

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Walter Eric Friedrich

in re Account of Emanuel Schwarz

Claim Number: 501733/SU

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Emanuel Schwarz (the “Account Owner”), over which Leopoldine Schwarz (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).¹

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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his father, Dr. Emanuel Schwarz, who was born on 8 October 1878 in Vienna, Austria, and was married to [REDACTED], née [REDACTED], on 20 April 1926 in Vienna. The Claimant stated that his father, who was Jewish, was a medical doctor, and that he maintained a medical practice at Wollzeile 34 in Vienna, where his family also resided from 1936 until 1938. The Claimant indicated that his family fled Austria in 1938, first fleeing to Italy and then to France, and that they did not return to Vienna until 1968. The Claimant further indicated that his father died in 1968, that his mother died in 1978 and that he is their only surviving heir, as he had no siblings.

The Claimant submitted documents in support of his claim, including: 1) a copy of his father’s death certificate, indicating that Dr. Emanuel Schwarz was born in the Jewish Community Center in Vienna on 8 October 1878, that he was married to [REDACTED], that he resided at Wollzeile 36 in Vienna, and that he died on 8 June 1968 in Vienna; 2) copies of his mother’s

¹ The CRT notes that, 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 (the “ICEP List”), Emanuel Schwarz is indicated as having two accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only one account.

death notice and death certificate, indicating that [REDACTED], née [REDACTED], was born on 23 September 1899, that she resided at Wollzeile 36 in Vienna, that she was the widow of Dr. Emanuel Schwarz, that she had a son named [REDACTED], and that she died on 21 December 1978 in Vienna; 3) a copy of his mother's certificate of inheritance, indicating that [REDACTED] was the only son and sole heir of [REDACTED], who resided at Wollzeile 36 in Vienna; 4) a copy of his own baptism certificate, indicating that [REDACTED], who resided at Wollzeile 34 in Vienna, was the son of Dr. Emanuel Schwarz and [REDACTED], née [REDACTED]; and 5) an excerpt from an asset registration filed by his father, which is described in detail below.

The Claimant indicated that he was born on 15 March 1927 in Vienna.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form and printouts from the Bank's database. According to these records, the Account Owner was Dr. Emanuel Schwarz and the Power of Attorney Holder was *Frau* (Mrs.) Dr. Leopoldine Schwarz, the Account Owner's wife, both of whom resided at Wollzeile 34 in Vienna, Austria. These records, which include signature samples for the Account Owner and the Power of Attorney Holder, also indicate that the Account Owner held one account, the type of which is not indicated. The Bank's records do not show when the account at issue was closed, nor do these records indicate the value of this account. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Emanuel Schwarz, numbered 39757. These documents indicate that Dr. Emanuel Schwarz, who was Jewish, was born on 8 October 1878, and that he resided at 34 Wollzeile in Vienna with his wife, [REDACTED], who was Roman Catholic. These documents further indicate that Emanuel Schwarz, was demoted from his position as a practicing medical doctor and assigned to the position of *Krankenbehandler* (medical assistant for the Jewish community) because he was Jewish. These records make no mention of assets held in Swiss bank accounts.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owner. The Claimant's parents' names, city and country of residence match the published names, city and country of residence of the Account Owner and the Power of Attorney Holder. The Claimant identified the Account Owner's title, profession and street address, which matches unpublished information about the Account Owner contained in the Bank's records, and is consistent with information in the 1938 Census records. In support of his claim, the Claimant submitted documents, including his parents' death certificates and his own baptism certificate, providing independent verification that the persons who are claimed to be the Account Owner and Power of Attorney Holder had the same names and resided in the same town recorded in the Bank's records for the Account Owner and the Power of Attorney Holder.

The CRT notes that the names Emanuel Schwarz and Leopoldine Schwarz each appear only once on the February 2001 published list of accounts determined by the auditors who conducted the ICEP Investigation to be probably or possibly those of victims of Nazi persecution (the "ICEP List"). The CRT notes that there are no other claims to this account.

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 fled Nazi-controlled Austria in 1938. The Claimant also submitted copies of his father's 1938 Census records, which indicate that Emanuel Schwarz was forced to discontinue his medical practice because he was Jewish.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner and Power of Attorney Holder by submitting specific information and documents demonstrating that the Account Owner and Power of Attorney Holder were the Claimant's parents. These documents include copies of his mother's death notice and death certificate, indicating that [REDACTED] was the widow of Dr. Emanuel Schwarz, and that she had a son named [REDACTED]; a copy of his mother's certificate of inheritance, indicating that [REDACTED] was the only son and sole heir of [REDACTED]; and a copy of his own baptism certificate, indicating that [REDACTED] was the son of Dr. Emanuel Schwarz and [REDACTED]. 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 fled Nazi-controlled Austria in 1938; that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; that the Account Owner and his 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 Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their 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 father, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one account of unknown type. 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, the average value of an account of unknown type in 1945 was 3,950.00 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 49,375.00.

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
27 February 2007