

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Fred David Brenner
also acting on behalf of Clarice Rubini-Reichlin and Harry Fleming

in re Accounts of Hermann Stark and Melanie Stark

Claim Number: 211805/HS

Award Amount: 476,539.00 Swiss Francs

This Certified Award is based upon the claim of Fred David Brenner, formerly Fritz Reis (the “Claimant”), to the published accounts of Hermann Stark (“Account Owner Hermann Stark”) and Melanie Stark, née Buchwald, (“Account Owner Melanie Stark”) (together the “Account Owners”) at the Zurich and London branches of the [REDACTED] (the “Bank”).¹

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 Owners as his cousin (his maternal grandmother’s brother’s daughter) Melanie Stark, née Buchwald, who was born on 23 May 1892, and her husband Dr. Herman Stark, who was born on 31 October 1890 in Przemysl, Poland. The Claimant stated that Melanie Buchwald and Hermann Stark, who were Jewish, married on 21 December 1919 in Vienna, Austria. According to the Claimant, Melanie Buchwald’s father Adolf was the brother of Katherine Fleischman, née Buchwald, who was the Claimant’s maternal grandfather. The Claimant explained that Katherine Buchwald married David Fleischman and that they had three children: Charlotte (the Claimant’s mother); Moritz, and Ernestine.

The Claimant explained that Herman Stark owned the cinema *Schönbrunner Schlosskino*, located at Schönbrunner Schloßstrasse 4 in Vienna XII. According to the Claimant, Herman and

¹ The CRT notes that Melanie Stark (“Account Owner Melanie Stark”) appears as power of attorney holder for three accounts belonging to Hermann Stark (“Account Owner Hermann Stark”) 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, upon careful review the CRT has determined that at various times, Account Owner Hermann Stark held two accounts over which Account Owner Melanie Stark held power of attorney, one account with no apparent power of attorney, and that the Account Owners held two accounts jointly.

Melanie Stark had a son, Herbert, who was born on 26 May 1923 in Vienna and who died on 30 December 1934 in Vienna. The Claimant stated that the Starks resided at several different addresses in Vienna between 1929 and 1939, including Lainzerstrasse 80 and Dorotheergasse 6. According to the Claimant, in 1939 Herman and Melanie Stark fled from Vienna to Brussels, Belgium, in order to escape Nazi persecution. Finally, the Claimant indicated that both Herman and Melanie Stark were deported to concentration camps, where they perished on unknown dates.

The Claimant indicated that he was born on 21 December 1920 in Vienna. The Claimant is representing his cousins Clarice Rubini-Reichlin, née Rosenthal (the daughter of his mother's brother Moritz), and Harry Fleming (formerly Fleischman) (the son of his mother's sister Ernestine), who were born on 1 March 1912 and 24 August 1923, respectively, in Vienna.

Information Available in the Bank's Records

The Bank's records consist of account opening contracts, power of attorney forms, customer cards, a list of account owners, printouts from the Bank's database, correspondence from Account Owner Hermann Stark to the Bank, correspondence between Account Owner Hermann Stark's sisters and their representatives and the Bank, and internal Bank correspondence.

According to these records the Account Owners were the married couple Dr. Hermann Stark and Melanie Stark, née Buchwald, both originally from Vienna, Austria.

The Bank's records indicate that Account Owner Hermann Stark opened a safe deposit box, numbered 1297, at the Bank's Zurich branch on 19 January 1934, providing the Bank with a correspondence address in care of Mr. Henri Brach, 20 Vieux Marché aux Vins, Strasbourg, France. The Bank's records indicate that Account Owner Melanie Stark, who gave the same Strasbourg address as Account Owner Hermann Stark, held power of attorney over the safe deposit box. According to the Bank's records, on 19 June 1934 Account Owner Hermann Stark instructed the Bank to allow Mr. Egon Friedländer of Paris to remove eleven gold bars, numbered 437 through 447 and weighing approximately one kilogram each, from the safe deposit box. These records further indicate that on 1 February 1939 the Bank was provided with a new correspondence address for the Account Owners in care of J. Behr, 5 rue Ste. Gudule, Brussels, Belgium. These records also indicate that rent was paid on the safe deposit box through 4 February 1939.

Additionally, the Bank's records contain a handwritten letter to the Bank from Account Owner Hermann Stark, dated 15 February 1939 in Brussels, authorizing Mrs. Susanne Turner, of Voltastrasse 15 in Zurich, to close safe deposit box 1297, and to deposit its contents (four gold bars) into a new custody account to be opened at the Bank in the name of Account Owner Hermann Stark. These records indicate that, on 18 February 1939, the Bank duly opened safe deposit box 1297 in the presence of Susanne Turner and removed the four gold bars (with a total fine weight of 4.01190 kilograms), placing them in a new custody account opened in the name of Account Owner Hermann Stark.

According to the Bank's records, the new custody account was numbered 42622, the gold bars it contained were numbered 448, 453, 457, and 462, and Account Owner Melanie Stark retained power of attorney over the new account, including the right to use the account for her own benefit. The Bank's records indicate that gold bar number 448 had a total fine weight of 0.99955 kilograms; gold bar number 453 had a total fine weight of 1.00755 kilograms; gold bar number 457 had a total fine weight of 1.00275 kilograms; and gold bar 462 had a total fine weight of 1.00205 kilograms. Finally, the Bank's records indicate that custody account 42662 was closed on 22 March 1939. There is no evidence in the Bank's records that the Account Owners or their heirs closed custody account 42662 themselves and received the proceeds.

The Bank's records also indicate that Account Owner Hermann Stark owned a demand deposit account. According to information provided by 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"), the demand deposit account had a balance of 13,030.50 French Francs ("FF") at some date after 1 January 1933. The Bank's records do not show when the French Franc demand deposit account was closed. The auditors who carried out the ICEP Investigation did not find the French Franc demand deposit 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 Owners or their heirs closed the French Franc demand deposit account and received the proceeds themselves.

According to the Bank's records, between February 1953 and November 1953, Account Owner Herman Stark's sisters and their attorney wrote to the Bank's Zurich branch to inquire about their brother's accounts. These letters indicate that Account Owner Hermann Stark's sisters and heirs were: Helene Raber of Vienna; Clara Schleier of Santiago de Chile, Chile; and Melanie Stark de Franke of Buenos Aires, Argentina. According to these letters, Account Owner Hermann Stark was deported in 1944 from Brussels to a concentration camp in Germany, where he perished.

These records indicate that Account Owner Herman Stark's sisters also tried to approach the Bank through a long-standing private customer of the Bank, who forwarded the sisters' letters to the Bank.

In their letters to the Bank inquiring about their deceased brother's accounts, the sisters described to the Bank that in September 1938, before fleeing Vienna, Account Owner Hermann Stark deposited gold in a safe deposit box at the Bank's Zurich branch, possibly in an account numbered 1297. The sisters also indicated in their letters to the Bank that in approximately the second half of September 1938, Hermann Stark had transferred the gold from the safe deposit box to a gold-custody account. The sisters explained to the Bank that they were not certain whether the gold still remained at the Bank or not, but that they would greatly appreciate the Bank's assistance in locating the gold. The sisters also stated that they would cover any related search fees or sign the necessary power of attorney forms in conjunction with a search for the assets that had belonged to their brother.

The Bank's records also contain an internal Bank memorandum dated 9 March 1953, in which one division of the Bank wrote to another division of the Bank (to the Private Office, Estate Matters, or *Privatsekretariat Nachlassangelegenheiten*) in Zurich, indicating that Helene Raber had contacted them and claimed that her brother, Dr. Hermann Stark of Vienna and Brussels, who had died in a concentration camp in Germany, held an account, which still contained assets, at "a Swiss bank." The Bank stated that the account could also have been held under the name "*Frau* (Mrs.) Mela Stark." The Bank indicated that it would be grateful if the Estate Matters division of the Bank would conduct the appropriate research regarding these assets.

The Estate Matters division of the Bank replied to the 9 March 1953 memorandum in its own memorandum dated 16 March 1953. The Estate Matters division indicated that its research had not revealed any assets within its division in the names of the Account Owners. The Estate Matters division indicated that the named individuals also did not hold a safe deposit box at the Bank.

The Bank's records do not contain a response from the Bank to any of Hermann Stark's sisters, or to their representatives. However, the Bank's records do contain some handwritten notations on the letters that Hermann Stark's sisters and representatives wrote to the Bank in 1953. In particular, the Bank's records include a 10 February 1953 letter from Melanie Stark de Franke to the Bank, which contains a handwritten notation of note. The notations at the bottom of the letter, which are in different handwriting from the letter itself, indicate that there was neither a savings/passbook account or a safe deposit box under the stated name, but that there was a custody account numbered 42622 which was closed on 22 March 1939.

In addition, the 3 November 1953 letter from the sisters' representative Otto Geiringer of Zurich to the Bank, in which he forwarded a letter from Clara Schleier regarding her brother's assets, contains a handwritten notation "Had (word illegible) No. 1297; closed on 18 February 1939!" (*Hatte [illegible] No. 1297; am 18.2.39 aufgehoben!*).

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about the Account Owners' accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents include customer cards for safe deposit box 1297 as well as records of two accounts at the Bank's London branch. Regarding the London accounts, the relevant records include: an account agreement, a customer card, a deposit slip, account statements, and a registration form required by the British Trading With The Enemy Act 1939, listing accounts at the Bank's London branch which were being "held for safe custody on behalf of Enemy persons or concerns."

These records indicate that the Account Owners opened a joint custody account, numbered 8257949, at the Bank's London branch on 7 April 1939, at which time they again listed their address in care of J. Behr, 5 rue Ste. Gudule, Brussels. The Account Owners signed the account opening agreement themselves in Brussels on 7 April 1939, and also instructed the Bank to hold all correspondence, according to the Bank's records. These records additionally indicate that the Account Owners held a joint demand deposit account at the Bank's London branch. According to the Bank's records, on 27 March 1939 three gold bars, numbered 453, 457 and 462, with a

fineness of 1.0, for a total fine weight of 96.849 ounces (3.01235 kilograms), were transferred from the Bank's Zurich branch to the Bank's London branch and deposited into the Account Owners' custody account. As of 10 July 1941 or earlier, according to the Bank's records, the Account Owners' address was changed to 31 rue Marie Therese, Brussels.

Additionally, the Bank's records indicate that "safekeeping charges" were assessed on the custody account. The charges appear to have been deducted from a sum set aside for that purpose at the Bank. Further, aside from the charges imposed by the Bank, both of the accounts in London remained dormant until they were suspended by the Bank on 21 April 1980. On that date, according to the Bank's records, the custody account was booked to a suspense account called "Dormant Global Depot" and the demand deposit account was booked to a suspense account called "Dormant Account No. 22701." According to the Bank's records, when the accounts were suspended the custody account contained three gold bars as before, with a total fine weight of 96.849 ounces (3.01235 kilograms), and the demand deposit account contained 978.65 Pound Sterling ("£"). There is no evidence in the Bank's records that the Account Owners or their heirs received the proceeds of these two accounts at the Bank's London branch.

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 Dr. Hermann Stark, numbered 33260. These documents include Hermann Stark's asset registration form (signed 14 July 1938, and updated by Hermann Stark's lawyer on 9 December 1938), as well as correspondence between the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or "VVSt") and the tax authorities in Berlin, and notices of tax assessments against Hermann and Melanie Stark.

These documents indicate that Dr. Hermann Stark, who was born on 31 October 1890, was married to Melanie Buchwald, both of whom were German citizens and Jewish, and that the couple resided at Lainzerstrasse 80 in Vienna XIII, and later at *Pension Aclon* at Dorotheergasse 6. These documents further indicate that Hermann Stark owned one-quarter of the cinema company *Schlosskino Dr. Stark & Co.*, located at Schönbrunner Schlosstrasse 2 in Vienna XII, as well as a one-quarter share in property located at Fabrikgasse 4-8 in Vienna XIII. These records further indicate that by 9 December 1938, Hermann Stark's business interests had been "aryanized" (through forced sale at a drastically reduced price to a non-Jewish person). According to these records, Hermann and Melanie Stark's assets were valued at 65,000.00 Reichsmark ("RM"), upon which the Nazi authorities assessed atonement tax (*Judenvermögensabgabe*) of RM 3,800.00 and flight tax (*Reichsfluchtsteuer*) of RM 15,300.00. Finally, these records indicate that Hermann Stark gave RM 1,000.00 to his sister, Helene Raber, and her husband to assist their emigration to South America.

These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The names and city of residence of the Claimant's relatives match the published names and city of residence of the Account Owners.² Additionally, the Claimant identified Account Owner Melanie Stark's maiden name (Buchwald) and Account Owner Hermann Stark's professional title (Dr.), as well as the Account Owners' original city of residence (Vienna), which matches unpublished information contained in the Bank's records.

The CRT notes that the other claim to these accounts was disconfirmed because that claimant provided a different country of residence than any of the countries of residence of the Account Owners.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that Account Owners were Jewish; that they fled Austria due to Nazi persecution, and that they were deported from Belgium to concentration camps where they perished.

Additionally, the Bank's records contain reports of the Account Owners' deportation and death. Further, the CRT notes that Account Owner Hermann Stark was required to register his assets pursuant to the 1938 Census, and that, according to these records, his business interests were "aryanized," and atonement tax and flight tax were assessed against both Account Owners.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific biographical information, demonstrating that the Account Owners were his cousin and his cousin's husband.

The CRT notes that the Claimant identified unpublished information about the Account Owners as contained in the Bank's records. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owners were 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 Owners, as he has asserted in his Claim Form. The CRT notes that the Bank records contain letters from Account Owner Hermann Stark's sisters dated in 1953. However, there is no information to indicate that the Account Owners have surviving heirs today other than the Claimant and the parties whom the Claimant is representing.

² Claimant Fred David Brenner (the "Claimant") spelled his relative's first name as "Herman" while the Bank's records spell the first name as "Hermann." However, since these are simply spelling variations of the same name, the CRT concludes that this discrepancy does not affect the Claimant's identification of Account Owner Hermann Stark.

The Issue of Who Received the Proceeds

The Bank's records indicate that safe deposit box 1297 was closed according to Account Owner Hermann Stark's instructions, and that its contents, gold bars 448, 453, 457, and 462, were transferred to the newly-opened custody account 42622 on 18 February 1939. Accordingly, given that this account was ordered closed by Account Owner Hermann Stark, this account is not awardable.

The Bank's records further indicate that custody account 42622 was closed on 22 March 1939, five days after which gold bars 453, 457, and 462 were transferred to custody account 8257949 at the Bank's London branch. According to the Bank's records, the fourth gold bar, number 448, was not transferred to London. Moreover, it is impossible to determine from the available Bank's records whether custody account 42622 contained further assets in addition to the four gold bars. With regard to gold bar 448 and any other assets remaining in custody account 42622 after the transfer to London of gold bars 453, 457, and 462, there is no indication in the Bank's records that the Account Owners themselves received the proceeds.

The CRT notes that custody account 42622 was closed on 22 March 1939, at which time, according to information provided by the Claimant and in the Bank's records, the Account Owners were outside of Nazi Austria, in Belgium. However, given that the Bank's records do not indicate who received the proceeds of custody account 42622 following the transfer of gold bars 453, 457, and 462 to London; that the Account Owners fled Austria due to Nazi persecution; that the Account Owners may have had relatives remaining in Austria and that they may therefore have yielded to Nazi pressure to turn over their accounts to ensure their safety; that the Account Owners were assessed flight and atonement tax by the Nazi authorities in Austria; that the Account Owners perished in the Holocaust; that the Account Owners' heirs were unable to obtain information about the Account Owners' accounts after the Second World War from the Bank; and given the application of Presumptions (e), (f), 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 assets remaining in custody account 42622 were not paid to the Account Owners or their 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.

With regard to the French Franc demand deposit account at the Bank's Zurich branch, given that there is no record of the payment of this account to the Account Owners, nor any record of a date of closure of this account; that the Account Owners perished in the Holocaust; that the Account Owners' heirs were unable to obtain information about the Account Owners' accounts after the Second World War from the Bank; and given the application of Presumptions (e), (f), and (j), as provided in Article 28 of the Rules, the CRT concludes that it is plausible that the proceeds of the French Franc demand deposit account were not paid to the Account Owners or their heirs.

With regard to the Account Owners' two accounts at the Bank's London branch, the Bank's records indicate that custody account 825794, which contained three gold bars, and the demand deposit account were suspended and the assets they contained transferred to suspense accounts on 21 April 1980. Given that the Account Owners were deported to their deaths at least 36 years

before these accounts were suspended; that the Bank failed to disclose the existence of these accounts in 1953, despite multiple inquiries by the Account Owners' heirs; that there is no record of the payment of these accounts to the Account Owners' heirs, nor any indication of the closure of these accounts following their suspension; and given the application of Presumptions (e) and (j), the CRT concludes that it is plausible that the proceeds of the Account Owners' two accounts at the Bank's London branch were not paid to the Account Owners or their heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant and the parties he represents. 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 Owners were his cousin and his cousin's husband, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of four of the Account Owners' accounts.

Amount of the Award

In this case, the Account Owners held a demand deposit account and a custody account (42622) in Zurich, and a demand deposit account and a custody account (8257949) in London.

Regarding the London custody account, the Bank's records indicate that from its opening to its suspension, it held three gold bars with a total fine weight of 96.849 ounces or 3.01235 kilograms, which would have been worth SF 14,971.38 in 1945.³ The current value of this amount is determined by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules to produce a total of SF 187,142.25.

As indicated previously, the Bank assessed fees on the custody account. In accordance with Article 31(1) of the Rules, the value of the custody account is therefore increased by an adjustment of SF 2,725.00, which reflects standardized bank fees and hold mail fees charged to the custody account between 1945 and 1980. Again, under Article 31(1), the current value of the fees is determined by multiplying it by a factor of 12.5 to produce a total of SF 34,062.50. Thus, the total adjusted current value of the London custody account is SF 221,204.75.

Regarding the Zurich custody account, as discussed above, it is impossible to determine from the available Bank's records whether it contained further assets in addition to gold bars 448, 453, 457, and 463. The Bank's records show that gold bars 453, 457, and 463 were transferred to the London custody account and eventually placed in a suspense account. These three gold bars have been valued separately, as detailed above. With regard to gold bar 448 and any other assets from the Zurich custody account which were not transferred to the London custody account, the total value is not indicated in the Bank's records. Under Article 29 of the Rules, when the balance of an account is unknown, 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. The current

³ In determining this value, the CRT used the official market value of gold in 1945 of 4,970.00 Swiss Francs ("SF") per kilogram.

value of this amount is determined by multiplying the 1945 average value by a factor of 12.5, in accordance with Article 31(1) of the Rules to produce a total of SF 162,500.00.

As for the Zurich demand deposit account, it had a balance of FF 13,030.50 as of an unknown date after 1 January 1933. This amount was equivalent to 1,641.84 Swiss Francs (“SF”) in March 1938, the date of the *Anschluss*, when the Account Owner’s country of origin was incorporated into the German Reich.⁴ However, the Bank’s records reveal neither the date that this balance was recorded, nor the date that the account was closed, nor the account’s closing balance. Accordingly, the CRT shall treat the balance of this account as unknown. Under Article 29 of the Rules, when the balance of an account is unknown, 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 SF 2,140.00. Therefore, the French Franc demand deposit account shall be valued at the 1945 average value of SF 2,140.00. The current value of this amount is determined by multiplying the 1945 average value by a factor of 12.5, in accordance with Article 31(1) of the Rules to produce a total of SF 26,750.00.

Finally, regarding the London demand deposit account, the Bank’s records indicate that it had a balance of £ 978.65, equivalent to SF 3,816.74, when it was suspended in April 1980. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 1,470.00, which reflects standardized bank fees and hold mail fees charged to the demand deposit account between 1945 and 1980. Consequently, the adjusted balance of the London demand deposit account is SF 5,286.74. The current value of this amount is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules to produce a total of SF 66,084.25.

Therefore, the total award amount is SF 476,539.00.

Division of the Award

According to Article 23(1)(e) of the Rules, if neither the account owner’s spouse nor any descendants of the account owner’s parents have submitted a claim, the award shall be in favor of any descendants of the account owner’s grandparents who have submitted a claim, in equal shares by representation; and under Article 23(1)(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23 (1)(a-f) has submitted a claim, the CRT may make an award to any relative, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity.

In this case, the Claimant is representing his cousins, Clarice Rubini-Reichlin (the daughter of his mother’s sister) and Harry Fleming (the son of his mother’s brother), whose shared great-grandparents were Account Owner Melanie Stark’s grandparents. The Claimant and the two parties he is representing are also related by marriage to Account Owner Melanie Stark’s husband, Account Owner Hermann Stark. Accordingly, the Claimant and represented parties

⁴ The CRT uses official exchange rates when making currency conversions.

Clarice Rubini-Reichlin and Harry Fleming are each entitled to one-third 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
10 August 2011