

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]

and to Claimant [REDACTED 3]
also acting on behalf of [REDACTED 4] and [REDACTED 5]

in re Accounts of Helene Flesch

Claim Numbers: 216019/MBC;¹ 217675/MBC

This Certified Denial is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the accounts of Helene Flesch, and upon the claim of [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the account of Erwin Basch. This Denial is to the published accounts of Helene Flesch (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All denials are published, but where a claimant has 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.

Procedural History

On 31 December 2002, the Court approved an Award to the Claimants for a custody account and a demand deposit account held by the Account Owner at the Bank (the “December 2002 Award”). On 11 August 2008, the Court approved an Award Amendment (the “August 2008 Award Amendment”) relating to the custody account numbered 51726 which had been awarded in the December 2002 Award.² In neither the December 2002 Award nor the August 2008 Award Amendment did the CRT reach a decision regarding two additional accounts which were

¹ Claimant [REDACTED 3] (“Claimant [REDACTED 3]”) submitted five additional claims, which are registered under the Claim Numbers 501538, 220023, 220024, 220025 and 220026. The CRT awarded the accounts of Siegfried Berl and Juliane Steiner to Claimant [REDACTED 3] in separate decisions; see *In re Accounts of Siegfried Berl* (approved on 10 August 2005); and *In re Accounts of Juliane Steiner* (approved on 8 June 2004). Additionally, the CRT treated Claimant [REDACTED 3]’s claim to the account of Johanna Bielitz in a separate decision; see *In re Accounts of Johanna Bielitz* (approved on 29 December 2005). Finally, the CRT treated Claimant [REDACTED 3]’s remaining additional claims in a separate determination dated 23 January 2008.

² See *In re Accounts of Helene Flesch* (two decisions) (approved on 31 December 2002 and 11 August 2008).

both closed in 1933, namely one custody account numbered 40919 and one demand deposit account. This Denial addresses those two remaining accounts.

The December 2002 Award and the August 2008 Award Amendment

In the December 2002 Award, the CRT determined that the Account Owner held two custody accounts and two demand deposit accounts at the Bank; however, only one custody account and one demand deposit account, both of which were closed in 1938, were awarded. The CRT further determined that the Claimants plausibly identified the Account Owner, that they plausibly demonstrated that they were related to the Account Owner, and that they made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Additionally, the CRT determined that it was plausible that the Account Owner did not receive the proceeds of the two accounts closed in 1938. It also determined that Claimant [REDACTED 1] and represented party [REDACTED 2] were each entitled to one-half of the award amount, and that Claimant [REDACTED 3] and the parties he represented were not entitled to share in the award.

The CRT further adopted and amended its findings regarding the value of the awarded custody account numbered 51726 in the August 2008 Award Amendment, based upon additional information provided to the CRT by the Bank.

Information Provided by the Claimants

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her paternal grandmother, Helene Sara Flesch, née Basch, who was born to [REDACTED] and to [REDACTED], née [REDACTED], on 5 December 1884 in Vienna, Austria. Claimant [REDACTED 1] stated that her grandmother married [REDACTED] on 10 October 1905 in Vienna. Claimant [REDACTED 1] further stated that Helene and [REDACTED] had two children who were both born in Vienna, namely [REDACTED], née [REDACTED], who was born on 27 September 1907, and [REDACTED], who was born on 8 May 1911. Claimant [REDACTED 1] explained that Helene Flesch and her family resided at Vorlaufstrasse 4 in Vienna from 1911 to 1934, when [REDACTED] died. Claimant [REDACTED 1] stated that her grandmother, who was a professional designer of crochet patterns, resided at Heinrichgasse 4 in Vienna from 1938 to 1939, and subsequently fled to the United States.

Claimant [REDACTED 1] indicated that her grandmother died on 7 November 1967 in Elmhurst, New York, and that her father passed away on 5 October 1986.

Claimant [REDACTED 3], who is a cousin of Claimant [REDACTED 1], submitted two Claim Forms identifying the Account Owner as his maternal great-aunt, Helene Flesch, née Basch. Claimant [REDACTED 3] stated that his great-aunt was the daughter of [REDACTED] and [REDACTED]. Claimant [REDACTED 3] further stated that his great-aunt was the sister of his maternal grandfather, [REDACTED]. Claimant [REDACTED 3] explained that his great-aunt was married to [REDACTED], and that she had two children, [REDACTED] and [REDACTED].

Claimant [REDACTED 1] submitted copies of documents, including: (1) her grandmother's birth certificate, indicating that Helene Flesch was born on 5 December 1884 in Vienna, Austria, and that her parents were [REDACTED] and [REDACTED], née [REDACTED]; (2) her grandmother's marriage certificate, issued by the Jewish Community of Vienna in 1939, indicating that [REDACTED] and Helene Flesch, née Basch, were married on 10 October 1905 in Vienna; (3) her grandmother's certificate of inheritance, issued by the District Court of Vienna on 17 December 1934, indicating that [REDACTED] died on 19 August 1934, and that his wife, Helene Flesch was his sole heir; (4) her father's birth certificate, indicating that [REDACTED] was born on 8 May 1911 in Vienna, and that his parents were [REDACTED] and Helene Flesch; and (5) her own birth certificate, indicating that [REDACTED 1] was born on 23 July 1951 in Dobbs Ferry, New York, and that her parents were [REDACTED] and [REDACTED].

Claimant [REDACTED 1] indicated that she was born on 23 July 1951 in Dobbs Ferry, New York, and that her sister, [REDACTED 2], née [REDACTED], whom she represents, was born on 7 March 1957 in Dobbs Ferry.

Claimant [REDACTED 3] indicated that he was born on 19 June 1957 in New York, New York. Claimant [REDACTED 3] is also representing his sister, [REDACTED 4], née [REDACTED], who was born on 12 August 1954 in New York; and his father, [REDACTED 5], who was born on 6 November 1923 in New York.

Information Available in the Bank's Records

As detailed in the December 2002 Award and the August 2008 Award Amendment, the Bank's records consist of a customer card, a custody account identification card ("*Leitkarte*") and custody account portfolio holding cards ("*Depotvalorenkarten*") for custody account 51726. According to these records, the Account Owner was *Frau* (Mrs.) Helene Flesch from Vienna, Austria. The Bank's customer card indicates that the Account Owner owned two demand deposit accounts and two custody accounts. The Bank's records indicate that the demand deposit accounts were closed on 10 February 1933 and 10 September 1938; that custody account numbered 51726 was closed 29 August 1938; and that custody account numbered 40919 was closed on 7 February 1933. As noted above, this decision only relates to the two accounts closed in 1933; the remaining accounts were dealt with in the December 2002 Award and the August 2008 Award Amendment.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Helene Flesch, née Basch, numbered 19765. These records show that Helene Flesch was born on 5 December 1884, that in 1939 she resided at Börsegasse 1/8 in Vienna I, and that she had previously resided at Stübenbastei 10 in Vienna I and Heinrichsgasse 4 in Vienna I. The records state further that she was assessed "Jewish Assets Tax"

(*Judenvermögensabgabe*) of 79,374.00 Reichsmark (“RM”) and flight tax (*Reichsfluchtsteuer*) of RM 18,043.00. The records also show that Helene Flesch owned bonds valued at approximately RM 39,166.00 and a savings account at an unknown bank.

These records make no mention of assets held in a Swiss bank account.

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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants’ relative’s name matches the published name of the Account Owner. Claimant [REDACTED 1] identified her grandmother’s country of residence, which matches published information about the Account Owner contained in the Bank’s records. Furthermore, Claimant [REDACTED 1] provided her grandmother’s city of residence, which matches unpublished information about the Account Owner contained in the Bank’s records.

In support of her claim, Claimant [REDACTED 1] submitted documents, including her grandmother’s birth certificate, her grandmother’s marriage certificate, her grandmother’s certificate of inheritance, and her father’s birth certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the Bank’s records as the name and city of residence of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 1] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish, and that she fled Austria in 1939, after the incorporation of Austria into the Nazi Reich in March 1938 (the “*Anschluss*”).

The Claimants’ Relationships to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was her paternal grandmother. These documents include her father’s birth certificate, indicating that [REDACTED]’s mother was Helene Flesch, and her own birth certificate, indicating that [REDACTED 1]’s father was [REDACTED].

Claimant [REDACTED 3] submitted specific biographical information, demonstrating that the Account Owner was his great-aunt.

The Issue of Who Received the Proceeds

With regard to the demand deposit account closed on 10 February 1933 and the custody account numbered 40919 which was closed on 7 February 1933, the CRT notes that these accounts were closed over five years prior to the incorporation of Austria into the Reich in March 1938 (the “Anschluss”). Therefore, the CRT concludes that the Account Owner was able to access and close these accounts, and that she received the proceeds of the claimed accounts herself.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, the Claimants may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT’s conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimants should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimants should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal
3 June 2009