

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2] and [REDACTED 3]
represented by [REDACTED 2] and [REDACTED 3]

to Claimant [REDACTED 4]
also acting on behalf of [REDACTED 5] and [REDACTED 6]

and to Claimant [REDACTED 7]¹

in re Account of Nachum Schwarzwald

Claim Numbers: 002539/AX; 208991/AX; 601572/AX²

Original Award Amount: 25,680.00 Swiss Francs

Award Amendment Amount: 13,375.00 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED 7] (“Claimant [REDACTED 7]”), [REDACTED 1] (“Claimant [REDACTED 1]”), and [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”) to the account of Nachum Schwarzwald (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

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

Procedural History

On 5 March 2003, the Court approved an Award to Claimant [REDACTED 7] for the Account Owner’s account (the “March 2003 Award”). In this Award Amendment, the CRT adopts and amends its findings to address the entitlement of Claimant [REDACTED 1] and Claimant [REDACTED 4] and the parties she represents. Subsequent review of Claimant [REDACTED

¹ On 5 March 2003, the Court approved an award to Claimant [REDACTED 7] (“Claimant [REDACTED 7]”) for the account of Nachum Schwarzwald (the “March 2003 Award”), which is the subject of this Award Amendment.

² Claimant [REDACTED 7] submitted a claim, numbered B-00140, on 30 May 2001, to the HCPO. This claim was referred by the HCPO to the CRT and has been assigned claim number 601572.

1]'s and Claimant [REDACTED 4]'s timely claims indicates that they and the persons Claimant [REDACTED 4] represents are entitled to share in the original award amount, as detailed below.

The March 2003 Award

In the March 2003 Award, the CRT determined that the Account Owner owned one demand deposit account. The CRT further determined that Claimant [REDACTED 7] plausibly identified the Account Owner, that he plausibly demonstrated that he is related to the Account Owner, and that he made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Additionally, the CRT determined that it is plausible that the Account Owner did not receive the proceeds of his demand deposit account. The CRT noted that the Bank's record did not indicate the value of the account, and therefore presumed that its value was 2,140.00 Swiss Francs ("SF"). Finally, the CRT determined that Claimant [REDACTED 7] was entitled to the entire award amount.

Information Provided by Claimant [REDACTED 1] and Claimant [REDACTED 4]

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her late husband's uncle, [REDACTED 1], who was born in Lwow, Poland. In a telephone conversation with the CRT on 15 April 2005, Claimant [REDACTED 1] indicated that her husband was [REDACTED], that her husband's brothers were [REDACTED], [REDACTED], and [REDACTED], that their parents were [REDACTED] and [REDACTED], née [REDACTED], and that [REDACTED]'s brother was [REDACTED]. Claimant [REDACTED 1] indicated that [REDACTED] resided in Lwow before the Second World War. Claimant [REDACTED 1] indicated that [REDACTED], who was Jewish, was killed in the Holocaust. In support of her claim, Claimant [REDACTED 1] submitted her Israeli passport, indicating that her family name is [REDACTED] and that she was from Poland. Claimant [REDACTED 1] indicated that she was born on 2 August 1925 in Poland. Claimant [REDACTED 1] is representing her children, [REDACTED 2] and [REDACTED 3], née [REDACTED].

Claimant [REDACTED 1] previously submitted an ATAG Ernst & Young claim form in 1998 and an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Nachum Szwarcwald.

Claimant [REDACTED 4]

Claimant [REDACTED 4] submitted a Claim Form identifying the Account Owner as her late husband's uncle, [REDACTED], who was born in Lwow. Claimant [REDACTED 4] indicated that her husband was [REDACTED], that his parents were [REDACTED] and [REDACTED], née [REDACTED], and that [REDACTED] was [REDACTED 4]'s brother. In a telephone conversation with the CRT on 27 January 2006, Claimant [REDACTED 4] identified her husband's siblings as [REDACTED], [REDACTED], [REDACTED], [REDACTED], and

[REDACTED]. Claimant [REDACTED 4] indicated that until 1939, her husband's uncle resided in Lwow, where he owned a delicatessen. Claimant [REDACTED 4] further indicated that [REDACTED], who was Jewish, was killed during the Holocaust. In support of her claim, Claimant [REDACTED 4] submitted the death certificate of [REDACTED], indicating that his parents were [REDACTED] and [REDACTED], née [REDACTED], and that he was born in Lwow, Poland. Claimant [REDACTED 4] further submitted a document from a Polish court, indicating that [REDACTED] ([REDACTED]), the son of [REDACTED], could marry without documentation. Claimant [REDACTED 4] indicated that she was born on 10 January 1929 in Poland. Claimant [REDACTED 4] is representing her children, [REDACTED 5] and [REDACTED 6].

Claimant [REDACTED 4] previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Nachum Szwarcwald.

Information Available in the Bank's Records

As detailed in the March 2003 Award, the Bank's records indicate the name and country of residence of the Account Owner and a person who held power of attorney over the account. The records indicate that the Account Owner held one demand deposit account, which was transferred from the Swiss Unclaimed Assets Fund to the Polish National Bank in August 1975.

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 three claims of the Claimants in one proceeding.

Claimant [REDACTED 1]'s and Claimant [REDACTED 4]'s Identification of the Account Owner

Claimant [REDACTED 1]'s husband's uncle's name and Claimant [REDACTED 4]'s husband's uncle's name match the published name of the Account Owner.^{3, 4} Claimant [REDACTED 1]'s husband's uncle's country of residence and Claimant [REDACTED 4]'s husband's uncle's country of residence match the published country of residence of the Account Owner.

³ The CRT notes that the name Nachum Schwarzwald was not published 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"). However, the CRT notes that the name Nachum Szwarcwald was published in February 1998 on a list of 53 Polish account owners whose accounts were transferred to the Swiss Unclaimed Assets Fund and were paid to the Polish National Bank.

⁴ The CRT notes that the Polish version of Schwarzwald is Szwarcwald.

The CRT notes that Claimant [REDACTED 1] identified her husband as [REDACTED], identified his brothers as [REDACTED], [REDACTED], and [REDACTED], identified their parents as [REDACTED] and [REDACTED], née [REDACTED], and indicated that [REDACTED]'s brother was [REDACTED]. The CRT further notes that Claimant [REDACTED 4] identified her husband as [REDACTED], identified his siblings as [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], identified their parents as [REDACTED] and [REDACTED], née [REDACTED], and indicated that [REDACTED]'s brother was [REDACTED]. Given the correlation between the information provided by Claimant [REDACTED 1] and Claimant [REDACTED 4], the CRT concludes that Claimant [REDACTED 1] and Claimant [REDACTED 4] are related. More specifically, the CRT concludes that Claimant [REDACTED 1]'s husband and Claimant [REDACTED 4]'s husband were brothers. Moreover, the CRT notes that the independent identification of [REDACTED] and his family by Claimant [REDACTED 1] and Claimant [REDACTED 4] supports the credibility of the information provided by both Claimant [REDACTED 1] and Claimant [REDACTED 4].

The CRT notes that Claimant [REDACTED 7]'s relative and Claimant [REDACTED 1]'s and Claimant [REDACTED 4]'s relative are not the same person. However, given that the Claimants have identified all published information about the Account Owner that is available in the Bank's records; that the information provided by each claimant supports and in no way contradicts any information available in the Bank's records; that there is no additional information in the Bank's records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that there are no other claims to this account, the CRT finds that the Claimants have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 1] and Claimant [REDACTED 4] have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] and Claimant [REDACTED 4] both stated that their relative was Jewish, and that they perished in the Holocaust.

Claimant [REDACTED 1]'s and Claimant [REDACTED 4]'s Relationships to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information demonstrating that the Account Owner was Claimant [REDACTED 1]'s husband's uncle. The CRT notes that Claimant [REDACTED 1] submitted her Israeli passport, indicating that her family name is [REDACTED] and that she was from Poland, which provides independent verification that Claimant [REDACTED 1]'s relatives bore the same family name as the Account Owner and that they resided in Poland. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to Claimant [REDACTED 1] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 1] is related to the Account Owner, as she has asserted in her Claim Form.

Claimant [REDACTED 4] has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information demonstrating that the Account Owner was Claimant [REDACTED 4]'s husband's uncle. The CRT notes that Claimant [REDACTED 4] submitted the death certificate of [REDACTED], indicating that his mother was [REDACTED] and that he was born in Lwow, Poland, and a document from a Polish court, indicating that [REDACTED] ([REDACTED]), the son of [REDACTED], could marry without documentation, which provides independent verification that Claimant [REDACTED 4]'s relatives bore the same family name as the Account Owner and that they resided in Poland. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to Claimant [REDACTED 4] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 4] is related to the Account Owner, as she has asserted in his Claim Form.

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

The Issue of Who Received the Proceeds

As detailed in the March 2003 Award, the CRT has concluded that the account's proceeds were not paid to the Account Owner or his heirs.

Basis for the Award Amendment

The CRT has determined that an Award may be made in favor of represented parties [REDACTED 2], [REDACTED 3], [REDACTED 5], and [REDACTED 6]. First, Claimant [REDACTED]'s and Claimant [REDACTED 4]'s claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] and Claimant [REDACTED 4] have plausibly demonstrated that they are the Account Owner's nephews' spouses, and that the parties they represent are the Account Owner's nephews' children, and those relationships justify an Award. Third, the CRT determined in the March 2003 Award that neither the Account Owner nor his heirs received the proceeds of the account. Further, the CRT notes that represented parties [REDACTED 2], [REDACTED 2], [REDACTED 5], and [REDACTED 6], as descendants of the Account Owner's parents, have a better entitlement to the account than Claimant [REDACTED 1] and Claimant [REDACTED 4], who are related to the Account Owner's through marriage.

Amount of the March 2003 Award

As detailed in the March 2003 Award, the Account Owner held one demand deposit account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based upon the investigation conducted by the Independent Committee of Eminent Persons ("ICEP" or "ICEP Investigation"), in 1945 the average value of a demand deposit account was SF 2,140.00.

According to Article 31 of the Rules, account values are multiplied by an adjustment factor to bring award amounts up to current value. At the time of the March 2003 Award, the adjustment factor was 12, and the resulting award amount was SF 25,680.00.

Since the March 2003 Award, the adjustment factor has been raised to 12.5.

New Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each group of Claimants has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 7] is entitled to one-half of the total Award amount, and Claimant [REDACTED 1] and Claimant [REDACTED 4] and the parties they represent are entitled to one-half of the total Award amount.

With respect to Claimant [REDACTED 1]'s and Claimant [REDACTED 4]'s portion 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 who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 1] is representing her children, [REDACTED 2] and [REDACTED 3], who are the great-grandchildren of the Account Owner's parents, and Claimant [REDACTED 4] is representing her children, [REDACTED 5] and [REDACTED 6], who are also the great-grandchildren of the Account Owner's parents. Accordingly, represented parties [REDACTED 2], [REDACTED 3], [REDACTED 5], and [REDACTED 6] are each entitled to one-fourth of this portion of the award, or one-eighth of the total award amount.

Amount and Division of the Award Amendment

The CRT recognizes that Article 31(1) of the Rules adjusts account values based upon the length of time that has passed since 1945 and the awarding of the account. In this case, even though Claimant [REDACTED 7] was awarded in March 2003, Claimant [REDACTED 1], Claimant [REDACTED 4], and the parties they represent, who are the subject of this award amendment, were not. Therefore, the CRT finds that the adjustment factor of 12.5, not 12, is the more appropriate factor to bring the value of their shares of the awarded account to current value.

Recognizing that almost three years have passed since the March 2003 Award, and that there is no indication that Claimant [REDACTED 7] was aware that other equally entitled persons had filed claims, the CRT determines that the parties Claimant [REDACTED 1] and Claimant [REDACTED 4] represent are entitled to a payment from the Settlement Fund equaling their shares of the award amount. As noted above, the total 1945 value of the Account Owner's account was SF 2,140.00. The parties Claimant [REDACTED 1] and Claimant [REDACTED 4]

represent are each entitled to one-eighth of this amount, or SF 267.50. The current value of these amounts is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an Award Amendment amount of SF 13,375.00.

The persons Claimant [REDACTED 1] represents are entitled to one-half of the Award Amendment amount, and the persons Claimant [REDACTED 4] represents are entitled to one-half of the Award Amendment amount. Specifically, as detailed above, [REDACTED 2] and [REDACTED 3], whom Claimant [REDACTED 1] represents, and [REDACTED 5] and [REDACTED 6], whom Claimant [REDACTED 4] represents, are each entitled to one-fourth of the Award Amendment amount.

Scope of the Award Amendment

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 Amendment

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
18 April 2006