

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant Maria Bennett

and to Claimant Felicitas Wohlwill
represented by David Wohlwill

in re Account of Julius Schwartz

Claim Numbers: 200071/SB; 207542/SB; 752838/SB;¹ 777126/SB²

This Certified Denial is based upon the claim of Maria Bennett, née Schwartz (“Claimant Bennett”) to an account belonging to herself,³ and upon the claim of Felicitas Wohlwill, née Schwartz (“Claimant Wohlwill”) (together the “Claimants”) to an account of Julius Schwartz. This Denial is to the unpublished account of Julius Schwartz (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

All denials 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 Claimants

The Claimants, who are siblings, each submitted a Claim Form identifying the Account Owner as their father, Julius Schwartz, who was born on 16 June 1884 in Lessen bei Grudenz, Germany, and was married to Elisabeth Koehne, in 1920 in Berlin, Germany. The Claimants stated that their father, who was Jewish, resided in Berlin, where he worked as a physician. The Claimants

¹ Felicitas Wohlwill submitted an IQ in 1999 to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those IQs which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned Claim Number 777126.

² Felicitas Wohlwill submitted an ICEP form to ATAG Ernst & Young in 1998. Although this claim was not a Claim Form, the Court, in an Order signed on 30 December 2004, ordered that those ICEP claim forms which can be processed as claim forms be treated as timely claims. Order Concerning Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (December 30, 2004). The ATAG Ernst & Young claim form was forwarded to the CRT and has been assigned claim number 752838.

³ The CRT did not locate an account belonging to Claimant Bennett 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”). Claimant Bennett should be aware that the CRT will carry out further research on their claims to determine whether an award may be made based upon the information provided by Claimant Bennett or upon information from other sources.

further added that Claimant Bennett studied at the *Ecole Internationale* in Geneva, Switzerland, between 1935 and 1936, and that monies were deposited at a Swiss bank to finance Claimant Bennett's education. The Claimants added that in January 1939 their parents and Claimant Wohlwill left Germany for Shanghai, China, while Claimant Bennett was sent to England. The Claimants stated that their mother died on 7 September 1944 in Shanghai and that in 1948 their father left Shanghai for Montreal, Canada, where he died on 13 February 1950. The Claimants submitted several documents in support of their claims including: (1) the Claimants' respective birth certificates; (2) Julius Schwartz's and Elisabeth Koehne's certificate of marriage, which indicates Julius Schwartz's date of birth and his profession as doctor; (3) a letter from Dr. Julius Schwartz addressed to Claimant Bennett sent through the Red Cross, signed "Daddy"; (4) Julius Schwartz's death certificate, which indicates his date and place of death; and (5) two letters, dated 11 November 1939 and 25 January 1940, from the Bank to the Claimants' father, the contents of which are more fully described below.

Claimant Bennett indicated that she was born on 27 August 1921 in Berlin. Claimant Wohlwill indicated that she was born on 13 March 1930 in Berlin.

Claimant Wohlwill previously submitted an Initial Questionnaire ("IQ") with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Julius Schwartz and Elisabeth (Lilly) Schwartz.⁴ Claimant Bennett also previously submitted an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Julius Schwartz.

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 Julius Schwartz during their investigation of the Bank. The Bank's documents were submitted by the Claimants to the CRT.

The Bank's records consists of the two aforementioned letters, dated 11 November 1939 and 25 January 1940, from the Bank to the Account Owner, as submitted by the Claimants. According to this record, the Account Owner was referred to only by the title "Dr." The Bank's correspondence does not indicate the type of account the Account Owner held. The Bank's record indicates that the Account Owner had written to the Bank on 19 October 1939, requesting the Bank to forward the equivalent of his account with the Bank to the *American Express Cy.*, Shanghai. The letter further states that the account held a balance of 1,414.00 Swiss Francs ("SF"), of which SF 1,400.00 had been remitted through the *American Express Cy.*, Zurich, to the *American Express Cy.* in Shanghai, that the equivalent amount in Shanghai Dollars was to be paid to the Account Owner, and that the Account Owner would be debited with the cost. The

⁴ The CRT did not locate an account belonging to the Claimants' mother, Elizabeth (Lilly) Schwartz in the Account History Database. The Claimants should be aware that the CRT will carry out further research on their claims to determine whether an award may be made based upon the information provided by the Claimants or upon information from other sources.

letter further indicates that the Account Owner had inquired about a sum of 500 Pound Sterling deposited in his favor by a Mr. Täschner in 1938, to which the Bank replied that it could not find any such item, nor could it find Mr. Täschner's name in its records. The Bank's letter suggested that Dr. Schwartz make inquiries at the another Swiss bank, as the similarity of the banks' names may have resulted in some confusion.

The letter dated 25 January 1940, which was written in English, makes reference to another letter written by the Account Owner dated 6 December 1939, asking the Bank's advice as to whether he had received a fair exchange rate from the *American Express Cy.* In this letter, the Bank again states that it does not know of "the Polish gentleman you [the Account Owner] mention," and that it could not trace any amount that he might have deposited with the Bank for the account of the Account Owner or a Dr. Koehne. In the same letter, the writer noted that "[t]he anxiety of the beginning of the war has vanished and we feel quite sure that our little country with its neutrality guaranteed by every neighbour [sic] will finally be kept out of the trouble."

The CRT's Analysis

Admissibility of the Claims

The CRT has determined that the claims are admissible according to Article 18 of the Rules Governing the Claims Resolution Process, as amended (the "Rules").

Joinder of Claims

According to Article 37(1) of 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 four claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The CRT notes that the Claimants submitted the records for the account at issue. The CRT notes that the Bank's records do not indicate the name of the Account Owner, but refer to the Account Owner as "Doctor" and indicate that he resided in Shanghai, China. In support of their claims, the Claimants submitted their parents' marriage certificate, indicating that their father was a doctor by profession, as well as a letter sent by Dr. Julius Schwartz to Claimant Bennett through the Red Cross, indicating that he was residing in Shanghai, providing independent verification that the person who is claimed to be the Account Owner had the same title and resided in the same city recorded in the Bank's records as the title and city of residence of the Account Owner. The CRT further notes that the other claim to this account was disconfirmed because that claimant provided a different country of residence than that of the Account Owner.

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 and resided in Nazi Germany until 1939, when he fled to Shanghai.

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' father. These documents include a letter sent by the Account Owner to Claimant Bennett, signed "Daddy." The CRT notes that the Claimants submitted the Account Owner's marriage and death certificates, which are documents which most likely only a family member would possess, which supports the plausibility that the Claimants are related to the Account Owner, as they have asserted in their Claim Forms. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The Bank's records indicate that at the Account Owner's request the account was closed between 19 October 1939 and 11 November 1939, that the proceeds of the account were transferred to *American Express Cy.*, Shanghai, and that the equivalent value in Shanghai Dollars was to be paid to the Account Owner. Therefore, the CRT concludes that the Account Owner received the proceeds of the claimed account.

Right of Appeal

Pursuant to Article 30 of the Rules, the Claimants may appeal this Denial to the Court through the Special Masters within ninety (90) days of the date of the letter accompanying this decision. Appeals should be delivered to the following address: Office of the Special Master, c/o Claims Resolution Tribunal, P.O. Box 9564, 8036 Zurich, Switzerland.

The Claimants should send appeals in writing to the above address and should include all reasons for the appeal. Appeals submitted without either a plausible suggestion of error or relevant new evidence may be summarily denied.

Scope of the Denial

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 Denial

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

Claims Resolution Tribunal
31 March 2005