

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED]

in re Account of Eduard Schwarzschild

Claim Number: 601293/BW¹

This Certified Denial is based upon the claim of [REDACTED] (formerly [REDACTED]) (the “Claimant”) to the unpublished account of Eduard Schwarzschild (the “Account Owner”) at the [REDACTED] (the “Bank”).

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

Information Provided by the Claimant

The Claimant submitted a claim to the Holocaust Claims Processing Office (“HCPO”) in December 1997 and an ATAG Ernst & Young claim form in August 1997 identifying the Account Owner as his father, Eduard Schwarzschild, who was born in Germany in May 1875, and was married in 1901 to [REDACTED], née [REDACTED], who was born in Paris, France, on 6 September 1885. According to the Claimant, his parents, who were Jewish, had four children: the Claimant, his sister [REDACTED], and his brothers [REDACTED] and [REDACTED]. The Claimant explained that his father was a businessman, the Honorary Consul of Estonia in Frankfurt, Germany, and the owner of the firm *Schwarzschild Ochs AG*, located in Frankfurt. According to the Claimant, his father traveled to Switzerland on several occasions, and on one such trip to Basel, the Claimant specifically remembers his father mentioning that he owned accounts in a Swiss bank. The Claimant stated that his family lived in Frankfurt at Am Leonhardsbrunn 7 until 1936, and thereafter at Liebigstrasse 53 until January 1939, when his father died. The Claimant further stated that his brother [REDACTED] perished in Auschwitz in June 1943, and that his brother [REDACTED], sister [REDACTED] and his mother emigrated to the United States, where his mother died in 1976. The Claimant indicated that he was born on 9 September 1917.

¹ The Claimant submitted a claim, numbered B00444, on 10 December 1997, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601293. In a separate decision, the CRT awarded the accounts of *Schwarzschild Ochs AG* to the Claimant. See *In re Accounts of Schwarzschild Ochs AG* (approved on 3 June 2003).

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 Eduard Schwarzschild during their investigation of the Bank. The Bank’s documents were obtained from the Archive of the Administrative Headquarters of Hessen in Darmstadt, Germany, (*Regierungspräsidium Darmstadt*) by the HCPO on the Claimant’s behalf and were forwarded to the CRT.

Information Available from German Archival Sources

These records consist of legal decisions, which resulted from the adjudication of the Claimant’s mother’s claims against the German government in the late 1950s and early 1960s for compensation and restitution of the value of securities the Claimant’s family were forced to sell, as well as the value of the compulsory taxes and payments which the Claimant’s family, as Jewish persons, were forced to pay to the German government during the Second World War. According to these records, on 11 February 1938, Eduard Schwarzschild, who resided at Liebigstrasse 53 in Frankfurt, and his daughter were forced to pay a monetary fine for an offense against the securities laws in the amounts of 10,000 Swiss Francs (“SF”) and SF 5,000 respectively, for a total fine of SF 15,000.00. These records further indicate that this amount was paid to the Reichsbank in Frankfurt by a check drawn on an account at the Bank. These records do not indicate the type of account held by the Account Owner, nor do they show when the account at issue was closed, to whom it was paid, or the value of the account. The CRT notes that although the fine was levied as two particular amounts upon the Account Owner and his daughter, the Bank’s records indicate the fine was paid in one payment by check drawn on a single account, and thus evidences the existence of only one account at the Bank.

According to these records, the SF 15,000 fine paid by the Account Owner in 1938 was restituted to the Claimant’s mother in 1962 as 14,757.75 Deutschmarks (“DM”) including a 25 percent interest payment of DM 3,689.44 for a total compensation in 1962 of DM 18,447.19, which was equivalent to SF 19,941.41.²

In addition, according to a court decision dated 24 November 1959, the Claimant’s mother was awarded a total of DM 149,699.47, which was equivalent to SF 154,789.25. According to that decision, this amount included sums of DM 39,846.00 (equivalent to SF 41,200.76), which represented restitution for objects of fine metal, *etc.*, and of DM 109,853.47 (equivalent to SF 113,588.49), which represented restitution for securities, foreign and domestic bonds denominated in foreign securities, and other monetary assets.³

² The CRT uses official historical exchange rates when converting foreign currencies into Swiss Francs.

³ The German original specifically lists the assets considered in calculating the restitution amount as well as the amounts calculated for the loss of use of the assets and the method of calculating the value of the securities. It reads, in part:

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name matches the unpublished name of the Account Owner. The Claimant also identified his father's address and city of residence, which matches unpublished information about the Account Owner in the Bank's records.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Eduard Schwarzschild, and indicates that his date of birth was 1 May 1875 and that he lived in Frankfurt, Germany, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the Claimant filed an ATAG Ernst & Young claim form and an HCPO claim form in 1997, asserting his entitlement to a Swiss bank account owned by Eduard Schwarzschild. The CRT notes that there are no other claims to this account.

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 Germany until 1939, and that one of his children perished in Auschwitz in 1943. As noted above, a person named Eduard Schwarzschild was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that he is the Account Owner's son. The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records; that the Claimant filed an ATAG Ernst & Young claim form and an HCPO claim form in 1997, identifying the relationship between the Account Owner and the Claimant, and that the Claimant also identified information which matches information contained in the Yad Vashem records. 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 Forms. There is no information to indicate that the Account Owner has other surviving heirs, who have filed claim forms.

Der Schadensersatz wird berechnet für:

- a) *Aktien, Devisen, ausländische Schuldverschreibungen und deutsche Schuldverschreibungen, die auf ausländische Währung lauten, nach dem Kurswert per 1.4.1956 (§ 16 Abs. 1 BrüG)*
- b) *Schuldverschreibungen, Grundpfandrechte, Bankguthaben, Barbeträge und Nutzungersatz, bei denen nicht die Voraussetzungen des Altsparengesetzes vorliegen, durch Umstellung der RM-Nominale bezw. des RM-Betrages im Verhältnis 10:1 in DM (§ 20 Abs. 1, § 15 Abs. 1 BrüG)....*

The Issue of Who Received the Proceeds

According to the records of the German archives, on 11 February 1938, the amount of SF 15,000.00 was transferred by check from an account at the Bank to the Reichsbank in Frankfurt in satisfaction of a monetary fine levied upon the Account Owner and his daughter. These records do not indicate the type of account held by the Account Owner, nor do they show when the account at issue was closed, to whom it was paid, or the value of the account on the date of its closure. These records further indicate that in 1962, the Claimant's mother (the Account Owner's wife) received compensation for the fine paid by the Account Owner totaling DM 18,447.19, which, as noted above, was equivalent to SF 19,941.41.

The CRT notes that the only documented evidence of an account indicates that SF 15,000.00 was paid from it in 1938. The CRT further notes that the 1962 restitution payment included this principle amount, plus SF 4,941.41 representing 25 percent interest for the years 1938 through 1962. Accordingly, the CRT concludes that the 1962 payment properly restituted the value of the Account Owner's account to his wife, and that no award is appropriate for this amount.

The CRT notes that the records do not specify whether the Account Owner's account at the Bank held assets other than the SF 15,000.00 that the Account Owner used to pay the fine levied against him. However, the post-War records do indicate that the Account Owner's wife received restitution from the German government totaling SF 154,789.25, of which SF 113,588.49 specifically restituted the value of securities denominated in foreign currency, bank accounts, and other monetary assets held by the Account Owner. Based upon these records and evidence of restitution, the CRT concludes the value of any other assets held at the Bank was properly restituted to the Account Owner's wife, and that no award is appropriate for any amount.

Right of Appeal

Pursuant to Article 30 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the Claimant 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 Claimant 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 Claimant 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 and by the Special Masters.

Claims Resolution Tribunal
13 February 2009