

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Ladislav Rauchmann
also acting on behalf of Edita Chudackova and Klara Rauchmann

in re Accounts of Friedrich Wirth

Claim Number: 208143/AC¹

Award Amount: 778,443.63 Swiss Francs

This Certified Award is based upon the claim of Ladislav Rauchmann (the “Claimant”) to the published and unpublished accounts of Friedrich Wirth (the “Account Owner”), over which Eugen Schaar (“Power of Attorney Holder Schaar”) and Helene Wirth (“Power of Attorney Holder Wirth”) held power of attorney (together the “Power of Attorney Holders”), at the Zurich branch of the [REDACTED] (the “Bank”).²

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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his maternal great-uncle, Friedrich Wirth, who was born on 21 July 1885 in Balaton Szentgyörgy, Hungary (now Balatonszentgyörgy, Hungary), and was married to Elena (Helene) Wirth, née Schaar (also Schaarova). According to the Claimant, Friedrich Wirth was the brother of the Claimant’s maternal grandfather, Ernő Wirth. The Claimant indicated that his great-uncle’s parents were Max (also Miksa or Maximilian) Wirth and Tinka (also Krisztina or Katarina) Wirth, née Oszmann (also Osman or Osmanova), and that his great-uncle was named Frigyes Virth at birth, but that his name was legally changed to Friedrich Wirth on 4 October 1885. The Claimant indicated that his great-uncle, who was Jewish, was a financially successful bank director, and that from 1938 until 1943, he resided at Fochova 33 and Grosslingova 33 in Bratislava,

¹ The Claimant submitted additional claims to the accounts of Lily (Lilly) Krisztina Wirth (Virth) and Anna Wirth (Virth), which are registered under the Claim Numbers 206497 and 206498. The CRT will treat the claims to these accounts separately.

² The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Friedrich Wirth is indicated as having one account. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of three accounts.

Czechoslovakia (now Bratislava, Slovakia), and that he moved in 1943 to Kumlikova 1 in Bratislava. The Claimant indicated that his great-uncle was persecuted by the Nazis while living in Bratislava, and that he died on 18 May 1943, without having had any children.

The Claimant submitted documents in support of his claim. These documents include: 1) copies of his own and his sisters' identity records, indicating that their mother's maiden name was Wirth; 2) copies of his mother's birth, marriage, and death certificates, which identify the family name Wirth, their Jewish faith, and the family's Czech origin; 3) a copy of his grandparents' marriage certificate, which identifies the family name Wirth, their Jewish faith, and the family's Czech origin; 4) copies of his father's and grandfather's death certificates, which identify the family name Wirth, their Jewish faith, and the family's Czech origin, and identify his grandfather's parents as Miksa Wirth and Krisztina Wirth, née Osman; 5) a copy of his mother's registration card with the Czech Repatriation Office, which identifies the family name Wirth, their Jewish faith, and the family's Czech origin; 6) a summary of a registry from the Budapest National Archives regarding Friedrich Wirth's birth, and a copy of his death certificate, identifying his domicile at Kumlikova 1 in Bratislava, his occupation as bank employee, his spouse's name, Elena Wirth, née Schaar, his Jewish religion, his date of death, and his parents' names, Max Wirth and Katarina Wirth, née Osman; and 7) copies of Bank correspondence that the Claimant received regarding his claim to the CRT.

The Claimant indicated that he was born on 14 April 1953 in Novosad, Czechoslovakia (now Novosad, Slovakia). The Claimant is representing his sister Edita Chudackova, née Rauchmann, who was born on 24 May 1948 in Novosad, and his sister Klara Rauchmann, who was born on 12 October 1949, also in Novosad.

The Claimant previously submitted two ATAG Ernst & Young claim forms in 1997, and an Initial Questionnaire with the Court in 1999, asserting his entitlement to Swiss bank accounts owned by Samuel Rauchmann, Livia (Lily) Rauchmann, Iren Regina Rauchmann, Ernö Wirth, and Friedrich Wirth.³ The Claimant also previously filed a claim with the CRT in 1997, asserting his entitlement to a Swiss bank account owned by Friedrich Wirth.

Procedure Before the Claims Resolution Tribunal for Dormant Accounts in Switzerland

The Claimant, also acting on behalf of Edita Chudackova and Klara Rauchmann, submitted an ATAG Ernst & Young claim form in 1997, asserting his entitlement to a Swiss bank account owned by the Account Owner, Friedrich Wirth, whose name was included in the list of dormant accounts published by the Swiss Bankers' Association in July 1997. The Panel of Arbitrators at the Claims Resolution Tribunal for Dormant Accounts in Switzerland (the "Panel of Arbitrators") rendered a partial award and a final award in an arbitration concluded on 18

³ The CRT did not locate an account belonging to the Claimant's relatives, Samuel Rauchmann or Ernö Wirth, in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons ("ICEP" or "ICEP Investigation"), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the "Rules"). The Claimant should be aware that the CRT will carry out further research on his claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources. The CRT will treat the claims to the accounts of Livia (Lily) Rauchmann and Iren Regina Rauchmann separately.

December 2000 (the “Arbitration”).⁴ The Panel of Arbitrators determined that the Claimant, Edita Chudackova, and Klara Rauchmann were each entitled to one-third of the accounts held by the Account Owner.

The Bank’s records submitted by the Bank to the Panel of Arbitrators consist of an account opening contract, customer cards, internal memoranda and notes, a power of attorney form, correspondence between the Account Owner and the Bank, bank statements, and receipts. According to these records, the Account Owner was Friedrich Wirth, a retired bank director, who resided at 33 Fochova in Bratislava, Czechoslovakia, and the Power of Attorney Holders were Eugen Schaar and *Frau* (Mrs.) Helene Wirth, née Schaar.

The Bank’s records indicate that the Account Owner held one custody account, numbered 66386, which was opened on 22 August 1938, one demand deposit account denominated in Pound Sterling (“£”), and one demand deposit account in United States Dollars (“US \$”). The Bank’s records indicate further that the demand deposit account in Pound Sterling was converted into a demand deposit account in Swiss Francs (“SF”) on an unknown date between 1945 and 1953. According to the Bank’s records, as of 31 December 1991, the balance of the demand deposit account originally held in Pound Sterling and converted to Swiss Francs was SF 18,160.00, the balance of the demand deposit account in United States Dollars was US \$345.50, which at the time was equivalent to SF 467.29, and the value of the securities held in the custody account was SF 150,000.00.

The Panel of Arbitrators determined that as of 1945, the adjusted value of the custody account was SF 43,955.57, the adjusted value of the demand deposit account originally held in Pound Sterling and converted to Swiss Francs was SF 5,239.47, and the adjusted value of the demand deposit account held in United States Dollars was SF 134.82, for a total 1945 adjusted value of SF 49,329.86. Pursuant to the partial award rendered by the Panel of Arbitrators on 26 July 2000, the Bank transferred SF 208,789.40 to the Claimant and the relatives represented by him. In the final award, the Panel of Arbitrators directed the Bank to pay an additional amount of SF 284,509.19 to the Claimant and the relatives represented by him as compensation pursuant to the Rules on Interest, Charges, and Fees established by the Board of Trustees of the Independent Committee of Eminent Persons (the “Rules on Interest and Fees”). Thus, the Claimant, Edita Chudackova, and Klara Rauchmann received a total amount of SF 493,298.59.

Information Available in the Bank’s Records

The additional Bank’s records submitted to the CRT by 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”) consist of printouts from the Bank’s database, a statement prepared for the 1945 freeze of assets held in Switzerland by citizens of Germany and territories incorporated into the Third Reich, lists of dormant accounts prepared in an internal survey of dormant assets in 1959 to identify account owners who had no contact with the Bank between 1 January 1930 and 31

⁴ Claims Resolution Tribunal for Dormant Accounts in Switzerland, docket No. 5608/0798/WS/DM.

August 1939 (the “1959 Survey”), documents relating to the 1962 survey of assets held in Switzerland by foreigners or stateless persons, who had been victims of racial, religious or political persecution (the “1962 Survey”), and correspondence between the Bank and the Claims Resolution Tribunal for Dormant Accounts in Switzerland.

According to these records, as of 17 February 1945, the balance of the demand deposit account in Pound Sterling was £ 2,130.14, and the balance of the demand deposit account in United States Dollars was US \$10,247.70. The Bank’s records do not indicate the value of the securities deposited in the custody account in 1945. According to the Bank’s records, as of 30 June 1955, the balance of the demand deposit account in Swiss Francs was SF 7,907.00, and the balance of the demand deposit account in United States Dollars was US \$10,023.10, the equivalent of SF 42,999.10.

The Bank’s records further indicate that the Account Owner’s name was included in the list of dormant accounts prepared by the Bank in connection with the 1959 Survey. The Bank’s records indicate that the last contact with the Account Owner was in 1939, and that on 7 September 1959, the balance of the demand deposit account in Swiss Francs was SF 10,285.00, the balance of the demand deposit account in United States Dollars was US \$9,973.60, and the value of the securities deposited in the custody account was SF 30,000.00.

The Bank’s records indicate that the Bank considered the Account Owner’s accounts for registration in the 1962 Survey, but that the accounts were not registered. These records indicate that as of 1 September 1963, the balance of the demand deposit account in Swiss Francs was SF 4,166.00, and the balance of the demand deposit account in United States Dollars was US \$9,947.50, the equivalent of SF 42,933.40. In addition, the Bank’s records indicate that as of 1 September 1963, the custody account contained 3 1/2% *Kassaoblig.* (3 1/2% bonds) issued by the Bank at a nominal value of SF 40,000.00.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant’s great-uncle’s name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant identified the Account Owner’s street address and professional title, which matches unpublished information about the Account Owner contained in the Bank’s records. Finally, the Claimant indicated that his great-uncle was married to Helene Wirth, née Schaar, and identified the name of Eugen Schaar, which matches the unpublished names of the Power of Attorney Holders contained in the Bank’s records. In support of his claim, the Claimant submitted documents, including 1) copies of his own and his sisters’ identity records, indicating that their mother’s maiden name was Wirth; 2) copies of his mother’s birth, marriage, and death certificates, a copy of his grandparents’ marriage certificate, copies of his father’s and grandfather’s death certificates, and a copy of his mother’s registration card with the Czech Repatriation Office, which identify the family name Wirth and the family’s Czech origin; and 3) a summary of a registry from the Budapest National Archives regarding Friedrich Wirth’s

birth, and a copy of his death certificate, identifying his domicile at Kumlikova 1 in Bratislava, his occupation as bank employee, and his spouse's name, Elena Wirth, née Schaar, thus providing independent verification that the person who is claimed to be the Account Owner resided in the same town recorded in the Bank's records as the residence of the Account Owner, and that the person who is claimed to be the Account Owner had the same name as the person recorded in the Bank's records as the Account Owner. The Claimant also submitted correspondence he received from the Bank.

The CRT notes that the Claimant's entitlement to the same accounts was already established and acknowledged by the Panel of Arbitrators while adjudicating his previous claim to accounts in the name of Friedrich Wirth, published in the July 1997 List.

The CRT also notes that the Claimant filed an Initial Questionnaire with the Court in 1999 and two ATAG Ernst & Young claim forms in 1997, asserting his entitlement to Swiss bank accounts owned by his relatives, including Friedrich Wirth, prior to the publication in February 2001 of the list of accounts determined by ICEP 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. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

Furthermore, the CRT notes that the name Friedrich Wirth appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution.

Finally, the CRT notes that of the other claims to these accounts, some were disconfirmed because those claimants provided a different first and last name and/or different country than those of the Account Owner, and some were disconfirmed because those claimants provided only plausible evidence that their relative was the Account Owner, whereas the Claimant has clearly demonstrated that his relative was the Account Owner, by identifying all of the unpublished information in the Bank's records regarding the Account Owner, as well as the Power of Attorney Holders, whom the other claimants failed to identify, and by providing the CRT with detailed written evidence in relation to them.

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 he lived in Nazi-dominated Czechoslovakia, and that until his death in 1943, he was persecuted by the pro-Nazi regime that was in place in Czechoslovakia.

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 great-uncle. These documents include: 1) copies of his own and his sisters' identity records, indicating that their mother's maiden name was Wirth; 2) copies of his mother's birth, marriage, and death certificates, which identify the family name Wirth and the family's Czech origin; 3) a copy of his grandparents' marriage certificate, which identifies the family name Wirth and the family's Czech origin; 4) copies of his father's and grandfather's death certificates, which identify the family name Wirth, the family's Czech origin, and also identify his grandfather's parents as Miksa Wirth and Krisztina Wirth, née Osman; 5) a copy of his mother's registration card with the Czech Repatriation Office, which identifies the family name Wirth and the family's Czech origin; 6) a summary of a registry from the Budapest National Archives regarding Friedrich Wirth's birth, and a copy of his death certificate, which identify his parents as Max Wirth and Katarina Wirth, née Osman. There is no information to indicate that the Account Owner has surviving heirs, other than the parties whom the Claimant is representing.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records.

The Issue of Who Received the Proceeds

In this case, the Claimant and the relatives whom he represents received the proceeds of the accounts held by the Account Owner following the partial award rendered by the Panel of Arbitrators. The accounts that were awarded to the Claimant and his relatives were: one custody account, one demand deposit account held in Swiss Francs, and one demand deposit account held in United States Dollars. The Bank's records submitted by the Bank to the Panel of Arbitrators indicated that as of 31 December 1991, this balance date being the closest date to 1945 available at that time, the custody account contained securities worth SF 150,000.00, the demand deposit account in Swiss Francs had a balance of SF 18,160.00, and the demand deposit account in United States Dollars had a balance of US \$345.50, which was the equivalent of SF 467.29.

The name of the Account Owner was published again on the 2001 List of Swiss Bank Accounts from the ICEP Investigation, as the auditors who carried out the ICEP Investigation could not determine whether one of the accounts at issue had already been paid to the Account Owner or his heirs. However, the Bank's records available to the CRT show that the Account Owner did not hold any account in addition to the accounts awarded to the Claimant by the Panel of Arbitrators. Consequently, the CRT determines that the Account Owner's heirs received the proceeds of the accounts held by the Account Owner at the Bank. Nevertheless, the Claimant is entitled to an additional compensation amount, as the documents submitted to the CRT by the auditors record account values closer to 1945, as described in the "Amount of the Award" section below.

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 Governing the Claims Resolution Process (the “Rules”). Second, the Claimant has plausibly demonstrated that the Account Owner was his great-uncle, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holders nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

As indicated above, the total value of the accounts at issue as of 31 December 1991 was SF 168,627.29. In accordance with the Rules on Interest and Fees, this amount was increased by an adjustment of SF 2,350.00 to reflect standardized bank fees charged to the accounts between January 1945 and December 1991, and reduced by SF 121,647.43 to reflect interest paid to the accounts, producing a 1945 adjusted value of SF 49,329.86, broken down into an adjusted value of SF 43,955.57 for the custody account, SF 5,239.47 for the demand deposit account held in Pound Sterling and converted into Swiss Francs, and SF 134.82 for the demand deposit account held in United States Dollars. This amount was then multiplied by a factor of 10, which was the applicable factor at that time, to produce an amount of SF 493,298.59. The latter amount was awarded to the Claimant and the relatives represented by him on 18 December 2000.

The additional Bank’s records submitted to the CRT by the auditors who carried out the ICEP Investigation show account values that are closer to 1945 than the documents available to the Panel of Arbitrators. According to these records, as of 7 September 1959, the value of the securities in the custody account on that date was SF 30,000.00, and that as of 17 February 1945, the balance of the demand deposit account in Pounds Sterling was £ 2,130.14, and the balance of the demand deposit account in United States Dollars was US \$10,247.70.

With respect to the custody account, in accordance with Article 31(1) of the Rules, the balance of the custody account, SF 30,000.00, is increased by an adjustment of SF 750.00, which reflects standardized bank fees charged to the custody account between January 1945 and September 1959. The records do not indicate that any interest was paid to this account. Consequently, the adjusted balance of the custody account is SF 30,750.00. The CRT notes that the 1945 adjusted value of the custody account of SF 43,955.57, as determined by the Panel of Arbitrators, is higher than the 1945 adjusted value of the account of SF 30,750.00, as determined by the CRT, and the custody account is therefore not subject to any additional award to the Claimant, based on information currently available to the CRT. The difference between the 1945 original adjusted value of SF 43,955.57, as used by the Panel of Arbitrators, and the 1945 adjusted value of SF 30,750.00, as calculated above, is SF 13,205.57. This amount reflects the 1945 adjusted value of overpayment made to the Claimant by the Panel of Arbitrators.

With respect to the demand deposit account in Pound Sterling, in accordance with Article 31(1) of the Rules, the amount in the account, £ 2,130.14, which at the time was equivalent to SF 36,872.72, is increased by an adjustment of SF 15.00, which reflects standardized bank fees charged to the account between January 1945 and February 1945. Consequently, the adjusted

balance of the account at issue is SF 36,887.72. The CRT notes that the 1945 adjusted value of the demand deposit account held in Pounds Sterling and converted to Swiss Francs of SF 5,239.47, as determined by the Panel of Arbitrators, is lower than the 1945 adjusted value of the account of SF 36,877.72, as determined by the CRT, and the account is therefore subject to an additional award to the Claimant. The difference between the 1945 original adjusted value of SF 5,239.47, as used by the Panel of Arbitrators, and the 1945 adjusted value of SF 36,877.72, as calculated above, is SF 31,638.25.

With respect to the demand deposit account in United States Dollars, in accordance with Article 31(1) of the Rules, the amount in the account, US \$10,247.70, which at the time was equivalent to SF 43,962.63, is increased by an adjustment of SF 15.00, which reflects standardized bank fees charged to the account between January 1945 and February 1945. Consequently, the adjusted balance of the account at issue is SF 43,977.63. The CRT notes that the 1945 adjusted value of the demand deposit account held in United States Dollars of SF 134.82, as determined by the Panel of Arbitrators, is lower than the 1945 adjusted value of the account of SF 43,977.63, as determined by the CRT, and the account is therefore subject to an additional award to the Claimant. The difference between the 1945 original adjusted value of SF 134.82, as used by the Panel of Arbitrators, and the 1945 adjusted value of SF 43,977.63, as calculated above, is SF 43,842.81.

The sum of the differences between the values used by the Panel of Arbitrators and the 1945 adjusted value as calculated by the CRT is SF 62,275.49. The current value of this amount is determined by multiplying the adjusted additional balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 778,443.63.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, the Claimant is representing his sisters, Edith Chudackova, née Rauchmann, and Klara Rauchmann. Accordingly, the Claimant and his sisters, as descendants of the Account Owner's parents, are each entitled to receive one-third 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
21 September 2005