

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Hans Siegfried Lauterbach

to Claimant Eve Marion Scharf
represented by Seymour Scharf

and to Claimant Lillian May Silbermann
also acting on behalf Anna Silbermann
represented by Anna Silbermann

in re Account of Max Silbermann

Claim Numbers: 217831/AK, 223770/AK, 501524/AK

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of Eve Marion Scharf, née Silbermann, (“Claimant Scharf”) to an account of Ernst Silbermann,¹ and upon the claims of Hans Siegfried Lauterbach (“Claimant Lauterbach”), and Lillian May Silbermann, née Eden, (“Claimant Silbermann”) (together the “Claimants”) to the accounts of Max Silbermann. This Award is to the published account of Max Silbermann (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).²

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.

¹ The CRT did not locate an account belonging to Claimant Scharf's relative, Ernst Silbermann, in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Claimant Scharf should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information provided by Claimant Scharf or upon information from other sources.

² The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably those of Victims of Nazi Persecution (the “ICEP List”), there are three account owners named Max Silbermann. The CRT will address the accounts held by other account owners with that name in separate decisions.

Information Provided by the Claimants

Claimant Lauterbach

Claimant Lauterbach submitted a Claim Form identifying the Account Owner as his maternal uncle, Max Silbermann. Claimant Lauterbach stated that Max Silbermann and his brother, Fritz Silbermann, who were both bachelors, resided in Berlin, Germany, where they owned a wholesale and retail textile shop. According to Claimant Lauterbach, his uncles, who were Jewish, fled Berlin in 1933 to avoid Nazi persecution. Claimant Lauterbach further indicated that his uncles' business was aryanized, that Max Silbermann fled to Shanghai, China, and that Fritz Silbermann fled to Lima, Peru. In a telephone conversation with the CRT, Claimant Lauterbach stated that his mother, Alma Lauterbach, née Silbermann, stayed in contact with her brother, Max Silbermann, until 1935, and that their mother, Rosa Silbermann, née Goldmann, was arrested by the Gestapo in 1938. Claimant Lauterbach stated that he was born on 19 July 1925 in Mechtal (formerly Miechowitz), Germany.

Claimant Lauterbach previously submitted an Initial Questionnaire ("IQ") with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Max Silbermann and Fritz Silbermann.

Claimant Scharf

Claimant Scharf submitted a Claim Form identifying the Account Owner as her paternal grandfather, Max Silbermann. Claimant Scharf stated that her grandfather, who was Jewish, was married to Else Silbermann, née Kaiser, and that they lived in Berlin, Germany. Claimant Scharf stated that Else and Max Silbermann had a son, Ernst Silbermann, who was born in Berlin on 17 August 1899. Claimant Scharf further stated that she is the daughter of Ernst Silbermann and Alice Silbermann, née Wolz, and that she and her parents fled Germany to the United States in 1939. In a telephone conversation with the CRT on 7 May 2004, Claimant Scharf stated that her grandparents, Max and Else Silbermann, remained in Germany, and that they perished in the Holocaust in the 1940s.

In support of her claim, Claimant Scharf submitted her birth certificate, showing that she was born in Berlin, and that she is the daughter of Ernst and Alice Silbermann; a marriage certificate, indicating that Ernst Silbermann was born in Berlin, and that he was married to Alice Wolf on 17 August 1923; the last will and testament of Ernst Silbermann, declaring Claimant Scharf his sole heir; and the death certificate of Ernst Silbermann, stating that he was the son of Max Silbermann.

Claimant Scharf stated that she was born on 4 April 1925 in Berlin.

Claimant Silbermann

Claimant Silbermann submitted a Claim Form identifying the Account Owner as her father-in-law, Max Silbermann, who was born on 12 November 1870 in Schirwindt, Germany, and was married to Charlotte Marianne Segall, who was born on 28 January 1892. Claimant Silbermann

indicated that Max Silbermann, who was Jewish, resided at Erfurterstrasse 9 in Berlin-Schöneberg from 1910 to 1938, and that his business address was Charlottenstrasse 64-65a in Berlin-Mitte from 1919 to 1938. Claimant Silbermann stated that Charlotte and Max Silbermann had two children: Ulrich Silbermann, who was born on 6 February 1927 in Berlin, and Klaus Silbermann, who was born on 9 May 1929 in Berlin-Wilmersdorf. Claimant Silbermann stated that Max Silbermann was a merchant, and that he and his partner, Louis Silbermann, owned the company *L. & M. Silbermann OHG*, a silk business. Claimant Silbermann further stated that the business had been boycotted since 1936 because Max and Louis Silbermann were Jewish, and that they had to give up their business shortly after the boycott. According to Claimant Silbermann, Max Silbermann died on 25 September 1938 in Berlin. Claimant Silbermann added that Max Silbermann's eldest son, Ulrich, and his wife, Charlotte, perished in Auschwitz in 1942 and 1943, respectively. Claimant Silbermann finally stated that her husband, Max Silbermann's youngest son, Klaus Silbermann, died in October 1995 in London, the United Kingdom.

In support of her claim, Claimant Silbermann submitted the following documents:

1. the birth certificate of Klaus Silbermann, showing that he was born on 9 May 1929 in Berlin-Wilmersdorf to Max Silbermann and Marianne Charlotte Silbermann, née Segall;
2. Claimant Silbermann's own marriage certificate, showing that she was married to Klaus Silbermann on 12 September 1953;
3. an affidavit sworn by Klaus Silbermann, certified by the German Embassy in London on 22 May 1958;
4. a certificate of inheritance dated 30 April 1964, showing that Klaus Silbermann was Max Silbermann's son and only heir;
5. two certificates issued by the Berlin office of the Main Public Trustee for Restitution Proceedings, stating that Ulrich Silbermann and Marianne Charlotte Silbermann, née Segall had been deported from Berlin to Lodz, Poland on 18 October 1941;
6. a decision dated 25 February 1966 from the Berlin Compensation Office, showing that Klaus Silbermann was denied compensation as his father, Max Silbermann, had died of natural causes and had not suffered bodily harm as a result of Nazi persecution; and
7. a decision dated 18 October 2001 from the Berlin Regional Office for the Regulation of Open Asset Questions, showing that Claimant Silbermann filed for restitution and compensation with respect to *L. & M. Silbermann OHG*, stating that the company *L. & M. Silbermann OHG* was listed in the companies' register of the local district court of Berlin from 1919 until 1937, when the owners, Max and Louis Silbermann, declared the closure of their business, that Max and Louis Silbermann were Jewish, and that they were persecuted by the Nazis, which eventually led to the liquidation of their business.

Claimant Silbermann stated that she was born on 19 May 1925 in London. Claimant Silbermann is representing her daughter, Anna Silbermann, who submitted her own birth certificate, indicating she was born to Klaus and Lillian Silbermann on 18 December 1957 in London.

Information Available in the Bank's Record

The Bank's record consists of an account registry card. According to this record, the Account

Owner was Max Silbermann from Berlin. The Bank's record indicates that the Account Owner held a demand deposit account, and that the account was opened in the 1930s. The Bank's record further indicates that the account was closed. The exact opening and closing dates are illegible. The Bank's record does not indicate the value of this account. There is no evidence in the Bank's record that the Account Owner or his heirs closed the account 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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant Lauterbach

Claimant Lauterbach's maternal uncle's name matches the published name of the Account Owner. Claimant Lauterbach's uncle's country and city of residence match the unpublished country and city of residence of the Account Owner. The CRT notes that Claimant Lauterbach filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Max Silbermann, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant Lauterbach has based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that Claimant Lauterbach had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant Lauterbach.

Claimant Scharf

Claimant Scharf's paternal grandfather's name matches the published name of the Account Owner. Claimant Scharf's grandfather's country and city of residence match the unpublished country and city of residence of the Account Owner. In support of her claim, Claimant Scharf submitted documents, including the death certificate of her father, Ernst Silbermann, stating that he was the son of Max Silbermann, 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.

Claimant Silbermann

Claimant Silbermann's father-in-law's name matches the published name of the Account Owner. Claimant Silbermann's father-in-law's country and city of residence match the unpublished country and city of residence of the Account Owner. In support of her claim, Claimant Silbermann submitted documents, including the birth certificate of her late husband, Klaus Silbermann, showing that his father was Max Silbermann, and that he was born in Berlin-Wilmersdorf, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's record as the name and city of residence of the Account Owner.

The CRT notes that Claimant Lauterbach's relative, Claimant Scharf's relative, and Claimant Silbermann's relative are not the same person. However, given that the Claimants have identified all published and unpublished information about the Account Owner that is available in the Bank's record; that the information provided by each claimant supports and in no way contradicts any information available in the Bank's record; that there is no additional information in the Bank's record which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that the other claims to this account were disconfirmed because those claimants provided a different country or city of residence than the Account Owner's country and city of residence, the CRT finds that Claimant Lauterbach, Claimant Scharf, and Claimant Silbermann have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have each made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish. Claimant Lauterbach stated that the Account Owner fled Germany to avoid Nazi persecution, that his business was aryanized, and that his mother was arrested by the Gestapo in 1938. Claimant Scharf stated that the Account Owner perished in a concentration camp in the 1940s. Claimant Silbermann stated that the Account Owner's business was confiscated by the Nazi authorities, and that his wife and son perished in Auschwitz. Claimant Silbermann also submitted a decision from the Berlin Regional Office for the Regulation of Open Asset Questions, indicating that the Nazis persecuted the Account Owner and that they liquidated his business.

The Claimants' Relationships to the Account Owner

The Claimants have each plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant Lauterbach's uncle, Claimant Scharf's grandfather, Claimant Silbermann's father-in-law, and the grandfather of Anna Silbermann, whom Claimant Silbermann represents. These documents include Claimant Scharf's birth certificate and her father's death certificate, Claimant Silbermann's marriage certificate, her husband's birth certificate, and Anna Silbermann's birth certificate.

The CRT notes that Claimant Lauterbach identified unpublished information about the Account Owner as contained in the Bank's record, and that he filed an IQ with Court in 1999, identifying

the relationship between the Account Owner and Claimant Lauterbach, prior to the publication of the ICEP List in February 2001, which supports the plausibility that Claimant Lauterbach is related to the Account Owner, as he has asserted in his Claim Form.

There is no information that the Account Owner had surviving heirs other than the party whom Claimant Silbermann is representing.

The Issue of Who Received the Proceeds

Given that according to Claimant Lauterbach, the Account Owner fled Germany to China; that according to Claimant Scharf, the Account Owner perished in the Holocaust; and that according to Claimant Silbermann, the Account Owner resided in Nazi Germany until his death in 1938; that there is no record of the payment of the Account Owner's account to him; 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 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 Lauterbach, Claimant Scharf, and Anna Silbermann. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant Lauterbach has plausibly demonstrated that the Account Owner was his uncle, and Claimant Scharf and Anna Silbermann have plausibly demonstrated that the Account Owner was their grandfather, and those relationships justify 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 Anna Silbermann, as the Account Owner's granddaughter, has a better entitlement to the account than Claimant Silbermann, the Account Owner's daughter-in-law.

Amount of the Award

In this case, 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 on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 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 26,750.00.

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 Claimant has established a plausible relationship to a person with the same name as the Account Owner.

Accordingly, Claimant Lauterbach is entitled to one-third of the total award amount, and Claimant Scharf is entitled to one-third of the total award amount. As indicated above, Anna Silbermann has a better entitlement to the account than Claimant Silbermann. Accordingly, Anna Silbermann is entitled to the remaining one-third of the total award amount.

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
12 May 2005