt, "who had tried vainly to obtain a release from the camp out of fear that illness could hurt his voice, shocked the public in 1942. Still, the protest brought no changes in the mandatory assignment of work."¹⁴

¹² Alfred A. Häsler, "The Lifeboat is Full: Switzerland and the Refugees, 1933-1945," Funk & Wagnalls, New York (1969), 268-270 (translated from the German by Charles Lam Markmann).

¹³ See "Die Schweiz und die Flüchtlinge" ["Switzerland and Refugees in the Nazi Era"]. *Unabhängige Expertenkommission Schweiz – Zweiter Weltkrieg* [Independent Commission of Experts Switzerland Second World War] (the "Bergier Report"), Zurich: Chronos Verlag, 2001, pp. 219 – 220.

¹⁴ *Id.* Regarding the death of Joseph Schmidt, the Bergier Report cites a report of the Swiss Federal Department of Justice [*Bericht des EJPD*], 15.12.1942, BAR, E 4800.I (-) 1967/III, Akz. I.16, Dossier 73; Häsler, *Boot*, 1967, S. 273.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Josef Schmidt, who resided in Vienna, Austria. The Bank's record indicates that the Account Owner held a safe deposit box, which was opened on 18 September 1933. The CRT notes that the closing date of the safe deposit box is illegible. The value of the contents of the safe deposit box on the date of its closure is unknown. 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") indicated that there was no evidence of activity on this account after 1945. There is no evidence in the Bank's record that the Account Owner or his heirs closed the safe deposit box 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 nine claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants' relative's name and city and country of residence from approximately 1933 to 1938 match the unpublished name of the Account Owner and his city and country of residence at the time the account was opened. In support of their claims, the Claimants collectively submitted documents, including various sworn statements, and their relative's passport and death certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank's record as the name of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Josef Schmidt, and indicates that he was born on 3 March 1904 in Romania, that he was a civil refugee in Switzerland, and that he died in 1942, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that Claimant [REDACTED 6] and Claimant [REDACTED 5] filed ATAG Ernst & Young claim forms in 1997, and that Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 6], and Claimant [REDACTED 7] all filed Initial Questionnaires with the Court in 1999, asserting their entitlement to a Swiss bank account owned by the Account Owner prior to the publication of the name Joseph Schmidt in February 2001 on 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 Claimants have based their present claims not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears

the same name as their relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that the Claimants had reason to believe that their relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants.

The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different country of residence than the country of residence of the Account Owner. 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 indicated that the Account Owner was Jewish, that he fled to Switzerland in 1942 in order to escape Nazi persecution, and that he died in a refugee camp in Switzerland. Claimant [REDACTED 6] also submitted the Account Owner's death certificate, indicating that he was Jewish, and that he died in the Girenbad refugee camp, as well as his mother's identity card, indicating that she was targeted as Jewish by the Nazi regime in Romania, and a photograph of the gravestone of the Account Owner, which indicates that he was Jewish. As noted above, a person named Josef Schmidt was included in the CRT's database of victims.

The Claimants' Relationships to the Account Owner

Claimant [REDACTED 1]

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant [REDACTED 1]'s great-uncle. These documents include a court order relating to her mother's estate, indicating that [REDACTED] was Claimant [REDACTED 1]'s mother, a court order relating to her maternal grandfather's estate, indicating that [REDACTED] was [REDACTED]'s father, and two sworn statements, dated 1954, indicating that the Account Owner was [REDACTED]'s half-brother.

Claimant [REDACTED 2]

Claimant [REDACTED 2] has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information, indicating that the Account Owner was her maternal grandfather's cousin. The CRT further notes that Claimant [REDACTED 2] identified unpublished information about the Account Owner as contained in the Bank's record; that Claimant [REDACTED 2] and her mother, [REDACTED], née [REDACTED], filed Initial Questionnaires with the Court in 1999, identifying the relationship between the Account Owner and themselves, prior to the publication in February 2001 of the ICEP List; and that Claimant [REDACTED 2] also identified information which matches information contained in the Yad Vashem records.

Claimant [REDACTED 3]

Claimant [REDACTED 3] has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents demonstrating that the Account Owner was her father's brother. These documents include Claimant [REDACTED 3]'s death certificate, indicating that her father was [REDACTED]; her father's death certificate, indicating that his parents were [REDACTED] and [REDACTED]. These documents, along with Joseph Schmidt's death certificate submitted by Claimant [REDACTED 6], indicating that Joseph Schmidt's parents were also [REDACTED] and [REDACTED], demonstrate that Claimant [REDACTED 3]'s father was the brother of Joseph Schmidt. The CRT notes that Claimant [REDACTED 3]'s husband identified Claimant [REDACTED 6] as Claimant [REDACTED 3]'s cousin and that Claimant [REDACTED 6]'s son identified Claimant [REDACTED 3] as Joseph Schmidt's niece.

Claimant [REDACTED 4]

Claimant [REDACTED 4] indicated that she has no familial relationship to the Account Owner and is not a testamentary heir.

Claimant [REDACTED 5]

Claimant [REDACTED 5] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, indicating that the Account Owner was his paternal grandfather's cousin. The CRT further notes that Claimant [REDACTED 5] identified unpublished information about the Account Owner as contained in the Bank's record, that he filed an ATAG Ernst & Young claim form in 1997, identifying the relationship between the Account Owner and himself prior to the publication in February 2001 of the ICEP List, and identified information which matches information contained in the Yad Vashem records.

Claimant [REDACTED 6]

Claimant [REDACTED 6] has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents demonstrating that the Account Owner was her uncle. These documents include her birth certificate, indicating that her mother was [REDACTED], and her mother's birth certificate, indicating that [REDACTED], née [REDACTED], was born on 14 February 1898 and was the daughter of [REDACTED] and [REDACTED]. These documents further include Joseph Schmidt's death certificate, which indicates that his parents were [REDACTED] and [REDACTED]. Finally, Claimant [REDACTED 6] also submitted a photograph of Claimant [REDACTED 6]'s mother's gravestone and a captioned photograph of Claimant [REDACTED 6] with Josef Schmidt, indicating that he was her maternal uncle.

Claimant [REDACTED 7]

Claimant [REDACTED 7] has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents indicating that the Account Owner was his

cousin. These documents include the his birth certificate, indicating that Clamant [REDACTED 7] is the son of [REDACTED], and a court order relating to the estate of [REDACTED], along with supporting sworn statements, indicating that [REDACTED], née Engel, was [REDACTED]'s sister. These documents, along with Joseph Schmidt's death certificate submitted by Claimant [REDACTED 6], indicating that [REDACTED], née [REDACTED], was the Account Owner's mother, demonstrate that the Account Owner was the cousin of Claimant [REDACTED 7].

There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner resided in Nazi-occupied territory during parts of the period from 1938 to 1942, and that in 1942 he fled to Switzerland, where he died in a refugee camp; that there is no record of the payment of the Account Owner's account to him; 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 (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 Claimant [REDACTED 6] and Claimant [REDACTED 3]. First, their claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 6] and Claimant [REDACTED 3] have plausibly demonstrated that the Account Owner was their uncle and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Further, the CRT notes that Claimant [REDACTED 6] and Claimant [REDACTED 3], as descendants of both of the Account Owner's parents, have a better entitlement to the account than Claimant [REDACTED 1], the descendant of one of the Account Owner's parents, and Claimant [REDACTED 2], Claimant [REDACTED 5], and Claimant [REDACTED 7], the descendants of the Account Owner's grandparents. The Account Owner's relatives also have a better entitlement to the account than Claimant [REDACTED 4], who is neither a relative nor an heir of the Account Owner.

Amount of the Award

In this case, the Account Owner held one safe deposit box. 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 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 15,500.00.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner’s spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner’s *parents* [emphasis added] who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 6] and Claimant [REDACTED 3] are the descendants of two of the Account Owner’s siblings. Accordingly, Claimant [REDACTED 6] and Claimant [REDACTED 3] are each entitled to one-half of the total award amount.

As previously indicated, neither Claimant [REDACTED 2], Claimant [REDACTED 5], nor Claimant [REDACTED 7], who are the descendants of the Account Owner’s grandparents, nor Claimant [REDACTED 1], who is the descendant of only one of the Account Owner’s parents, are entitled to a portion of the Award. Furthermore, Claimant [REDACTED 4], who is not a relative of the Account Owner, also has no entitlement to the proceeds of his account.

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
27 February 2007