

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Kurt Peschke
also acting on behalf of Hertha Scholz
represented by Kathrin Havinis

in re Account of Armin Wurmfeld

Claim Number: 401468/WT

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of Kurt Peschke (the “Claimant”) to the published accounts of Armin Wurmfeld (the “Account Owner”) at the Zurich branch of the [REDACTED] (“the Bank”).

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 grandmother’s niece’s husband, Armin Wurmfeld, who was born on 8 July 1879 in Sankt Pölten, Austria, and was married to Margaretha Wurmfeld, née Czerwenka, on 21 May 1929 in Vienna, Austria. The Claimant indicated that his relative’s husband, who was Jewish, was a gynecologist who lived at Ungargasse 53, Vienna from 1929 until 1940, when he and his wife fled to the United States. The Claimant indicated that his relative’s husband died in Los Angeles, the United States, and that his grandmother’s niece returned to Vienna, where she died on 9 August 1983.

The Claimant submitted copies of: (1) his grandmother’s niece’s marriage certificate, indicating that on 21 May 1929 Margaretha Czerwenka, who was born on 20 January 1896 to Karl Czerwenka and Anna Czerwenka, née Aul, married Dr. Armin Wurmfeld, who was born on 8 July 1879, and who lived at Ungargasse 53, Vienna III; (2) a registration form of the Austrian police, indicating that Margarete Wurmfeld was the wife of Dr. Armin Wurmfeld and that she lived at 3 Ungargasse 53 from 11 June 1929 until 20 June 1940, and that she registered as a German citizen in New York on 21 June 1940 until 13 July 1941; (3) his grandmother’s niece’s naturalization certificate, indicating that Margarete Wurmfeld became a United States citizen on 16 December 1946; (4) his great-aunt’s death certificate, indicating that Anna Czerwenka, née Aul, who was the widow of Karl Czerwenka, passed away on 22 January 1961 in Vienna; (5) his

grandmother's niece's will, dated Vienna, 25 July, 1982, indicating that Margarete Wurmfeld left her estate to Herta Scholz and Maria Wagner-Schönkirk; (6) his grandmother's niece's death certificate, indicating that Margarete Anna Wurmfeld, who was born on 20 January 1896, passed away on 9 August 1983 in Vienna; (7) a certificate issued by the district court of Hietzing, Vienna, and a court decision indicating that Margarethe Wurmfeld's will was admitted to probate on 9 August 1983 and that her heirs were her cousin Maria Wagner, who was born on 16 January 1910, and her cousin's daughter Hertha Scholz, who was born on 8 May 1929; (8) a court decision from the district court of Döbling, Vienna, dated 27 November 1995, indicating that Maria Wagner's safe deposit box was to be opened in the presence of her heirs, Hertha Scholz and Kurt Peschke; (9) a published notice of his aunt's death, indicating that Maria Wagner, née Aul, passed away on 27 September 1995; and (10) a detailed family tree.

The Claimant indicated that he was born on 31 March 1931 in Freudenthal, Czechoslovakia (today Bruntal, Czech Republic). The Claimant is representing his sister, Hertha Scholz, née Peschke, who was born on 8 May 1929 in Freudenthal.

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 Armin Wurmfeld during their investigation. The documents evidencing an account belonging to Armin Wurmfeld were obtained from archival sources in the Swiss Federal Archive and are further described below.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962 (the "Federal Decree"), the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution ("the 1962 Survey"). In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the assets of Armin Wurmfeld, numbered 537. These records indicate that the Account Owner was Dr. Armin Wurmfeld, and that the Power of Attorney Holder was Margareta Wurmfeld, the Account Owner's wife. These records indicate that the Account Owner's last known address was Ungargasse 53, Vienna III, Austria, and that the Bank's last contact with the Account Owner was in 1938.

The documents indicate that the Account Owner held one demand deposit account at the Zurich branch of the Bank. The records further indicate that the account had a balance of 266.00 Swiss Francs ("SF") as of 1 September 1963.

According to a document, dated 10 November 1965, the Registration Office for Assets of Missing Foreigners (the "Registration Office") ("*Meldestelle für Vermögen verschwundener*

Ausländer”) requested that the Custody Office of the city of Zurich (“*Vormundschaftsbehörde der Stadt Zürich*”) entrust the assets to a custodian, as prescribed by the Federal Decree, and that such a custodian was appointed in 1966. The records from the Swiss Federal Archive do not refer to the ultimate disposition of the assets. There is no evidence in the records of the Swiss Federal Archive that the Account Owner or his heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Dr. Armin Wurmfeld, numbered 4234, which is dated 13 July 1938. These records indicate that Dr. Armin Wurmfeld was Jewish, that he was a gynecologist who was born on 8 July 1879, that he was married to Margarete Wurmfeld, née Czerwenka, and that he lived at Ungargasse 53, Vienna III. These records indicate that Dr. Wurmfeld was required to pay flight tax (“*Reichsfluchtsteuer*”) of 29,348.00 Reichsmark (“RM”), which was due on 30 April 1940. These records make no mention of assets held in a Swiss bank account.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant’s grandmother’s niece’s husband’s name matches the published name of the Account Owner. The Claimant identified the name of the Power of Attorney Holder, and the street address of the Account Owner and the Power of Attorney Holder, which matches information about the Account Owner and the Power of Attorney Holder contained in the records of the Swiss Federal Archive. In support of his claim, the Claimant submitted documents, including: (1) his grandmother’s niece’s marriage certificate, indicating that Margaretha Czerwenka was married to Dr. Armin Wurmfeld; and (2) a registration form of the Austrian police, indicating that Margarete Wurmfeld was the wife of Dr. Armin Wurmfeld and that she lived at 3 Ungargasse 53 from 11 June 1929 until 20 June 1940, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided at the same street address recorded in the records of the Swiss Federal Archive as the name and street address of the Account Owner. The CRT notes that the name Armin Wurmfeld appears only once on the List of Account Owners Published in 2005 (the “2005 List”). The CRT notes that the other claim to this account was disconfirmed because that claimant provided no evidence of a relationship to the Account Owner and the Power of Attorney Holder.

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 in 1940 he and his wife fled Austria to the United States. The Claimant also submitted a registration form of the Austrian police, indicating that Margarete Wurmfeld was the wife of Dr. Armin Wurmfeld and that she lived at 3 Ungargasse 53 from 11 June 1929 until 20 June 1940, and that she registered as a German citizen in New York on 21 June 1940 until 13 July 1941.

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 husband of the Claimant's grandmother's niece. These documents include: (1) his grandmother's niece's marriage certificate, indicating that Margaretha Czerwenka was married to Dr. Armin Wurmfeld; and (2) a registration form of the Austrian police, indicating that Margarete Wurmfeld was the wife of Dr. Armin Wurmfeld; (3) a certificate issued by the district court of Hietzing, Vienna, and a court decision indicating that Margarethe Wurmfeld's heirs were her cousin Maria Wagner and her cousin's daughter Hertha Scholz; and (4) a court decision from the district court of Döbling, Vienna, indicating that Maria Wagner's heirs were Hertha Scholz and Kurt Peschke. There is no information to indicate that the Account Owner has surviving heirs other than the party whom the Claimant is representing.

The CRT further notes that the Claimant submitted copies of his grandmother's niece's marriage certificate and death certificate. The CRT notes that it is plausible that these documents are documents which most likely only a family member would possess. The CRT further notes that the Claimant submitted a copy of his grandmother's niece's will, which provides independent verification that the Claimant's relatives bore the same family name as the Account Owner and that they resided in Vienna. 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.

The Issue of Who Received the Proceeds

Given that the Account Owner that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; that the account was registered in the 1962 Survey; that the Account Owner and his heirs would not have been able to obtain information about his account 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 Presumption (h), 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, the Power of Attorney Holder, 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 Claimant and the party 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 grandmother's niece's husband, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The records of the Swiss Federal Archives indicate that the value of the demand deposit account as of 1 September 1963 was SF 266.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 285.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1963. Consequently, the adjusted balance of the account at issue is SF 551.00. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 26,750.00.

Division of the Award

According to Article 23(1)(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23(1)(a-f) has submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity. In this case, the Claimant is representing his sister, Hertha Scholz, née Peschke. Accordingly, the Claimant is entitled to one-half of the total award amount and his sister is 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 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 2008