

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], [REDACTED 3], and [REDACTED 4]

in re Accounts of Martin Wilmersdörfer

Claim Number: 400549/BW/AC

Award Amount: 76,125.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], formerly [REDACTED 1], (the “Claimant”) to the published accounts of Martin Wilmersdörfer (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Custodian”) and at the Zurich branch of the [REDACTED] (the “Bank ”).¹

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.

¹ The CRT notes that it has jurisdiction over accounts at the [REDACTED] (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.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his father, Martin Wilmers, formerly Wilmersdörfer, who was born on 23 January 1901 in Neumarkt, Germany, and was married to [REDACTED] on 23 March 1933 in Frankfurt, Germany. The Claimant indicated that his father's parents were [REDACTED] and [REDACTED]. The Claimant stated that his father, who was Jewish, was a businessman who, in 1938 and 1939, made numerous trips to Switzerland, where he conducted business with various Swiss banks. The Claimant indicated that his family lived at Kaiserstrasse 56 in Frankfurt until 1939, after which they fled Nazi Germany via London, the United Kingdom, and emigrated to the United States, where they settled New York City and later in Teaneck, New Jersey. The Claimant indicated that his father died on 23 March 1983, that his mother died on 25 April 1983, and that he was their only child.

The Claimant submitted copies of documents, including: (1) his father's German passport, issued in Frankfurt on 18 January 1938 to Martin Wilmersdörfer, who was born on 23 January 1901 in Neumarkt and resided in Frankfurt, and which indicates that Martin Wilmersdörfer, who was Jewish, traveled between Germany and various cities in Switzerland, including Basel and Zurich, on at least ten occasions between 18 January 1938 and 15 May 1939; that he left Germany for the United Kingdom on 30 May 1939; and that he left the United Kingdom for the United States on 18 September 1940; (2) his father's German driver's license, indicating that Martin Wilmersdörfer was born on 23 January 1901 in Neumarkt and that he resided in Frankfurt; (3) an excerpt from a German administrative decision, issued in 1963, indicating that Martin Wilmers, formerly Wilmersdörfer, was born on 23 January 1901 in Neumarkt and had resided in Frankfurt; (4) his father's death certificate, which indicates that Martin Wilmers was born on 23 January 1901 in Germany, that he was the son of [REDACTED] [sic], and that he was married to [REDACTED]; (5) his father's will, which indicates that Martin Wilmers bequeathed his residual estate to his wife, [REDACTED], that he had a son named [REDACTED 1], and that he had three grandchildren, [REDACTED 2], [REDACTED 3], and [REDACTED 4]; (6) his mother's death certificate, indicating that [REDACTED] was born on 12 August 1909 in Germany, and that she had a son named [REDACTED 1]; (7) his mother's will, indicating that [REDACTED] bequeathed her residual estate to her husband, Martin Wilmers, or if he predeceased her, then half of her residual estate was to go to her son, [REDACTED 1], and the other half was to be divided equally among her grandchildren, [REDACTED 2], [REDACTED 3], and [REDACTED 4]; and (8) his own birth certificate, indicating that [REDACTED 1] was born on 6 January 1935 in Frankfurt to Martin Wilmersdoerfer and [REDACTED].

The Claimant indicated that he was born on 6 January 1935 in Frankfurt.

Information Available in the Bank's Records

The CRT notes that 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 report an account belonging to Martin Wilmersdörfer during their investigation. The documents evidencing accounts belonging to Martin Wilmersdörfer were obtained from archival sources in Germany, and are further described below.

Information Available from the German Archives

In the records of the German Archives, there are documents concerning the assets of Martin Wilmersdörfer. These records consist of a series of financial reports and other documents contained in a file from the customs office of the German Ministry of Finance regarding a criminal proceeding brought by the ministry against the Account Owner concerning the Account Owner's export business to Switzerland and his alleged infraction of the German currency regulations in 1938.

According to these records, the Account Owner was Martin Wilmersdörfer, who was Jewish and was born on 23 January 1901 in Neumarkt to [REDACTED] and [REDACTED]. These records indicate that he was married to [REDACTED], that they resided at Josef-Haydenstrasse 37 in Frankfurt, Germany with their four-year old son, and that he owned and managed *Firma Martin Wilmersdörfer*, located at Kaiserstrasse 56 in Frankfurt.

The records from the German Archives indicate that the Account Owner held a demand deposit account at the Custodian and an account, the type of which is not indicated, at the Bank.

These records do not indicate when the accounts at issue were closed, nor do these records indicate the value of these accounts. There is no evidence in the records from the German Archives 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 father's name matches the published name of the Account Owner. The Claimant identified the Account Owner's birthplace, parents, mother's maiden name, wife, wife's maiden name, and business address, which match unpublished information about the Account Owner contained in the records from the German Archives.

In support of his claim, the Claimant submitted documents, including an administrative decision, his father's passport, driver's license, will, death certificate, and the Claimant's own birth certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name, spouse, birthplace, date of birth, and city and country of residence as recorded in the German Archives as the name, birthplace, date of birth, spouse, and city and country of residence of the Account Owner. The Claimant's father's passport also contains a sample of his father's signature, which matches the signature samples contained in the German Archives records.

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 his family fled Nazi Germany via the United Kingdom and emigrated to the United States in 1939. The Claimant also submitted his father's German passport, which indicates that he was Jewish. The CRT notes that Nazi authorities brought criminal charges against the Account Owner for alleged infractions of German currency regulations.

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 Account Owner was the Claimant's father. These documents include the wills of his father and his mother, which indicate that Martin Wilmers had a son named [REDACTED 1], and the Claimant's birth certificate, which indicates Martin Wilmersdoerfer had a son named [REDACTED 1]. There is no information to indicate that the Account Owner has surviving heirs, other than the parties whom he is representing.

The Issue of Who Received the Proceeds

Given that the Account Owner resided in Nazi Germany until he fled in 1939, when he emigrated to the United States via London, the United Kingdom; that the Account Owners' accounts had been reported in Nazi documentation; that there is no record of the payment of the Account Owners' 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 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 (d), (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 the Claimant and his children, whom 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 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 accounts.

Amount of the Award

In this case, the Account Owner held a demand deposit account at the Custodian, and an account of unknown type at the Bank. 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 value of an account of unknown type was SF 3,950.00. Thus, the combined 1945 average value of the two accounts at issue is SF 6,090.00. 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 76,125.00.

Division of the Award

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner’s will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. In this case, the Claimant is representing his three children, who are the grandchildren of the Account Owner. The Claimant has submitted a copy of the Account Owner’s will, which indicates that his wife was to receive his entire residual estate. The CRT notes that the Account Owner predeceased his wife. Accordingly, his entire residual estate passed to her. According to the Account Owner’s wife’s will, one-half of her estate was bequeathed to her son, [REDACTED 1], and the remaining one-half was to be divided equally among her grandchildren, [REDACTED 2], [REDACTED 3], and [REDACTED 4], née [REDACTED].

Accordingly, Claimant [REDACTED 1] is entitled to one-half of the total award amount, and represented parties [REDACTED 2], [REDACTED 3], and [REDACTED 4], née [REDACTED], are each entitled to one-sixth 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
30 May 2007