

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]
and to Claimant [REDACTED 3]
also acting on behalf of [REDACTED 4]

in re Account of Louis Winkler

Claim Numbers: 220531/AY; 221901/AY; 220757/AY¹

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published account of Louis Winkler (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where the claimants have requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted a Claim Form identifying the Account Owner as her paternal grandfather, Louis Winkler, who was born on 11 December 1869 in Lutter, Germany to [REDACTED] and [REDACTED], and who was married to Rosa Schwarzhaupt on 9 October 1901 in Munich, Germany. Claimant [REDACTED 3] stated that Louis and Rosa Winkler had three children, who were all born in Eschwege, Germany: [REDACTED] (Claimant [REDACTED 3]’s father), who was born in 1910, Heinz, and [REDACTED]. Claimant [REDACTED 3] stated that her grandfather, who was Jewish, was a banker and fled Germany for Cuba in 1938, and subsequently went to New York, the United States, where he later died in 1956. According to Claimant [REDACTED 3], Louis Winkler’s wife died in New York, Heinz Winkler died in Great Neck, New York, [REDACTED] died in 2000 in New York, and [REDACTED], née [REDACTED], died in New York. According to the family tree submitted by Claimant [REDACTED 3], [REDACTED] had two children, [REDACTED 3], and

¹ Claimant [REDACTED 3] submitted an additional claim to the account of Rosa Winkler, which is registered under the Claim Number 220758. The CRT will treat the claim to this account in a separate decision.

[REDACTED 4], Heinz Winkler had two children, [REDACTED], and [REDACTED]; and [REDACTED], née [REDACTED], had one child, [REDACTED].

In support of her claim, Claimant [REDACTED 3] submitted documents, including her grandparents' marriage certificate indicating that the couple resided in Munich, that Louis Winkler was a banker, and that her grandmother's maiden name was Schwarzhaupt. Claimant [REDACTED 3] also submitted her parents' marriage certificate indicating that her father was a Jewish banker and that he was the son of Rosa Winkler. Claimant [REDACTED 3] also submitted an official certificate issued by the Braunschweig municipality, Germany, based on the records of the Jewish community of Seesen, Germany, indicating the date and place of birth of Louis Winkler and the names of his parents, and Rosa Winkler's German passport, indicating that she resided in Munich, stamped with the letter "J" on 31 May 1935 and containing her signature. Claimant [REDACTED 3] also submitted her father's birth certificate indicating that he was born to Louis Winkler and Rosa Winkler, née Schwarzhaupt, and her own birth certificate indicating that she was the daughter of [REDACTED]. Claimant [REDACTED 3] further submitted Louis Winkler's certificate of inheritance, issued on 22 October 1956 in Munich, indicating that according to a will dated 3 September 1943 and the laws of New York, the heirs of Louis Winkler, in equal shares (1/3), are his children [REDACTED], née [REDACTED], Henry Winkler and Dr. [REDACTED].

Claimant [REDACTED 3] indicated that she was born in 1955 in New York, and that she is representing her sister, [REDACTED 4], née [REDACTED], who was born in 1944 in Jerusalem, Israel.

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted two Claim Forms identifying the Account Owner as his paternal grandfather, Louis Winkler, who was born in 1869. Claimant [REDACTED 1] stated that his grandfather was married to Rosa Schwartzhaupt (Schwarzhaupt), and that his father, Heinz Winkler, was their son. According to the information provided by Claimant [REDACTED 1], Louis Winkler was a managing director and part-owner of a bank named *Gebrueder Schwartzhaupt* that was located in Munich, Germany. Claimant [REDACTED 1] stated that his grandfather, who was Jewish, abandoned the business and fled with his family from Germany to escape Nazi persecution. Claimant [REDACTED 1] further stated that the family went to Merano, Italy, and later to Cuba and to New York, the United States, where Louis Winkler lived until his death in 1956. Claimant [REDACTED 1] asserted that Rosa Winkler died in 1953 in New York, and that Heinz Winkler died in 1993 in Great Neck, New York, United States. Claimant [REDACTED 1] indicated that his father changed his name from Heinz to Henry upon his arrival to the United States.

In support of his claim, Claimant [REDACTED 1] submitted documents, including his father's birth certificate indicating that he was born to Louis and Rosa Winkler, who were Jewish, his parent's marriage certificate and his father's death certificate, both indicating that Henry Winkler was the son of Louis and Rosa Winkler, née Schwarzhaupt, from Germany. Claimant [REDACTED 1] also submitted a probate order with respect to his father's estate, according to which, Henry Winkler's sole heir is [REDACTED 2]. Claimant [REDACTED 1] indicated that

he was born on 9 February 1949 and that he represents his mother, [REDACTED 2], née [REDACTED], who was born on 8 April 1910 in Antwerp, Belgium.

Information Available in the Bank's Records

The Bank's records consist of an account opening contract, a document according to which the assets held in the Account Owner's account were designated as collateral for the Account Owner's debts to the Bank (*Pfand-Bestellung*) dated 24 March 1931, a record relating to a loan granted to the Account Owner by the Bank, power of attorney forms, and printouts from the Bank's database. The Bank's records indicate that the Account Owner was Louis Winkler, a part-owner of a bank named *Geb Brüder Schwarzhaupt Bankgeschäft*, who resided at Widermayerstrasse 49 in Munich, Germany and that the Power of Attorney Holders were *Frau* (Mrs.) Rosa Winkler, née Schwarzhaupt and Heinz Winkler, the Account Owner's son, who resided at the same address. The Bank's records indicate that one of the power of attorney forms was signed by Rosa Winkler, née Schwarzhaupt, on 13 October 1930 in Zurich, Switzerland, and that Heinz Winkler signed the other power of attorney form in Munich on 10 February 1931.

The Bank's records indicate that the Account Owner held a custody account number 30619, which was opened on 13 March 1930 and into which the Account Owner deposited on that date shares of *Compania Hispano-Americana de Electricidad, Madrid (A-G)*, eight of which had a nominal value of 500.00 Pesetas (Pta) each, and ten shares with a nominal value of Pta 100.00 each. In addition, the Bank's records indicate that the Account Owner was granted two loans: one of 6,000.00 Swiss Francs (SF) and the other of an unspecified amount. While these records show that the first loan was paid back, they contain no indication as to the status of the second loan.

The Bank's records do not show when the custody account was closed, or to whom it was paid. 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, the Power of Attorney Holders or their heirs closed the account and received the proceeds themselves.

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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants' grandfather's name, city and country of residence match the published name, city and country of residence of the Account Owner. Claimant [REDACTED 1] indicated that the Account Owner was the part-owner of a bank named *Gebrueder Schwartzhaupt*, which matches unpublished information about the Account Owner contained in the Bank's records. Additionally, the Claimants indicated that Rosa Winkler's maiden name was Schwarzhaupt, which matches unpublished information about Power of Attorney Holder Rosa Winkler contained in the Bank's records. Furthermore, the Claimants indicated that Heinz Winkler was the Account Owner's son, which also matches unpublished information about the Account Owner in the Bank's records. In support of their claims, the Claimants submitted their grandparents' marriage certificate, which indicates that they resided in Munich, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city of residence as the name and city of residence recorded in the Bank's records as the name and city of the Account Owner. The Claimants also submitted a sample of their grandmother's signature, which matches the signature sample of Power of Attorney Holder Rosa Winkler contained in the Bank's records. The CRT notes that the name Louis Winkler appears only once on the February 2001 published list of accounts determined by ICEP to be probably those of victims of Nazi persecution. Finally, 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 fled Germany to escape Nazi persecution, and that he was forced to abandon his business in Germany.

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 Claimants' grandfather. These documents include Louis and Rosa Winkler's marriage certificate, [REDACTED]'s marriage certificates, Heinz Winkler's birth certificate, the probate order with respect to Henry Winkler's estate, and Claimant [REDACTED 3]'s birth certificate.

The Issue of Who Received the Proceeds

Given that the Account Owner was forced to abandon his business and flee Germany; that there is no record of the payment of the Account Owner's account to him or to the Power of Attorney Holders nor any record of a date of closure of the account; that the Account Owner, the Power of Attorney Holders and their heirs would not have been able to obtain information about the account from the Bank after the Second World War 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 the application of Presumptions (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney

Holders 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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that they are the Account Owner's grandchildren, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holders, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody account. According to the Bank's records, the account held at least 18 shares of *Compania Hispano-Americana de Electricidad, Madrid (A-G)*, eight of which had a nominal value of Pta 500.00 each, and ten shares with a nominal value of Pta 100.00 each. The CRT was not able to ascertain the market value of these shares at the time. The CRT notes that the Bank's records do not indicate whether these shares constituted the total content of the account. Accordingly, the CRT concludes that the value of the account is unknown. Pursuant to Article 29 of the Rules, when the value of an account is unknown, 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 custody account was SF 13,000.00. 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 162,500.00.

Division of the Award

According to Article 23(2)(a) and Article 23(2)(b) 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. Moreover, according to Article 23(2)(b) of the Rules, if none of the named beneficiaries has filed a claim, the CRT shall make an Award to any claimant who has submitted an unbroken chain of wills or other inheritance documents pertaining to the Account Owner. According to Article 23(2)(c) of the Rules, if a claimant bases a claim of entitlement on a chain of inheritance but has not submitted an unbroken chain of wills or other inheritance documents, the CRT may use the general principles of distribution established in Article 23(1) to make allowance for any missing links in the chain, consistent with principles of fairness and equity.

In this case, Claimant [REDACTED 1] submitted a probate order with respect to the Account Owner's estate, indicating the Account Owner's heirs as his three children, including Claimant [REDACTED 1]'s father, Henry, and Henry Winkler's will, naming [REDACTED 2], the Claimant's mother, as his sole heir.

The CRT invokes the general principles of distribution established in Article 23(1) to make allowance for the missing link in the chain of wills between the Account Owner and Claimant [REDACTED 3] and her sister, whom she represents. 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. Accordingly, Claimant [REDACTED 3] and her sister, [REDACTED 4], née [REDACTED], whom she represents, as descendants of the Account Owner's son [REDACTED], are entitled to share equally one-half of the total award amount, or one-fourth of the total award amount each. Claimant [REDACTED 1]'s mother, [REDACTED 2], whom Claimant [REDACTED 1] represents, is entitled to the other half of the total award amount, as specified in Henry Winkler's will. Claimant [REDACTED 1] is not entitled to share in the award amount.

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).

Certification of the Award

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

Claims Resolution Tribunal