

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED]

in re Accounts of Anna Sedlacek

Claim Number: 751465/MC¹

This Certified Denial is based upon the claim of [REDACTED] (the “Claimant”) to accounts allegedly owned by Anna Sedlacek (Fischer) or Arno Fischer.² This Denial is to unpublished accounts of Anna Sedlacek (the “Claimed Account Owner”) at the St. Gallen branch of the [REDACTED] (the “Bank”).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 claimant, any relatives of the claimant other than the claimed account owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted an ATAG Ernst & Young Claim Form (“ATAG Form”) identifying the Claimed Account Owner as her mother, Anna Sedlacek, née Hersikova, who was born on 31 August 1909, resided in Prague, Czechoslovakia (today the Czech Republic) prior to the Second World War, was married to the Claimant’s father, [REDACTED]. The Claimant stated that her father, who was Jewish, committed suicide in 1941 shortly before he was to be deported to a concentration camp. The Claimant explained that she survived the Holocaust by going into hiding, and that her mother also survived the War and remarried, taking the new surname Sedlacek (Sedlackova). The Claimant stated that she and her mother left Czechoslovakia in 1949, and that her mother died in 1978 in France.

¹ [REDACTED] (the “Claimant”) did not submit a Claim Form to the CRT. However, in 1997 she submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-Q-71-006-112-250, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 751465.

² The CRT did not locate an account belonging to Arno Fischer in the Account History Database prepared pursuant to the investigation of ICEP (the “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules.

In support of her claim, the Claimant submitted copies of documents, including:

- (1) her own birth certificate, indicating that [REDACTED] was born in Prague on 9 April 1938, and that her parents were [REDACTED] and Anna, née Hercykova;
- (2) her father's death certificate, indicating that [REDACTED] died in 1941 and that he had committed suicide;
- (3) her father's 1940 certificate of residence, indicating that [REDACTED], his wife Anna Hercykova, and their daughter [REDACTED] were all residents of Bohemia and Moravia;
- (4) a certificate issued in 1965 by the French national office of refugee protection and citizenship, indicating that Anna Sedlacek, (formerly Fischer,) née Hercyk [*sic*], who was born on 31 August 1909 in Prague, was the widow of [REDACTED], who died on 24 November 1941; and that the Nazis had declared the couple divorced under Nazi laws, but that the Czech authorities had later considered that divorce to be null and invalid; and
- (5) several documents from the Bank, which are further described below.

The Claimant indicated that she was born on 9 April 1938 in Prague.

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 Anna Sedlacek during their investigation of the Bank. The Bank's documents were submitted to the CRT by the Claimant.

These documents consist of two account statements dated from 1954 and one letter from the Bank dated 25 August 1954. According to these records, the owner of the account was *Frau* (Mrs.) Anna Sedlacek, who resided in Hamburg, Germany. The Bank's records indicate that the Anna Sedlacek held a demand deposit account and a custody account.

The first account statement is dated April 1954 and indicates that Anna Sedlacek resided in Hamburg. The second account statement is dated 24 August 1954, and indicates that the Anna Sedlacek's demand deposit account was active between December 1953 and 24 August 1954, on which date the remaining balance of that account was paid out to A. Sedlacek of Hamburg.

The letter from the Bank is dated 25 August 1954 and is addressed to *Frau* Anna Sedlacek-Fischer of Hamburg. The letter indicates that the Bank, in response to Anna Sedlacek-Fischer's request, was sending her the remaining securities in her custody account, given that the sale of those securities was not possible at the time. The Bank's letter listed the securities that were being sent to her at the time, which included, for example, *4½% Schuldverschreibung Deutsches Reich 1938 2. Ausgabe* bonds. The Bank's letter also stated that the custody account also contained two sets of coupons issued on securities that were no longer held in her custody account. The Bank's letter specifically stated that these coupons could not be valued and were

worthless as of August 1954, and that it therefore discarded those coupons because they had no value.

The Bank concluded its letter by stating that the custody account was therefore completely paid out, and the account was closed.

The CRT's Analysis

Admissibility of the Claim

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

Basis for the Denial

The CRT notes that the Claimant provided documentation to support a claim to an account owned by the Claimed Account Owner. However, the CRT has determined that the evidence submitted by the Claimant is insufficient to justify an award. According to Article 17 of the Rules, the CRT shall use the records and files available from the Account History Database, the Account Dossiers, and the Total Accounts Database, the information submitted by the claimants, and to the extent that the CRT deems relevant, other sources of information to determine whether an award is justified. Although the CRT has previously awarded accounts to claimants when the ICEP Investigation failed to locate an account belonging to their relative (an account not included in the Account History Database, the Account Dossiers, and the Total Accounts Database), the evidence submitted by these claimants falls into very limited categories. Article 17 of the Rules lists certain categories of evidence that the CRT has used to justify an award when an account is not identified in the ICEP Investigation. These categories include Austrian State Archives Records and other government records, records of the New York State Holocaust Claims Processing Office, and any other historical and factual material available to the CRT. Examples of facially reliable evidence submitted by claimants include actual bank documents, documents submitted to an official governmental agency, and official letterhead indicating a connection to a Swiss bank.

While the CRT bears in mind the difficulties of proving the existence of an account after the destruction of the Second World War, it has determined in this case that the account statements and letter from the Bank do not fall into any of the categories discussed above. While the documents confirm the existence of accounts owned by the Claimed Account Owner, these accounts only show that the accounts were open in 1953 and 1954, years after the Relevant Period, which is defined by the Rules as the period from 1933 to 1945. While the letter from the Bank may arguably suggest that the account at one time held securities that were dated from the Relevant Period (for example, the *4½% Schuldverschreibung Deutsches Reich 1938 2. Ausgabe* bonds), and thus may arguably suggest that the account also existed during that period, the documents do not conclusively show that the account existed during this period, and they clearly show that the account was not confiscated by the Nazi regime. In fact, the documents provide evidence that the accounts continued to exist after the War, and that the owner of the account

retained dominion of the account, closed the accounts, and received the proceeds herself in 1954. Accordingly, the CRT is unable to make an award to the Claimant based upon the evidence she has submitted.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of 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.

Claims Resolution Tribunal
30 August 2010