

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Max Wagner

and Claimant Miriam Wagner

in re Account of Osias Wagner

Claim Numbers: 212307/JW; 790490/JW^{1,2}

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claims of Max Wagner (“Claimant Max Wagner”), and Miriam Wagner (“Claimant Miriam Wagner”) (together “the Claimants”) to the accounts of Sally Wagner and Osias Wagner.³ This Award is to the unpublished account of Osias Wagner (the “Account Owner”) at the Chiasso branch of the [REDACTED] (the “Bank”). The account awarded is from the Total Accounts Database (“TAD”) at 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 Claimants

Claimant Max Wagner submitted a Claim Form, and the Claimants submitted an Initial Questionnaire (“IQ”) identifying the Account Owner as Osias (Oskar) Wagner, the father of Claimant Max Wagner and the father-in-law of Claimant Miriam Wagner (Claimant Max Wagner’s wife). The Claimants indicated that Osias Wagner was born on 4 March 1887 in Königsberg, Germany, and was married to Sally (Sali) Wagner, née Rosner, on 28 December 1911 in Berlin, Germany. The Claimants indicated that the couple, who were Jewish, had three

¹ In addition to Claimant Max Wagner’s Claim Form, the Claimants submitted an Initial Questionnaire (“IQ”), numbered ENG-0072078, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 790490. Claimant Max Wagner submitted one IQ together with his brother, Marcel Wagner. In his Claim Form, Claimant Max Wagner indicated that his brother Marcel passed away on 8 November 2000. Claimant Max Wagner submitted a copy of his brother’s death certificate.

² The Claimants submitted an additional IQ, numbered ENG-0465111, which has been assigned Claim Number 790491. The CRT will treat this claim in a separate determination.

³ The CRT will treat the claim to the accounts of Sally Wagner in a separate determination.

children: Max, Marcel, and Ingeborg (Ingrid). The Claimants further indicated that Osias Wagner lived at Hankegstrasse 2 in Berlin, where he worked as a banker and businessman, and owned a wholesale distribution company called *Tabakwaren Grosshandel O. Wagner*. According to the Claimants, in 1937, Osias Wagner learned that he was going to be arrested by the Nazis, and so he and his family fled to Czernowitz, Romania (now Chernivtsi, Ukraine), where he worked in a factory. The Claimants indicated that in 1941, their family was forced to live in the ghetto, and that they were subsequently deported to the labor camp in Transnistria, where they remained until being liberated in 1944. The Claimants indicated that their family remained in Romania until 1946, when they emigrated to Hungary, and subsequently to the United States in 1949. The Claimants indicated that Ingeborg Wagner died on 5 July 1957, that Osias Wagner died on 26 February 1966 in Philadelphia, Pennsylvania, the United States, and that Sally Wagner died on 4 June 1979 in the United States.

In support of their claims, the Claimants submitted copies of the following documents: (1) a certificate issued on 8 September 1948 by the Bavarian Agency for Victims of the Nuremberg laws, indicating that Osias Wagner, Sally Wagner, Marcel Wagner, Max Wagner, and Ingeborg Wagner were victims of racial persecution; (2) a document from the Immigration Service of the American Joint Distribution Committee in Munich issued on 22 April 1949, indicating that Osias Wagner, Sally Wagner, Max Wagner and Ingeborg Wagner left for the United States on 26 April 1949; (3) the death certificate of Osias Wagner, indicating that he was born on 4 March 1887 in Germany, that he was married to Sally Wagner, and that he died on 26 February 1966; (4) the death certificate of Sally Wagner, indicating that she was married to Osias Wagner and that she died on 3 May 1979; and (5) the death certificate of Marcel Wagner, indicating that his parents were Osias and Sally Wagner, and that he died on 8 November 2000.

Claimant Max Wagner indicated that he was born on 16 February 1916 in Berlin.

Information Available in the Bank's Records

The Bank's records consist of a customer card, the general terms and conditions applying to the account, an instruction form regarding correspondence, a letter from the Account Owner, and a deposit receipt. According to these records, the Account Owner was *Signor* (Mr.) Osias Wagner, who resided at Reg. Ferdinand 35 in Cernauti, Romania. The Bank's records indicate that on 8 May 1939, the Account Owner opened a demand deposit account, numbered 2040 and denominated in United States Dollars ("US \$"), with a deposit of US \$100.00. The account was held under the Bank's name but on account of the Account Owner at The National City Bank of New York in New York, New York, the United States. These records indicate that the Account Owner instructed the Bank to hold all correspondence, and include signature samples for the Account Owner.

According to the Bank's records, the Account Owner ordered the Bank on 25 May 1939 to transfer the amount of US \$100.00 to account numbered 210 at the Zurich branch of the Bank. The Bank's records do not show when the account at issue was closed. 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 find this 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.

This account was not part of the Account History Database at the CRT, but was identified as a result of matching and research carried out at the Bank and using, as noted above, the TAD at the Bank. The TAD at the Bank is one of the several databases that comprise a total of approximately 4.1 million accounts. These are part of the approximately 6.9 million accounts that were identified by the ICEP auditors as open or opened in the 1933-1945 period in Swiss banks, less the estimated 2.8 million accounts for which no records remain. These 4.1 million accounts, in databases located at the 59 ICEP audited Swiss banks,⁴ are composed of 1.9 million savings accounts with a 1930-1940s value of 250 Swiss francs or less and accounts with Swiss addresses, and 2.2 million accounts that ICEP concluded should not be included within the Account History Database, that is within the 36,000 accounts that ICEP determined were “probably or possibly” owned by victims of Nazi persecution. The account awarded is part of a group of accounts identified in the TAD.

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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants’ relative’s name, city, and country of residence match the unpublished name, city, and country of residence of the Account Owner. In support of their claim, the Claimants submitted documents, including copies of a certificate issued by the Bavarian Agency for Victims of the Nuremberg laws, a document from the Immigration Service of the American Joint Distribution Committee, and the death certificates of Osias Wagner, Sally Wagner, and Marcel Wagner, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank’s records as the name of the Account Owner. The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, that he lived in Nazi Germany until 1936, when he fled to Romania, that he lived in Nazi-allied Romania during the

⁴ These 59 audited banks represent 254 banks that existed in the 1933-1945 period.

Second World War, that he was forced to live in the ghetto and was deported to a labor camp. The Claimants also submitted a certificate from the Bavarian Agency for Victims of the Nuremberg laws, which indicates that the Account Owner was a victim of racial persecution.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the father of Claimant Max Wagner and the father-in-law of Claimant Miriam Wagner. These documents include the death certificate of Marcel Wagner, indicating that his parents were Osias and Sally Wagner. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner lived in Nazi Germany until 1936; that he subsequently lived in Nazi-allied Romania during the Second World War; that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; 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 Max Wagner. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant Max Wagner has plausibly demonstrated that the Account Owner was his father, 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 account.

Further, the CRT notes that Claimant Max Wagner, as the Account Owner's child, has a better entitlement to the account than Claimant Miriam Wagner, the Account Owner's daughter-in-law.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The Bank's records indicate that the value of the account as of 8 May 1939 was \$100.00, which at the time was equivalent to

444.00 Swiss Francs (“SF”).⁵ 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(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, Claimant Max Wagner is the Account Owner’s son. Accordingly, Claimant Max Wagner is entitled to the entire award amount.

As noted above, Claimant Miriam Wagner, as the Account Owner’s daughter-in-law, is less entitled to the Account Owner’s account than her husband, Claimant Max Wagner, and is therefore not entitled to share in the award.

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) at banks other than the Bank.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
25 September 2006

⁵ When making currency conversions, the CRT uses official exchange rates.