

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Dorrit Kitty Marks,
also acting on behalf of Gerard Charles Smetana

in re Account of Friedrich Smetana

Claim Number: 204659/MW

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of Dorrit Kitty Marks, née Smetana, (the “Claimant”) to the published account of Friedrich Smetana (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

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 a Claim Form identifying the Account Owner as her father, Dr. Friedrich Smetana, who was born on 22 August 1898 in Vienna, Austria, and was married to Marianne Smetana, née Reiner, on 28 July 1931 in Brno, Czechoslovakia. The Claimant stated that her father, who was Jewish, was a prominent and wealthy attorney who worked at Riemergasse 11 in Vienna. The Claimant further stated that her father was also a shareholder and limited partner in the family’s leather goods/handbag company, *Smetana Kommanditgesellschaft Mariahilfer Ledertaschengesellschaft*, which was located at Getreidemarkt in Vienna. The Claimant indicated that after the incorporation of Austria into the Reich in 1938 (the *Anschluss*), her father was unable to continue his law practice, and as a result could not provide for his family. The Claimant further indicated that her father, along with his family, fled from Austria to Athens, Greece, via Brno, Serbia, and Turkey in November 1938. The Claimant explained that once they arrived in Greece, her family found refuge with the family of Dr. Simon Levi and that her father opened a Swiss bank account in late 1938 or early 1939. The Claimant indicated that her father resided at Essopou 4 in Athens. The Claimant further explained that her parents, along with their two children, received visas for the United States in early 1939, with permission to travel through Switzerland and France. The Claimant stated that her family left Cherbourg, France, on 24 February 1939, and arrived in New York, New York, the United States on 4 March 1939. The Claimant indicated that her father died on 7 April 1947 in New York, New York. The Claimant further indicated that her mother died on 26 September 1998 in Miami, Florida, the United States. According to the Claimant, her father did

not close his Swiss bank account before his death and no one in her family has previously tried to retrieve his assets.

In support of her claim, the Claimant submitted documents including her birth certificate, which indicates that her father was Dr. Friedrich Smetana who lived in Vienna, and her father's passport issued in Athens, which indicates that he was born in Vienna and held the title of doctor and attorney, that he had two children named Gerhard and Dorrit who were born on 22 June 1932 and 15 January 1936, respectively, that he acquired an immigration visa on 1 February 1939 from the United States Consulate General in Athens, Greece, for Friedrich, Dorrit Kitty, and Gerhard Smetana, and that he acquired permission from the Swiss and French governments to travel through Switzerland and France to reach the United States. The Claimant indicated that she was born on 15 January 1936 in Vienna. The Claimant represents her brother, Gerard Charles Smetana, who was born on 22 June 1932 in Vienna.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Dr. Friedrich Smetana, who resided in Athens, Greece. The Bank's record indicates that the Account Owner held a demand deposit account in Sterling Pounds, which was opened on 30 December 1938 and was closed on 10 August 1942. The amount in the account on the date of its closure is unknown. There is no evidence in the Bank's record that the Account Owner or his 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, and/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 Dr. Friedrich Smetana, numbered 22995. These records show that Dr. Friedrich Smetana was married to Marianne Smetana, née Reiner, and that he was an attorney with an office at Riemergasse 11 in Vienna, as well as a part owner of a leather goods company, *Smetana Kommanditgesellschaft Mariahilfer Ledertaschengesellschaft*, which was located at Getreidemarkt in Vienna. The Austrian Census data indicates that Dr. Friedrich Smetana had assets in excess of 20,000.00 Reichsmark ("RM") as of 10 July 1938, including shares in his family's business and securities. These records further indicate that Dr. Friedrich Smetana was assessed *Reichsfluchtsteuer* (flight tax) of RM 2,120.00 on 15 August 1938. These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her father's name matches the published name of the Account Owner. The Claimant identified the Account Owner's title and city of residence in 1938, which matches unpublished information about the Account Owner contained in the Bank's record. In addition, the Claimant stated that her father, who fled Austria in November 1938, opened the account in late 1938 or early 1939, which is consistent with unpublished information indicating that the account was opened in November 1938. In support of her claim, the Claimant submitted documents, including her birth certificate, which indicates that her father was Dr. Friedrich Smetana who lived in Vienna, and her father's passport issued in Athens, which indicates that he was born in Vienna and held the title of doctor and attorney, that he had two children named Gerhard and Dorrit who were born on 22 June 1932 and 15 January 1936, respectively, that he acquired an immigration visa on 1 February 1939 from the United States Consulate General in Athens, Greece, for Friedrich, Dorrit Kitty, and Gerhard Smetana, and that he acquired permission from the Swiss and French governments to travel through Switzerland and France to reach the United States, 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 the other claim to this account was disconfirmed because that claimant indicated that the claimed account owner died prior to the opening date of the account as recorded in the Bank's record, and indicated a different city and country of residence than the city and country of residence of the Account Owner.

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 that he fled Austria in November 1938. The CRT notes the Austrian State Archive contains a 1938 Census declaration completed by Dr. Friedrich Smetana. As stated above, the Nazi Regime required the submission of this asset registration form from all Jews living within or nationals of the Reich who held assets above a specified level.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that the Account Owner was the Claimant's father. These documents include the Claimant's birth certificate, which indicates that her father was Dr. Friedrich Smetana who lived in Vienna, and her father's passport, which indicates he had two children named Gerhard and Dorrit who were born on 22 June 1932 and 15 January 1936, respectively. There is no information to indicate that the Account Owner has surviving heirs other than the Claimant's brother, who the Claimant represents.

The Issue of Who Received the Proceeds

The CRT notes that the Bank's record indicates that the account was closed on 10 August 1942, at which time, according to information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. However, given that the Bank's record does not indicate to whom the account was closed; that the Account Owner fled from Austria to Greece due to Nazi persecution, and subsequently emigrated to the United States; that the Account Owner may have had relatives or acquaintances remaining in Austria or Greece, such as the family of Dr. Simon Levi, with whom he took refuge in Greece, and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety; 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, 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 (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 Owners, 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 her father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

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 present 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 demand deposit account was 2,140.00 Swiss Francs. The present 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 26,750.00 Swiss Francs.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. In this case, the Claimant is representing her brother,

Gerard Charles Smetana. Accordingly, the Claimant and her brother are each entitled to receive one-half of the total 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 her claim to determine whether there are additional Swiss bank accounts to which she 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
18 November 2004