

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]

in re Account of Nathan Wagschal

Claim Numbers: 753396/LV;¹ 787628/LV²

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (the “Claimant”) to the unpublished accounts of Nathan Wagschal (the “Account Owner”) at the [REDACTED] (the “Bank”).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 an Initial Questionnaire (“IQ”) and an ATAG Ernst & Young claim form identifying the Account Owner as her father, Nathan Wagschal, who was married to [REDACTED]. The Claimant stated that her father, who was Jewish, resided in Vienna, Austria, at Nussdorferstrasse 4. In a telephone conversation with the CRT on 5 January 2005, the Claimant’s niece, [REDACTED 2], whom the Claimant represents, stated that Nathan Wagschal was a shoe wholesaler and that he owned a shoe warehouse in Vienna. The Claimant’s niece also stated that at some point after the incorporation of Austria into the Reich in March 1938 (the

¹ [REDACTED 1] did not submit a Claim Form to the CRT. However, in 1998 she submitted an ATAG Ernst & Young claim form to the Court in the United States. Although this claim was not a Claim Form, the Court, in an Order signed on 30 December 2004, ordered that those ATAG Ernst & Young claim forms which can be processed as claim forms be treated as timely claims. Order Concerning Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (December 30, 2004). The ATAG Ernst & Young claim form was forwarded to the CRT and has been assigned claim number 753396.

² [REDACTED 1] did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered ENG 0681 058, 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 787628.

“*Anschluss*”), the Nazis came to the warehouse and confiscated the entire stock of shoes, which corresponds with the Claimant’s earlier statement that in March 1939, SS troops looted the inventory of her family’s shoe manufacturing business. According to the Claimant the value of the inventory was equal to 200,000.00 United States dollars (“US\$”). The Claimant explained that after the *Anschluss*, her father attempted to transfer funds abroad in order to provide a basis for obtaining a visa to the United States. The Claimant explained that her father transferred money to the Bank through a Czech contact of her brother’s, who was already in Switzerland. This contact, a woman, traveled regularly from Vienna to Zurich using her Czech passport, and carried jewelry on each trip. According to the Claimant, US \$25,000.00 was transferred to the Bank in this way. The Claimant further stated that these funds were later transferred back to Austria, explaining that the bank manager at the *Wiener Bankverein* informed her father that the *Wiener Bankverein* had received US \$25,000.00 from Zurich. According to the Claimant, the bank manager told her father that he would have to report the receipt of these funds, but that he would suppress its provenance, as he did not want to have her father’s blood on his conscience. The Claimant stated that her father was arrested at some point following this incident and that she never heard from him again. The Claimant stated that she resided in Vienna until 1939, when she fled to the United Kingdom, where she remained until the end of the Second World War.

In support of her claim, the Claimant submitted two signature sample forms from the Bank, bearing the signature of her father and of her brother, [REDACTED]; a letter dated 23 February 1937 written by Nathan Wagschal in Vienna, to [REDACTED] at the Bank in Zurich, requesting that his account be changed to a numbered account bearing the number 1111 and declaring that he would guarantee all purchases made by his nephew on account number 277 with securities that he held; a letter on her father’s company letterhead dated 22 August 1938 from Nathan Wagschal, addressed to [REDACTED] at the Bank, thanking him for receiving his son, [REDACTED], which indicates that Nathan Wagschal owned a shoe import and export company in Vienna; a letter from the Bank dated 25 June 1997 to the Claimant, referring to an inquiry made by the Claimant about an account belonging to Nathan Wagschal, in which the Bank informed the Claimant that Nathan Wagschal probably held an account at the Bank a long time ago, and that the Bank assumed that this account was closed before the end of the Second World War; and a letter dated 9 September 1997 addressed to *Ernst & Young L.L.P.*, in which the Claimant referred to the letter her father wrote to [REDACTED], thanking him for receiving his son warmly and assuring him that his son had his full confidence. In the same letter the Claimant explained that her brother had run out of money while in Zurich and had approached the bank manager to withdraw money from their father’s account. The Claimant further explained that the bank manager had advised the Claimant’s brother to write to his father and that the bank would allow the Claimant’s brother access to his father’s account after receiving written permission from his father.

The Claimant indicated that she was born on 24 February 1911 in Kozowa, Poland. The Claimant represents her niece, [REDACTED 2], who was born on 7 December 1950 in Montreal, Canada, and who is the daughter of the Claimant’s deceased brother, [REDACTED].

Information Available in the Bank's Records

The Bank's records consist of an excerpt from the Bank's list of customers; a notice informing [REDACTED] in Antwerp, Belgium, of a transfer of 10.00 Pound Sterling ("£"); and a letter written by the Account Owner on the Account Owner's business letterhead to the Bank's representative, [REDACTED], dated 22 August 1938, thanking [REDACTED] for his friendly reception of the Account Owner's son, [REDACTED], and stating that his son had his full confidence regarding the Account Owner's affairs. According to these records, the Account Owner was Nathan Wagschal, who resided in Vienna, Austria, and who owned a shoe import and export company located at Nussdorferstrasse 4, Vienna IX. The Bank's records indicate that the Account Owner held a demand deposit account numbered 1111.

The Bank's document regarding a transfer of £10.00 on an unknown date to [REDACTED] of 57 [REDACTED], Antwerp also contains the name [REDACTED] of Zurich. However, there is no indication in this document that the money transferred related to the account belonging to the Account Owner, nor does this document show any connection between the Account Owner and [REDACTED] or [REDACTED].

The Bank's records do not show when the account at issue was closed nor do these records indicate the value of this account.

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. There is no evidence in the Bank's records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT notes that the Claimant submitted documents supporting her claim, including two signature sample forms from the Bank, bearing the signature of her father and of her brother, [REDACTED] and a letter dated 23 February 1937 written by Nathan Wagschal in Vienna, to [REDACTED] at the Bank in Zurich, requesting that his account be changed to a numbered account bearing the number 1111 and declaring that he would guarantee all purchases made by his nephew on account number 277 with securities in his custody account. The CRT notes that these documents were not included in the documents forwarded to the CRT pursuant to the ICEP Investigation. These records indicate that the Account Owner held at least two accounts, one numbered 1111, which is identified in the records of the ICEP Investigation, and one numbered 277, which is not. Moreover, because the Account Owner indicated that he would guarantee purchases made by his nephew with securities owned by him, these records demonstrate that at least one of these accounts was a custody account. Accordingly, the CRT has determined that, in addition to the demand deposit account numbered 1111, the Account Owner also held a custody account. Because this account was not reported by the ICEP auditors, the CRT has no information regarding its disposition. According to the documents submitted by the Claimant, there is no indication that the Account Owner or his heirs closed the account and received the proceeds.

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 Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name and city and country of residence match the unpublished name and city and country of residence of the Account Owner. The Claimant identified the Account Owner's son's name as [REDACTED], which further matches unpublished information about the Account Owner contained in the Bank's records. The Claimant also identified her father's profession as a shoe wholesaler and his street address in Vienna, which also match unpublished information about the Account Owner contained in the Bank's records.

In support of her claim, the Claimant submitted documents, including a letter written by Nathan Wagschal in Vienna to the Bank, dated 23 February 1937, and letter dated 22 August 1938 written by Nathan Wagschal on his company letterhead to a Mr. [REDACTED] at the Bank, which indicates that Nathan Wagschal owned a shoe import and export company in Vienna, a copy of which is also contained in the Bank's records, 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 records as the name and city of residence of the Account Owner.

The CRT notes that there are no other claims to these accounts.

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, that the Nazis confiscated assets from his company after the *Anschluss*, and that he was arrested and was never heard from again.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information, demonstrating that the Account Owner was the Claimant's father. The CRT notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records and that the Claimant filed an ATAG Ernst & Young claim form in 1998 and an IQ with the Court in 1999, identifying the relationship between the Account Owner and the Claimant. The CRT further notes that the Claimant submitted two signature sample forms from the Bank, bearing the signatures of her father and of her brother, [REDACTED]; and letters written by Nathan Wagschal to the Bank. The CRT notes that it is plausible that these documents are documents which most likely only a family member would

possess. 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 this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her IQ and ATAG Ernst & Young claim form. There is no information to indicate that the Account Owner has other surviving heirs other than the party which the Claimant is representing.

The Issue of Who Received the Proceeds

In this case, the CRT has determined that the Account Owner held a demand deposit account and a custody account.

Given that the Claimant's submissions indicate that the Bank's records are incomplete; that the Account Owner was arrested and that his family never heard from him again; that there is no record of the payment of the Account Owner's accounts to him nor any record of a date of closure of the accounts; that the Account Owner and his heirs would not have been able, and in this case were not 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 (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 accounts' 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. 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 a demand deposit account and a custody 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 current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs ("SF") and the average value of a custody account was SF 13,000.00. The total for the two accounts is therefore SF 15,140.00. 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)(c) of the Rules, if the Account Owner's spouse had 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. The Claimant represents her niece, [REDACTED 2]. Accordingly, the Claimant and her niece are each 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 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
12 May 2005