

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Dr. Walter Friedrich

in re Accounts of Oskar Schwoner

Claim Number: 501722/LH

Award Amount: 351,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published accounts of Oskar Schwoner (the “Account Owner”) 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 paternal grandmother’s brother, Oskar Schwoner, who was born on 17 May 1882 in Vienna, Austria, and was married to [REDACTED], née [REDACTED], on 22 August 1908 in Vienna. The Claimant indicated that his great-uncle had one child, [REDACTED], who was born on 9 August 1910 in Vienna, and who perished in 1939 in Nazi-occupied Bohemia-Moravia (now the Czech Republic). The Claimant further indicated that his great-uncle, who was Jewish, resided at Gentzgasse 158 in Vienna from 1927 until 1939, and that in 1939 he fled to Buenos Aires, Argentina, where he died in 1948. The Claimant stated that his great-uncle was a director of one company in Vienna and two others in Switzerland.

In support of his claim, the Claimant submitted copies of documents, including: (1) Oskar Schwoner’s 1938 Census of Jewish-owned assets declaration, which indicates that he lived at Gentzgasse 158 in Vienna, and was married to [REDACTED], née [REDACTED]; (2) a record of death (*Todfallsaufnahme*) dated 11 January 1988, relating to the death of [REDACTED], the Claimant’s father, which indicates that [REDACTED] resided in Vienna, that he had four children, including [REDACTED], the Claimant, and that his mother’s name was

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”), Oskar Schwoner is indicated as having four accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of three accounts held by Oscar Schwoner.

[REDACTED]; (3) a record of death dated 2 May 1938, relating to the death of [REDACTED], the Claimant's great-uncle, which indicates that [REDACTED] had three siblings including, Oskar Schwoner and [REDACTED], the Claimant's grandmother, and that they resided in Vienna; and (4) a court document dated 5 June 1944, relating to the divorce of Oskar and [REDACTED], which indicates that Oskar Schwoner left Austria on 5 May 1939.

The Claimant indicated that he was born on 29 December 1956 in Vienna.

Information Available in the Bank's Records

The Bank's records consist of extracts from the Bank's ledger, Bank correspondence, and a printout from the Bank's database. According to these records, the Account Owner was *Dir.* (Director) Oskar Schwoner, who resided at Gentzgasse 158 in Vienna, Austria. Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of extracts from the Bank's ledger, a list of closed accounts and a customer card.

The Bank's records indicate that the Account Owner held a demand deposit account and two custody accounts. According to the records, the demand deposit account was opened in 1934 and frozen in 1945 pursuant to the 1945 freeze of assets held in Switzerland by the citizens of Germany and the territories incorporated into the Third Reich (the "1945 Freeze"), at which time the account had a balance of 127.50 Swiss Francs ("SF"). The records indicate that on 15 December 1950, the balance of the account had been reduced to SF 98.00, and by 13 June 1955 it had been reduced to SF 78.00. On 13 June 1955, the Bank applied for the release of the account, noting that the account had not previously been reported because its balance was below SF 5,000.00 and because its owner, to the Bank's knowledge, did not reside in Germany. On 27 June 1955, the account was released from the freeze, at which time its value remained at SF 78.00. The records indicate that the account was transferred on 27 November 1959 to a suspense account, at which time its balance was SF 53.00. The account remains open and dormant.

With regard to the two custody accounts, the Bank's records indicate that one custody account was numbered 61453. This account was opened on 7 March 1937. According to the records, the Bank extended credit to the Account Owner against assets deposited in this account with an agreed upon margin of up to 40 percent. The credit, which was originally in the amount of SF 6,000.00, was secured by shares held in the custody account, including 10 shares of *Royal Dutch* and 50 shares of *International Nickel Co. of Canada*. In March 1937, the 10 shares of *Royal Dutch* were sold. A handwritten note on the Bank's record, dated 28 October 1937, states that in case there was insufficient coverage of the debt, as many shares of *International Nickel* as necessary to re-establish the agreed-upon margin could be sold without prior approval of the Account Owner. The records reflect that in November 1937 (the remainder of the date is illegible), 10 shares of *International Nickel* were sold. By 12 October 1937, the amount owed by the Account Owner had decreased to SF 5,300.00, and by 23 November 1937, it had decreased to SF 3,700.00 (likely as a result of the proceeds of the sale of the 10 *International Nickel* shares being credited to the Account Owner's debt). According to the Bank's records, the remaining 40 shares of *International Nickel* were transferred to the *Deutsche Golddiskonto Bank* in Berlin, Germany on 1 August 1938, and the account was subsequently closed. The Bank's records do

not indicate whether the 40 shares of *International Nickel* were the only assets in the custody account at the time of its closure.

The other custody account was numbered 39940 and was opened in 1934. 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 or his heirs closed this account and received the proceeds himself.

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 Oskar Schwoner, numbered 5024. These records indicate that Oskar Schwoner was born on 17 May 1882 in Vienna, Austria, that he was Jewish and married to [REDACTED], née [REDACTED], who was not Jewish, and that he resided at Gentzgasse 158 in Vienna. According to his asset declaration, Oskar Schwoner owned securities consisting of a one-third ownership of the shares of three linked publishing companies – *Société Graphique A.G. für Moden Verlag*, Vienna, *Star Moden A.G.*, Zurich, Switzerland, and *Movag A.G.*, Glarus, Switzerland – for a value of 66,667.00 Reichsmark (“RM”), and 40 shares of *International Nickel* valued at RM 4,594.00. These records further indicate that Oskar Schwoner was assessed flight tax (*Reichsfluchtsteuer*) amounting to RM 18,703.00 on total assets of RM 74,812.00 on 26 January 1939, and that on 20 February 1939 this amount was reduced to RM 13,212.00 on assets totaling RM 59,448.00. This reduction took in part account of a RM 6,600.00 payment of atonement tax. The records further indicate that Oskar Schwoner emigrated on 5 May 1939 under the Gildemeester program.

In his declaration, Oskar Schwoner listed a liability amounting to 3,671.00 Swiss Francs (“SF”) to the Bank, for which his 40 shares of *International Nickel* were given in security.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant’s great-uncle’s name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant identified the Account Owner’s profession and exact street address in Vienna, which match unpublished information about the Account Owner contained in the Bank’s records.

In support of his claim, the Claimant submitted documents, including excerpts from Oskar Schwoner’s 1938 Census declaration, a record of death relating to the death of [REDACTED];

and a court document relating to the divorce of Oskar and [REDACTED], providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city as the name and city of residence of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Oskar Schwoner, and indicates that his date of birth was 17 May 1882 and place of birth was Vienna, which matches the information about Account Owner Schwoner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the name Oskar Schwoner appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of victims of Nazi persecution (“ICEP” or the “ICEP List”).

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 the Account Owner was Jewish, that he fled Nazi-controlled Austria to Argentina in 1939, and that his son perished in Nazi-occupied Bohemia-Moravia in 1939. The CRT notes that the Account Owner was required to register his assets pursuant to the 1938 Census. As noted above, a person named Oskar Schwoner was included in the CRT’s database of victims.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant’s great-uncle. These documents include: (1) a record of death relating to the death of [REDACTED], the Claimant’s great-uncle, which indicates that [REDACTED] had three siblings including, Oskar Schwoner and [REDACTED], the Claimant’s grandmother; and (2) a record of death relating to the death of [REDACTED], the Claimant’s father, which indicates that he had four children, including [REDACTED], the Claimant, and that his mother’s name was [REDACTED].

The information provided by the Claimant indicates that the Account Owner may have other surviving relatives, however, no other relative has submitted a claim or is represented in this claim. Accordingly, their potential entitlement is not considered.

The Issue of Who Received the Proceeds

The Bank’s records indicate that the demand deposit account remains open and dormant. The Bank’s records indicate that the custody account numbered 61453 was closed subsequent to a transfer of the assets in the account to the *Deutsche Golddiskonto Bank* in Berlin on 1 August 1938.

With regard to the custody account numbered 39940, given that the Account Owner resided in Nazi-controlled Austria until 1939, when he fled the country; that the Account Owner was

required to register his assets pursuant to the 1938 Census; that another account belonging to the Account Owner was transferred to a Nazi-controlled bank; 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 (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 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 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 great-uncle, and that relationship justifies an Award. Third, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one demand deposit account and two custody accounts.

With respect to the demand deposit account, the Bank's records indicate that the value of the demand deposit account as of 1945 was SF 127.50. According to Article 29 of the Rules, if the amount in a demand deposit account was 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.

With respect to the custody account numbered 39940, 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a custody account was SF 13,000.00.

With respect to the custody account numbered 61453, the CRT notes that, although this account included security for a guaranteed credit extended by the Bank to the Account Owner, the Bank could not have transferred a debit to the *Deutsche Golddiskonto Bank*. The CRT further notes that it is unlikely that the Bank would have transferred assets pledged as security on a loan unless the loan had been repaid in full or there were other assets to cover the security requirement.

Further, the CRT notes that, according to the Bank's statement, this custody contained at least 40 shares of *International Nickel Co. of Canada* on the date of the transfer. According to the Account Owner's asset declaration, these shares were worth a total of RM 4,594.00, which was the equivalent of SF 8,062.47. The Account Owner's asset declaration indicates that the Account Owner owed SF 3,671.00 to the Bank. The Account Owner therefore had a net balance

of SF 4,391.47 at the Bank. It is not clear from the records whether the Account Owner's debt to the Bank was paid from the shares of *International Nickel*, from other assets, or whether it was paid at all (though, again, it is unlikely that the Bank would have agreed to transfer assets that secured a loan it had extended). In any case, the CRT determines that the Bank is responsible for the full value of the assets transferred, regardless of any outstanding loan amount, because, absent the transfer, the Account Owner could have maintained the debt to a later date or paid it from other assets. Therefore, for the calculation of the award amount, the total value of the assets transferred is determinative, not the net value of the Account Owner's account at the Bank. Moreover, although it is clear that at least 40 shares of *International Nickel*, valued at SF 8,062.47, were in the account at the time of the transfer, it is not clear from the Bank's records that these were the only assets contained in the account. Therefore, 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 SF 13,000.00.

Thus, the combined 1945 average value for the three accounts at issue is SF 28,140.00. The current value of the amount of the award 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 a total award amount of SF 351,750.00.

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
19 July 2007