

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Dmitriy Podlubnyy

in re Account of *N. Stark u. Cie Tuchhandlung*

Claim Number: 401300/BW

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published account of Siegfried Bretzfelder.¹ This Award is to unpublished account of *N. Stark u. Cie Tuchhandlung* (the “Account Owner”) at the [REDACTED] (the “Custodian”).²

¹ The CRT notes that this account was published on the List of Account Owners Published in 2005 (the “2005 List”) under the name Siegfried Bretzfelder. The CRT has determined, however, that the account was owned by the business entity of *N. Stark u. Cie Tuchhandlung*, of which Siegfried Bretzfelder was a partner and co-owner.

² The CRT notes that the records do not specify the institution at which the Account Owner’s assets were deposited, only that it held a demand deposit account known as a post check account (“*Postscheckkonto*”). Such accounts were only available with the [REDACTED] (the “Custodian”). The CRT notes that it has jurisdiction over accounts at the Custodian under the Settlement Agreement reached by the parties to the Holocaust Victim Assets Litigation (the “Settlement Agreement”), even though the Custodian is not a bank and was not included in the investigation of Swiss banks carried out pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) in order to identify accounts of Victims of Nazi Persecution. According to the Settlement Agreement, “Deposited Assets means (1) any and all Assets actually or allegedly deposited ... with *any custodian, including, without limitation, a bank, branch or agency of a bank, other banking organization or custodial institution or investment fund established or operated by a bank incorporated, headquartered or based in Switzerland at any time (including, without limitation, the affiliated, subsidiaries, branches, agencies, or offices of such banks, branches, agencies, or offices of such banks, branches, agencies, custodial institutions, and investment funds that are or were located either inside or outside Switzerland at any time) in any kind of account (including without limitation, a safe deposit box or securities account) prior to May 9, 1945, that belonged to a Victim or Target of Nazi Persecution ... and/or (2) any and all Assets that the ICEP or the Claims Resolution Tribunal determines should be paid to a particular claimant or to the Settlement Fund because the Asset definitely or possibly belonged to an individual [or business entity] ... actually persecuted by the Nazi Regime or targeted for persecution by the Nazi Regime for any reason.*” [emphasis added] *In re Holocaust Victim Asset Litigation*, 105 F. Supp. 2d 139 (E.D.N.Y. 2000), Exhibit I to Plan of Allocation, Class action Settlement Agreement (26 January 1999), 2 - 3, text available at http://swissbankclaims.com/PDFs_Eng/exhibit1toPlanofAllocation.pdf. Furthermore, although it was not a party to the Holocaust Victim Asset Litigation, the Custodian is among the parties whose liability is released by the Settlement Agreement, since “Releasees means the Settling Defendants; the Swiss National Bank; Other Swiss Banks; the Swiss Bankers Association; the Swiss Confederation (including, without limitation, the Cantons and *all other political subdivisions and governmental instrumentalities in Switzerland*); *all business concerns (whether organized as corporations or otherwise) headquartered, organized, or incorporated in Switzerland as of October 3, 1996 ...*” [emphasis added] *Id.* at 3.

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 Custodian have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying one of the owners of the Account Owner as her paternal great-uncle, Siegfried Bretzfelder, who was born in approximately 1880 in Bavaria, Germany, and was married to [REDACTED] in approximately 1920. The Claimant indicated that the couple had a son, [REDACTED], who was born sometime between 1920 and 1922 in Bavaria. The Claimant stated that her great-uncle, who was Jewish, was the brother of her grandmother, [REDACTED], née [REDACTED]. The Claimant further stated that her great-uncle was a businessman and lived in Munich at Kastelburgsraße 24. The Claimant indicated her great-uncle and his family lived in Munich until approximately 1941, when she believes they were deported to a concentration camp, where they perished. According to the Claimant, her father contacted the Red Cross and traveled to East Germany after the War to try to locate his relatives or determine their exact fate, but he never heard from his family again. Finally, the Claimant indicated that her father passed away in 1965, and that she is an only child.

The Claimant submitted the following documents in support of her claim: (1) her father's birth certificate which indicates that [REDACTED] was born on 20 April 1902 in Odessa, Ukraine, to [REDACTED], born 1880, and [REDACTED], née [REDACTED], born 1883; (2) the Claimant's own birth certificate, which indicates that [REDACTED] was born on 25 May 1922 in the village of Vorzyl, Ukraine, to [REDACTED], son of [REDACTED], and [REDACTED]; (3) a certificate issued by the Kiev, Ukraine state archive that indicates that [REDACTED] is the granddaughter of [REDACTED], who was executed by the Nazis on 25 October 1941; and (4) the Claimant's marriage certificate, which indicates [REDACTED] was married to [REDACTED], born in 1923, on 14 March 1948 in Vorzyl.

The Claimant indicated that she was born on 25 May 1922 in the Ukraine.

Information Available in the Custodian's Records

The CRT notes that the auditors who carried out the investigation of Swiss banks 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 Siegfried Bretzfelder during their investigation. The documents evidencing an account belonging to *N. Stark u. Cie Tuchhandlung*, of which Siegfried Bretzfelder was a partner and co-owner, and which are further described below, were obtained from archival sources in Germany.

Information Available from the German Archives

In the records of the German Archives, there are documents concerning the assets of the Account Owner. These documents consist of correspondence and an audit report prepared on 30 December 1938 by the Foreign Exchange Control Authority (*Devisenstelle*) of the Munich branch of the German Finance Office (*Oberfinanzpräsident*) concerning the business *N. Stark u. Cie, Tuchhandlung*, of which [REDACTED] was a partner and co-owner.

The audit report, which was conducted during the aryanization of the Jewish-held business, details the shareholders of the company and indicates that the company was held by three partners, all Jewish, and among them was [REDACTED], who resided at Holbeinstrasse 22 in Munich. Additionally, the audit report indicates that the Basel, Switzerland branch of the business had been dissolved as of 22 December 1938 and that at the time of dissolution, the Basel branch held a demand deposit account known as a post check account (“*Postscheckkonto*”), numbered V9476, with the Custodian in Basel, numbered V 9478, which contained a balance at the time of the audit of 1,155.00 Swiss Francs (“SF”). The audit report further indicates that a withdrawal in the amount of SF 1,000.00 occurred on 16 December 1938 and that the account was closed and the remaining balance of the account was transferred on 22 December 1938 to Munich. There is no evidence in the German Archives records that the Account Owner, its shareholders, or their heirs closed the account and received the proceeds themselves.

The CRT’s Analysis

Identification of the Account Owner

The Claimant’s great-uncle’s name matches the published name of one of the owners of the Account Owner. The Claimant also identified the city and country of location of the Account Owner, which matches unpublished information about the Account Owner contained in the records of the German Archives.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named [REDACTED], who was married to [REDACTED], née [REDACTED], and indicates that his date of birth was 1880 and place of residence was Munich; as well as a person named [REDACTED], who was born in 1921 to [REDACTED] and [REDACTED], which matches information about one of the owners of the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Although the Claimant did not specifically name the Account Owner, the CRT notes that she identified unpublished information about the Account Owner and one of its owners, and that she indicated that her great-uncle was a businessman. The CRT further notes that the Claimant was still a minor when the Nazis came to power in Germany, where her great-uncle lived, that she and her family lived in the Ukraine, and that it is plausible that she would not know the details of her great-uncle’s business in Germany.

The CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified one of the owners of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that her great-uncle, one of the owners of the Account Owner, was a Victim of Nazi Persecution. The Claimant stated that her great-uncle was Jewish, and was deported to a concentration camp, where he perished, and that the Account Owner, her great-uncle's business, was aryanized. As noted above, a person named [REDACTED] was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to one of the owners of the Account Owner by submitting specific information, demonstrating that one of the owners of the Account Owner was the Claimant's great-uncle. There is no information to indicate that the Claimant's great-uncle has other surviving heirs.

The CRT further notes that the Claimant identified unpublished information about an owner of the Account Owner, as contained in the German archival records, and that the Claimant also identified information about her relative, which matches information contained in the Yad Vashem records.

The CRT further notes that the Claimant submitted a copy of her father's birth certificate. The CRT notes that it is plausible that this document is a document which most likely only a family member would possess, and which provides independent verification that the Claimant's relatives bore the same family name as the Account Owner. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that an owner of 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 an owner of the Account Owner, as she has asserted in her Claim Form.

The Issue of Who Received the Proceeds

The German Archives records indicate that the account was closed and its proceeds transferred on 22 December 1938 to Munich.

Given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax- and other confiscatory measures, including confiscation of assets held in Swiss banks; the facts of this case are similar to other cases that have come before the CRT in which the businesses of Jewish residents and/or nationals of the Reich were forcefully aryanized, and subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich.

Given also that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that the Account Owner's account was reported in documents concerning the aryazation process; that there is no record of the payment of the Account Owner's account to the owners of the Account Owner; that the Claimant's relative, an owner of the Account Owner, remained in Germany until his death in a concentration camp; that the Claimant's relative, an owner of the Account Owner, and his heirs would not have been able to obtain information about his account after the Second World War from the Custodian 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), and (h), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendices A and C),³ the CRT concludes that it is plausible that the account proceeds were not paid to the owners of the Account Owner 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.

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 her great-uncle was an owner of the Account Owner, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the owners of the Account Owner, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held a demand deposit account. The German Archives records indicate that the value of the account as of 16 December 1938 was SF 1,155.00. 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. 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. Consequently, the total award amount in this case is SF 26,750.00.

Division of the Award

According to Article 23(3) of the Rules, if the Account Owner is a legal or other entity (such as a corporation, association, organization, etc.), the Award will be made in favor of those Claimants who establish a right of ownership to the assets of the entity. Furthermore, according to Article 25(2) of the Rules, in cases where a joint account is claimed by relatives of only one or some of the joint Account Owners, it shall be presumed that the account was owned as a whole in equal shares by the Account Owners whose shares of the account have been claimed. Accordingly, the

³ Appendix C appears on the CRT II website -- www.crt-ii.org.

Claimant, as the great-niece of the only owner of the Account Owner whose share has been claimed, is entitled to the entire 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
27 February 2007