

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED], represented by [REDACTED]

in re Accounts of Erich Wertheimer

Claim Number: 224515/LV

Award Amount: 199,625.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published accounts of Erich Wertheimer (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 a Claim Form identifying the Account Owner as his paternal uncle, Erich Wertheimer, who was the brother of the Claimant’s father, [REDACTED]. The Claimant indicated that his father also had another brother, [REDACTED]. The Claimant stated that his relatives resided in Magdeburg, Germany. According to the information provided by the Claimant, the [REDACTED] brothers, who were Jewish, owned a department store called *Warenhäuser Wertheimer*, and several other businesses including a coffee factory, a mill, a real estate company, a cigarette factory, a brewery, a metal fitting factory and a clothing factory. The Claimant stated that his mother was [REDACTED], who was born on 31 March 1913 and resided in Magdeburg. The Claimant indicated that after his birth on 24 October 1936 in Magdeburg, his father could not be located. In support of his claim, the Claimant submitted various documents, including a certificate issued by the Committee for Victims of Fascism of the city of Magdeburg, acknowledging that [REDACTED] was a victim of Fascist persecution; a decision issued by an administrative court in Magdeburg on 18 January 1993, declaring that [REDACTED], who was born on 8 June 1907, and who resided in Magdeburg, had passed away as of 31 December 1945; and a questionnaire issued by the Office of Labor and Social Welfare, Department of Victims of Fascism of the province of Saxony (Sachsen), Magdeburg Office, indicating that [REDACTED] had a one year relationship with [REDACTED], who was Jewish, and that the couple had a son named [REDACTED], but that [REDACTED] had to flee after the birth of his son to avoid being arrested. The Claimant also submitted his birth certificate, which does not state his father’s name but states that his mother was [REDACTED].

The Claimant stated in a telephone conversation with the CRT on 10 May 2004 that Erich Wertheimer was the older brother of his father, [REDACTED]. The Claimant stated that he does not know the fate of Erich Wertheimer nor what happened to the [REDACTED] family during the Second World War. The Claimant also stated that he did not have any further information about Erich Wertheimer.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by Erich Wertheimer, [REDACTED] or [REDACTED].

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Erich Wertheimer, who resided in Magdeburg, Germany, and Amsterdam, the Netherlands. The Bank's record indicates that the Account Owner held one demand deposit account, one savings account and one custody account, numbered 37875. The Bank's record indicates that the demand deposit account was closed on 20 May 1942. The Bank's record also indicates that the custody account was opened on 15 February 1930 and closed on 12 May 1942. Finally, the Bank's record indicates that the savings account was closed on 7 February 1938. The Bank's record does not indicate the value of these accounts. There is no evidence in the Bank's record that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's uncle's name and country of residence match the published name and country of residence of the Account Owner. The Claimant identified his uncle's city of residence, which matches unpublished information about the Account Owner contained in the Bank's record. In support of his claim, the Claimant submitted a decision issued by an administrative court in Magdeburg on 18 January 1993, declaring [REDACTED] as deceased as of 31 December 1945; and a questionnaire issued by the Office of Labor and Social Welfare, Department of Victims of Fascism of the province of Saxony (Sachsen), Magdeburg Office, describing the circumstances of the Claimant's parents' relationship and stating that the Claimant's father fled to avoid being arrested. These documents provide independent verification that the Account Owner's family resided in Magdeburg, which matches unpublished information about the Account Owner as contained in the Bank's record.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Erich Wertheimer, and indicates that he resided in Magdeburg, which matches the information about the Account Owner provided by the Claimant. The CRT notes that the database indicated that Erich Wertheimer also resided in the Netherlands and that he was

deported to Auschwitz. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by Erich Wertheimer, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimant has based his present claim not simply on the fact that an individual identified on the ICEP 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 before the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

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, and that he resided in Nazi Germany. As noted above, a person named Erich Wertheimer was included in the CRT’s database of victims, which also indicates that he was deported to Auschwitz.

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 Claimant’s uncle was Erich Wertheimer. The CRT notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank’s records; that the Claimant previously filed an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, identifying the relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List; and that the Claimant identified information which matches information contained in the Yad Vashem records. The CRT further notes that the Claimant submitted a decision issued by an administrative court in Magdeburg on 18 January 1993, declaring that [REDACTED], who resided in Magdeburg, had passed away as of 31 December 1945, and a questionnaire issued by the Office of Labor and Social Welfare, Department of Victims of Fascism of the province of Saxony (Sachsen), Magdeburg Office stating that [REDACTED] is the Claimant’s father and acknowledging that [REDACTED] had to flee after the birth of his son to avoid arrest, providing independent verification that the Claimant’s relatives bore the family name Wertheimer and that they resided in Magdeburg. 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. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

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; that the accounts were closed in February 1938 and May 1942; that the Account Owner was deported to Auschwitz; that information concerning when the Account Owner may have fled to the Netherlands is unavailable; that there is no record of the payment of the Account Owner's accounts to him; that the Account Owner and his 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 (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 proceeds of the accounts 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. 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 uncle. 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 demand deposit account, one custody account and one savings 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 investigation carried out pursuant to the instructions of the ICEP (the "ICEP Investigation"), in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs, the average value of a custody account was 13,000.00 Swiss Francs and the average value of a savings account was 830.00 Swiss Francs. Thus, the total 1945 average value of the accounts at issue is 15,970.00 Swiss Francs. 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 199,625.00 Swiss Francs.

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
29 June 2004