

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Andrew Schuller
also acting on behalf of Thomas Schuller and Janet Mary Schuller Holmes

in re Accounts of Gertrude Schüller

Claim Numbers: 219545/NP; 401536/NP

Award Amount: 472,026.88 Swiss Francs

This Certified Award is based upon the claims of Andrew Schuller (the “Claimant”) to the published accounts of Gertrude Schüller and of G. Taussig.¹ This Award is to the unpublished accounts of Gertrude Schüller (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).²

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 Claim Forms identifying the Account Owner as his paternal grandmother, Gertrude Schüller, née von Taussig, who was born on 25 October 1886 in Vienna, Austria, and was married to *Hofrat* Dr. Ludwig Schüller on 11 June 1908 in Vienna. The Claimant further indicated that his grandparents had two sons, Erwin Schüller and Theodor Schüller, the Claimant’s father. According to the Claimant, his grandmother, who was widowed on 23 May 1931, resided at 62 Prinz Eugenstrasse and 2 Goldegasse [sic] in Vienna. The Claimant indicated that his grandmother, who was Jewish, fled Vienna on 14 March 1938 for New York, New York, United States, via Zurich, Switzerland, and London, England. The Claimant further indicated that the financial assets and art objects his grandmother left in Vienna

¹ In a separate decision, the CRT awarded the accounts belonging to Gertrude Schüller that were published on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) as probably or possibly those of Victims of Nazi Persecution (the “ICEP List”) and that were held at another Swiss bank to the Claimant. See *In re Accounts of Gertrude Schüller* (approved on 10 September 2004). References to three of these accounts are also found in the archival records that are discussed on page 3 of this decision. The CRT will treat the claim to the account of G. Taussig in a separate determination.

² The CRT notes that the ICEP auditors who carried out the investigation of the bank in which the accounts that are the subject of this award were held did not report these accounts during their investigation. Upon careful review of records obtained from the Archive of the Regional Tax Office in Berlin (*Oberfinanzdirektion Berlin*), the CRT has concluded that these records evidence the existence of three additional accounts belonging to Gertrude Schüller.

were confiscated by the *Gestapo* shortly after her departure. The Claimant indicated that his grandmother died on 19 February 1946 in New York.

The Claimant submitted documents in support of his claims, including: a copy of Gertrude Schüller's Austrian passport, numbered 937193; a residence certificate (*Heimatschein*) issued by the City of Vienna, dated 8 November 1926, indicating that Gertrude Schüller was a resident of Vienna; a confirmation of registration (*Bestätigung der Anmeldung*) issued by the Police of the City of Zurich, Switzerland, indicating that Gertrude Schüller, née von Taussig, arrived on 14 March 1938 in Zurich; a certificate of identity, signed by Gertrude Schüller on 17 May 1938, in lieu of a passport issued for the purpose of emigration to the United States of America and referencing Austrian passport number 937193; a United States visa issued by the American Consul in Zurich to Gertrude Schüller on 17 May 1938; and documents relating to restitution of Gertrude Schüller's property confiscated during the Nazi era. Furthermore, the Claimant submitted an unsigned copy of Gertrude Schüller's will, in which she bequeathed her entire estate to her sons, Erwin Schuller and Theodor Schuller, in equal shares; the will of Theodor Schuller, in which he set up a trust for the benefit of his son, Andrew Schuller (the Claimant); and a deed of variation to the trust, in which the said trust was distributed among Andrew Schuller, Thomas Schuller and their children. The Claimant also submitted a family tree.

The Claimant indicated that he was born on 7 September 1944 in Oxford, England. The Claimant is representing his brother, Thomas Schuller, who was born on 17 February 1948 in Oxford, and his paternal cousin, Janet Mary Schuller Holmes, who was born on 23 September 1944 in Johannesburg, South Africa.

Information Available in the Bank's Records

The CRT notes that the auditors who carried out the investigation of the 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 report the accounts that are the subject of this award during their investigation of the Bank. The records for the Account Owner's accounts at the Bank were obtained from the Archive of the Regional Tax Office in Berlin (*Oberfinanzdirektion Berlin*) and are described in detail below.³

Information Available in the German Archives

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, 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 Regional Tax Office in Berlin, there are documents concerning the assets of Gertrude Schüller, numbered 922/5204. According to these records, Gertrude Schüller was born on 25 October 1886 and formerly resided at Goldeggasse 2 in Vienna, Austria. The records indicate that Gertrude Schüller, a

³ These documents have since been moved to the Federal Office for Central Services and Unresolved Property Issues, Restitution Archive: Documents from the Nazi Era (*Bundesamt für zentrale Dienste und offene Vermögensfragen, Rückerstattungsarchiv: Archivalien aus der NS-Zeit*).

widow, was being represented by Helmuth Schiemann, an attorney in Berlin, and that she had fled to New York by 29 July 1938. The records further indicate that Gertrude Schüller owned rural property in the community (*Gemeinde*) of Klausen Leopoldsdorf, Klein Mariazellerforst, Austria, forty-two different securities with a total value of 258,148.04 Reichsmark (“RM”), and demand deposit accounts with assets in the amount of RM 9,665.41. These financial assets were held at eight banks, including banks in Great Britain, the Netherlands, Sweden, and Switzerland. These documents further include an affidavit addressed to Gertrude Schüller by the Bank, dated 11 July 1938, indicating that as of 27 April 1938 Gertrude Schüller held one custody account, numbered 33523, containing 3% *Oblig. Schweizerische Bundesbahnen 1903, diff.* bonds with a nominal value of SF 20,000.00 and a market value of SF 20,200.00 and ten shares in *Kraftwerk Laufenburg, Laufenburg* with a market value of SF 765.00 per share, totaling SF 7,650.00; one demand deposit account with a value of SF 249.50; and one demand deposit account with a value of SF 7,772.15. The documents further contain official correspondence, including: a letter from Gertrude Schüller addressed to the Chief of Police Headquarters in Berlin, dated 18 February 1939 and sent from her New York address, in which she acknowledges having received a flight tax (*Reichsfluchtsteuer*) assessment in the amount of RM 92,890.00, dated 10 October 1938; an apparently internal document originating in the Tax Office and consisting of a handwritten computation of atonement tax (*Berechnungsbogen Judenvermögensabgabe*) for Gertrude Schüller amounting to RM 57,200.00 on total assets rounded to RM 286,000.00, dated 21 January 1939; and a revised atonement tax assessment of RM 38,600.00 on assets totaling RM 193,000.00, derived from the earlier total less the flight tax assessment, indicating that Gertrude Schüller apparently had paid that tax by 16 August 1939, the date of the revision. This revision was addressed to Helmuth Schiemann, who responded that, as of March 1939, he no longer represented Gertrude Schüller.

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 Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant’s grandmother’s name and city and country of residence match the unpublished name and city and country of residence of the Account Owner. The Claimant identified the Account Owner’s date of birth, marital status, and former street address, which match unpublished information about the Account Owner contained in the German Restitution Archive 1938 census records.

In support of his claims, the Claimant submitted documents, including: his grandmother’s Austrian passport, a *Heimatschein* from the City of Vienna, and a certificate of identity, together providing independent verification that the person who is claimed to be the Account Owner had

the same name and resided in the same town recorded in the affidavit dated 11 July 1938 from the Bank in the records of the Regional Tax Office in Berlin as the name and city of residence of the Account Owner. The CRT notes that there are no other claims to these accounts.

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 his grandmother was Jewish, that she fled Austria in March 1938, and that her Austrian assets were confiscated by the *Gestapo* shortly after her departure.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he and represented parties Thomas Schuller and Janet Mary Schuller Holmes are related to the Account Owner by submitting specific biographical information and documents demonstrating that the Account Owner was their paternal grandmother. These documents include Gertrude Schüller's will that bequeathed her entire estate to her sons Erwin Schuller and Theodor Schuller, who were the Claimant's and the represented parties' respective fathers, as noted on the family tree submitted by the Claimant.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that the Account Owner reported the accounts in the 1938 Census; that there are no Bank documents indicating when or to whom the accounts were closed; that there is no record of the payment of the Account Owner's accounts to her or her heirs; that the Account Owner fled her country of origin due to Nazi persecution; that the Account Owner may have had relatives remaining in Austria and that she may therefore have yielded to Nazi pressure to turn over her accounts to ensure their safety; that the Account Owner and her heirs would not have been able to obtain information about her 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 (f), (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 there is a sufficient probability that the account proceeds were not paid to the Account Owner or her 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 and the parties he represents. First, the claims are 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 grandmother and the grandmother of the parties he is representing, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

Gertrude Schüller's 1938 Census declaration evidences the existence of three accounts at the Bank. The affidavit dated 11 July 1938 from the Bank was addressed to the Account Owner and indicates that she held one custody account, numbered 33523, containing 3% *Oblig. Schweizerische Bundesbahnen 1903, diff.* bonds with a nominal value of SF 20,000.00 and a market value of SF 20,200.00 and ten shares in *Kraftwerk Laufenburg, Laufenburg* with a market value totaling SF 7,650.00; one demand deposit account with a balance of SF 249.50; and one demand deposit account with a balance of SF 7,772.15.

As regards the custody account, according to the CRT's Guidelines for the Valuation of Securities, circulated by Special Master Helen B. Junz, as a general rule, the market value of bonds shall be awarded if that value was above the nominal value on the date the account owner is deemed to have lost control over the account. Stocks are valued at market value. In this case, the market value of the bonds in the custody account is higher than their nominal value and is used to calculate the award amount. Accordingly, the CRT values the securities in the account at SF 27,850.00. The current value of this amount is determined by multiplying the historic balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 348,125.00 for this account.

As for the demand deposit with the balance of SF 249.50, the CRT determines that it is unable to rely on the balance amounts declared in the 1938 Census as it has no evidence regarding the circumstances of the Account Owner's declaration. The CRT notes that, as evidenced in a number of cases, the Account Owner may not have declared all her assets, or understated their value, in the belief that this might help her safeguard some of them. Pursuant to Article 29 of the Rules, if the amount in a demand deposit account is less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. In this case, the CRT does not find that the value of the account indicated in the Account Owner's 1938 Census declaration constitutes plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the value of the Account Owner's demand deposit account shall be determined to be SF 2,140.00. The current value of this amount is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 26,750.00 for this account.

As for the demand deposit account, the 1938 Census declaration indicates that its balance was SF 7,772.15. The current value of the amount of the award is determined by multiplying the historic

value by a factor of 12.5, in accordance with Article 31(1) of the Rules to produce an award amount of SF 97,151.88 for this account.

Consequently, the total amount of the Award is SF 472,026.88.

Division of the Award

The Claimant is representing his brother, Thomas Schuller, and his cousin, Janet Mary Schuller Holmes, in these proceedings. According to Article 23(2)(b) and (c) of the Rules, if none of the beneficiaries named in the Account Owner's will has filed a claim, the CRT shall make an award to any claimant who has submitted an unbroken chain of wills or other inheritance documents, starting with the will of the Account Owner. If a claimant bases a claim of entitlement on a chain of inheritance documents but has not submitted an unbroken chain of wills or inheritance documents, the CRT may use the general principles of distribution established in Article 23(1) to make allowance for any missing links in the chain, consistent with principles of fairness and equity.

In the present case, the Claimant submitted the Account Owner's will in which she bequeathed her entire estate to her two sons, Erwin Schuller (Janet Mary Schuller Holmes's father) and Theodor Schuller (the Claimant's and Thomas Schuller's father). Furthermore, the Claimant submitted his father's will and a deed of variation demonstrating that he and his brother are beneficiaries of Theodor Schuller's estate. The Claimant, however, did not produce inheritance documents pertaining to the estate of Erwin Schuller. According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award will be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Consequently, based on the inheritance documents submitted by the Claimant and the provisions of Article 23 of the Rules, the CRT determines that the Claimant and Thomas Schuller are each entitled to one-fourth (1/4) of the Award amount, and that Janet Mary Schuller Holmes is entitled to one-half (1/2) of the 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 claims 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
28 June 2006