

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

in re Accounts of Bruno Spiro

Claim Number: 402244/WT

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published account of Bruno Spiro (the “Account Owner”) at the Lucerne 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 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 maternal grandfather, Bruno Spiro, who was born on 24 February 1875 and was married to [REDACTED], née [REDACTED]. The Claimant stated that Bruno Spiro had two daughters, [REDACTED], née [REDACTED] (the Claimant’s mother), and [REDACTED], née [REDACTED] (the Claimant’s aunt). The Claimant indicated that his grandfather, who was Jewish, was a weapons dealer who resided in Hamburg, Germany, and traveled frequently to Switzerland. According to the Claimant, his grandfather perished in a concentration camp.

In support of his claim, the Claimant submitted copies of: (1) his mother’s birth certificate, indicating that [REDACTED] was born on 17 November 1916 in Hamburg to Bruno Richard Spiro and [REDACTED], née [REDACTED], both of whom were Jewish; (2) his mother’s marriage certificate, indicating that [REDACTED] married [REDACTED] on 22 June 1935 in Hamburg; (3) his own birth certificate, indicating that [REDACTED 1] was born on 31 August 1938 in Hamburg to [REDACTED] and [REDACTED], née [REDACTED]; and (4) his sister’s birth certificate, indicating that [REDACTED 2] was born on 25 December 1941 in Loughborough, the United Kingdom, to [REDACTED] and [REDACTED], née [REDACTED].

The Claimant indicated that he was born on 31 August 1938 in Hamburg. The Claimant is representing his sister, [REDACTED 2], who was born on 25 December 1941 in Loughborough, and his cousin, [REDACTED 3] (the daughter of [REDACTED], née [REDACTED]).

The Claimant's mother, [REDACTED], and the Claimant's aunt, [REDACTED], previously submitted an ATAG Ernst & Young claim form in 1997 to the Claims Resolution Tribunal for Dormant Accounts in Switzerland ("CRT-I"), asserting their entitlement to a Swiss bank account owned by Bruno Spiro and S. Spiro.¹

Information Available in the Bank's Record

The CRT notes that 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 report an account belonging to Bruno Spiro during their investigation of the Bank. The records for the Account Owner's custody account at the Bank were obtained from the Archive of the City of Hamburg, Office of the President of the Regional Tax Office (*Staatsarchiv Hamburg, Oberfinanzpräsident*) and are described in detail below.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about the custody account ("Voluntary Assistance"). The Bank provided the CRT with a document. This document consists of a customer card and indicates that Bruno Spiro of Berlin, Germany, owned a custody account numbered 3833, and a demand deposit account at the Bank. This record indicates that the custody account was closed on 25 September 1937, and that the demand deposit account was closed on 23 October 1937. The record also indicates that the Bank had been notified that Bruno Spiro had died, given that on an unknown date, the account was noted as being held by "Bruno Spiro's heirs" rather than by Bruno Spiro (*Bruno Spiro Erben*). The amount in the accounts on the date of their closure is unknown. There is no evidence in the Bank's record that the Account Owner's heirs closed the accounts and received the proceeds themselves.

Information Available from the German Archives

In the records of the Archive of the City of Hamburg, Office of the President of the Regional Tax Office (*Staatsarchiv Hamburg, Oberfinanzpräsident*), there are documents concerning the assets of Bruno Spiro, numbered 382. These documents are the records of the criminal prosecution of Bruno Spiro for tax fraud, "treason to the German people" (*Volksverrat*), and impermissible possession and sale of securities. The records indicate that Bruno Spiro was the sole proprietor of the firm *Benny Spiro* in Hamburg, and that he was an arms dealer and a member of a "society of international Jewish arms dealers" (*eines der Mitglieder einer international jüdischen*

¹ In a separate decision, the Claims Resolution Tribunal for Dormant Accounts in Switzerland ("CRT-I") awarded the account of Bruno Spiro and S. Spiro to [REDACTED], who is the Claimant's mother, and to [REDACTED], who is the Claimant's aunt and the mother of represented party [REDACTED 3].

Waffenschiebergesellschaft). The German archival records indicate that Bruno Spiro sold machine guns, rifles, pistols and ammunition to groups in Czechoslovakia and Palestine, and that he transacted business in Hamburg, Berlin, and Paris, France.

According to these records, Bruno Spiro was arrested in July 1936 in Hamburg by the Gestapo for arms smuggling; during their investigation, the Gestapo discovered evidence that Bruno Spiro had sold foreign-held securities, including unnamed securities which were sold for 33,250.00 Swiss Francs (“SF”) and which had been held in an account that Bruno Spiro held at the Bank in Lucerne, Switzerland. The German archival records indicate that these sales took place beginning in June 1933 and throughout 1934, and that Bruno Spiro had used the proceeds for his own business in Switzerland, rather than repatriate the proceeds from the securities sales to Germany as required by German law.

The records indicate that Bruno Spiro committed suicide on 29 September 1936 while imprisoned in the concentration camp at Fuhlsbüttel, near Hamburg. These records include an order from the state solicitor’s office (*Oberstaatsanwalt bei dem Landgericht Hamburg*) dated 13 September 1937, petitioning for the seizure of 99,600.00 Reichsmark (“RM”) from Bruno Spiro’s bank account at the *Norddeutsche Kredit-Bank* in Hamburg, of which RM 27,000.00 was allegedly derived from the sale of securities held at the Bank. These records also include a decision from the District Court of Hamburg (*Landgericht Hamburg*), dated 25 March 1938, denying the request of the state solicitor’s office to seize funds from Bruno Spiro’s German bank account in order to offset the value of the foreign-held securities. The District Court ruled that such a seizure would negatively impact Bruno Spiro’s sole heir, his wife, who did not appear to have been implicated in her husband’s business affairs.

These records do not contain information about the disposition of the custody account held at the Bank.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant’s grandfather’s name matches the published name of the Account Owner. The Claimant identified the Account Owner’s city and country of residence, and the type of business in which he was engaged, all of which matches information about the Account Owner contained in the German Archives.

In support of his claim, the Claimant submitted documents, including his mother’s birth certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the German Archive records 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 Bruno Spiro, and indicates that his date of birth was 24 February 1875 and that he resided in Hamburg, Germany, which matches the information about the Account

Owner 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 Bruno Spiro appears only once on the List of Account Owners Published in 2005 (the “2005 List”). The CRT further notes that the Claimant’s mother and aunt filed an ATAG Ernst & Young claim form in 1998, asserting their entitlement to a Swiss bank account owned by Bruno Spiro and S. Spiro prior to the publication of the 2005 List. This indicates that the Claimant has based his present claim not simply on the fact that an individual identified on the 2005 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 and his family before the publication of the 2005 List. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the 2005 List. This supports the credibility of the information provided by the Claimant.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants did not provide sufficient details regarding the Account Owner to establish a plausible relationship to the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified 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 died in a concentration camp.

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 grandfather. These documents include the Claimant’s mother’s birth certificate and his own birth certificate. There is no information to indicate that the Account Owner has other surviving heirs other than the parties whom the Claimant is representing.

The CRT further notes that the Claimant identified information about the Account Owner as contained in the records of the German Archives. The CRT further notes that the Claimant submitted a copy of his mother’s marriage certificate and his own birth certificate, which provides independent verification that the Claimant’s relatives bore the same family name as the Account Owner and that they resided in Hamburg. 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 the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his Claim Form.

The Issue of Who Received the Proceeds

The CRT notes that, according to the German archival records, the Gestapo discovered evidence that Bruno Spiro had sold foreign-held securities, including unnamed securities held at the Bank

which were sold for SF 33,250.00, from June 1933 through 1934, and that he used the proceeds for his own business in Switzerland, rather than repatriate the proceeds from the securities sales to Germany as required by German law. The CRT further notes that the decision from the District Court of Hamburg (*Landgericht Hamburg*), dated 25 March 1938, indicates that it had denied the request of the state solicitor's office to seize funds from Bruno Spiro's German bank account in order to offset the value of the foreign-held securities, because such a seizure would negatively impact Bruno Spiro's sole heir, his wife, who did not appear to have been implicated in her husband's business affairs. This information shows that Bruno Spiro or his heirs received the proceeds from his sale of his foreign-held securities, including those held at the Bank, that took place from June 1933 through 1934.

The CRT notes, however, that the archival records do not indicate that all the securities in the custody account were sold by 1934. In fact, the Bank's record shows that both the custody account and the demand deposit account belonging to the Account Owner continued to exist after his sale of securities in 1934, and that the custody account and demand deposit account were not closed until 25 September 1937 and 23 October 1937, respectively. There is no evidence in either the Bank's record or in the German archival records that the assets remaining in the accounts until their closure were paid to the Account Owner or his heir.

Given that the Account Owner was arrested by the Gestapo in July 1936 and imprisoned in the concentration camp at Fuhlsbüttel, where he perished on 29 September 1936; that the Bank's record indicates that the two accounts held by the Account Owner were closed after his death; that the German archival records indicate that the Nazi authorities were aware that the Account Owner held assets at the Bank; that the Account Owner's heirs would not have been able to obtain information about his accounts 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 (a), (d), (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 and the represented parties. 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 grandfather, and that relationship justifies 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 accounts.

Amount of the Award

In this case, the Account Owner held one custody account and one demand deposit account. Although the German archival records indicate the value of some securities that were held in

1933 and 1934 in the custody account, the records do not indicate the value of the assets remaining in the accounts on their dates of closure in 1937.² 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 and the 1945 average value of a demand deposit account was SF 2,140.00. 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 189,250.00.

Division of the Award

According to Article 23(1)(d) 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 his sister [REDACTED 2] and his cousin, [REDACTED 3]. Accordingly, the Claimant and his sister, represented party [REDACTED 2], are each entitled to one-quarter of the total award amount; and represented party [REDACTED 3] is entitled to 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 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
18 December 2008

² As noted above, the German archival records indicate that the Account Owner himself requested the sale of the securities that he held at the Bank in 1933 and 1934, and that he was able to circumvent Nazi confiscatory legislation to access the proceeds of the sale. Also as noted above, there is no evidence that the Account Owner accessed the remaining assets that were in the accounts at the time of their closure in 1937.