

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED]

**in re Account of Rosa Wagner (AKA Rosa Klaus)
and
Account of Heinrich Wagner
(Power of Attorney Holders Rosa Wagner, Betti Zakostelski, Max Zakostelski)¹**

Claim Numbers: 300565/SB; 600812/SB^{2, 3, 4}

This Certified Denial is based on the claims of [REDACTED], née [REDACTED], (the “Claimant”) to an account of Rosa (Ruth) Wagner, née Zeman (Zemanová). The CRT did not locate an account belonging to Ruth Wagner or Rosa (Ruth) Zeman (Zemanová), 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”). This Denial is to the published account of Rosa Wagner (“Account Owner 1”) at the [REDACTED] (“Bank 1”), and to the published account of Heinrich Wagner (“Account Owner 2”), over which Rosa Wagner, Betti Zakostelski, and Max Zakostelski held power of attorney, at the [REDACTED] (“Bank 2”).⁵

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.

¹ In an effort to locate any and all accounts that might have belonged to the Claimant’s relative, the CRT has reviewed and analyzed all accounts whose owners’ or power of attorney holders’ names are substantially similar to that of the Claimant’s relative, even if the Claimant did not specifically claim that particular account and even if the Claimant could not identify the owner of the account as her relative.

² The Claimant submitted a claim, numbered B-01765, on 12 April 1999, 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 600812.

³ The Claimant submitted two Initial Questionnaires with the Court in 1999 and a Claim Form to the CRT. The CRT is treating the Initial Questionnaires and the Claim Form under the consolidated Claim Number 300565.

⁴ According to Article 37 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 Claimant in one proceeding.

⁵ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Rosa Wagner is indicated as the power of attorney holder for two accounts owned by Heinrich Wagner. Upon careful review, the CRT has concluded that the Bank’s records evidence that Rosa Wagner was the power of attorney holder for only one of the two accounts at issue.

Information Provided by the Claimant

The Claimant submitted a Claim Form and a claim to the Holocaust Claims Processing Office (“HCPO”) asserting that her aunt, Rosa (Ruth) Wagner, née Zeman (Zemanová), who was born in Prague, Czechoslovakia (today the Czech Republic), and was married to [REDACTED], owned a Swiss bank account. The Claimant stated that her aunt, who was Jewish, resided in Prague, where she owned a store. The Claimant continued that her aunt deposited money in a Swiss Bank prior to the outbreak of the Second World War. The Claimant further stated that her aunt was deported to an unknown concentration camp during the Second World War, and that she never returned. The Claimant indicated that she was born on 20 November 1925 in Prague.

The Claimant previously submitted two Initial Questionnaires with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Rosa Wagner.

Information Available in the Bank’s Records

The CRT notes that the Claimant submitted a claim to an account belonging to her relative, Rosa Wagner. The auditors who carried out the ICEP Investigation reported two accounts whose owner’s or power of attorney holder’s names match that provided by the Claimant. Each account is identified below by its Account Identification Number, which is a number assigned to the account by the ICEP auditors for tracking purposes.

Account 3019158

Bank 1’s records indicate that Account Owner 1 was Rosa Wagner, who resided in the United States. Bank 1’s records also indicate Account Owner 1’s city of residence, her maiden name, the name of her husband and her date of birth.

Account 5026655

Bank 2’s records indicate that Account Owner 2 was Heinrich Wagner, who resided in Vienna, Austria, and that the Power of Attorney Holders were Rosa Wagner, Betti Zakostelski, and Max Zakostelski. Bank 2’s records also indicate Account Owner 2’s street address, and Power of Attorney Holder Rosa Wagner’s street address, city and country of residence. Finally, Bank 2’s records contain Account Owner 2’s and the Power of Attorney Holders’ signatures.

The CRT’s Analysis

Admissibility of the Claims

The CRT has determined that the claims are admissible according to Article 18 of the Rules.

Identification of the Account Owners

As for Account 3019158, the CRT concludes that the Claimant has not identified Account Owner 1 as her relative. Although the name of her aunt matches the published name of Account Owner 1, the information provided by the Claimant differs materially from the published and unpublished information about Account Owner 1 available in Bank 1's records. Specifically, the Claimant stated that her aunt resided in Prague, Czechoslovakia, until she was deported to a concentration camp. In contrast, Bank 1's records show that Account Owner 1 resided in a city in the United States. Further, the Claimant stated that her aunt's maiden name was Zeman (Zemanová), and that she was married to [REDACTED]. In contrast, Bank 1's records show that Account Owner 1 had a different maiden name, and that she was married to a different person. Consequently, the CRT is unable to conclude that Account Owner 1 and the Claimant's aunt are the same person.

As for Account 5026655, the CRT concludes that the Claimant has not identified Power of Attorney Holder Rosa Wagner as her relative. Although the name of her aunt matches the published name of Power of Attorney Holder Rosa Wagner, the information provided by the Claimant differs materially from the unpublished information about Power of Attorney Holder Rosa Wagner available in Bank 2's records. Specifically, the Claimant stated that her aunt resided in Prague, Czechoslovakia, until she was deported to an unknown concentration camp. In contrast, Bank 2's records show that Power of Attorney Holder Rosa Wagner resided in another city and country, which the Claimant did not identify, and to which the Claimant established no connection. The CRT notes that the Claimant did not identify Account Owner 2, even though he appears to be related to Power of Attorney Holder Rosa Wagner. Consequently, the CRT is unable to conclude that Power of Attorney Holder Rosa Wagner and the Claimant's aunt are the same person.

The CRT also notes that under Swiss law, a power of attorney holder is not considered to be the owner of an account. After a power of attorney holder dies, his or her powers in an account cease to exist, and thus do not pass to his or her heirs. Therefore, even if the Claimant had identified the power of attorney holder, but not the account owner, as his relative, the Claimant would not have been entitled to the account unless there was evidence in the Bank's records that the power of attorney holder and the account owner were related.

Right of Appeal

Pursuant to Article 30 of the Rules, the Claimant/s 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 Special Master Michael Bradfield, 51 Louisiana Ave., NW, Washington, DC 20001 USA.

The Claimant should send appeals in writing to the above address and should include all reasons for the appeal. If more than one account has been denied in this Certified Denial, the Claimant should identify the Account Identification Number that forms the basis of the appeal. Appeals submitted without either a plausible suggestion of error or relevant new evidence may be summarily denied.

Scope of the Denial

The Claimant should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal
10 August 2005