

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant George Ernst Arnstein
also acting on behalf of Carole Anast

and to Claimant Christine Celia Hackett

in re Accounts of Nelly Arnstein

Claim Numbers: 204389/RS; ¹ 501006/RS²

Award Amount: 172,875.00 Swiss Francs

This Certified Award is based upon the claim of George Ernst Arnstein (“Claimant Arnstein”) to the accounts of Clare Adler; and the claim of Christine Celia Hackett, née Nash, (“Claimant Hackett”) (together the “Claimants”) to the account of Clare Adler. This Award is to the unpublished accounts of Nelly Arnstein (the “Account Owner”), over which Georgiana Arnstein (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where claimants have not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimants

Claimant Arnstein submitted a Claim Form identifying the Account Owner as his paternal aunt, Nelly Arnstein, who was born on 15 December 1896 in Stuttgart, Germany. Claimant Arnstein further identified the Power of Attorney Holder as Nelly Arnstein’s mother and Claimant Arnstein’s paternal grandmother, Georgiana (Georgia or Georgine) Arnstein, née Adler. Claimant Hackett, whose father was the cousin of Claimant Arnstein’s father, identified Georgiana (Georgia) Adler as the sister of her paternal grandmother Cecilia Adler. The Claimants stated that Georgiana Arnstein was born on 20 September 1865, that she was one of five sisters, and that she married Joseph Arnstein on 6 January 1889 in Stuttgart.

¹ In a separate decision, the CRT awarded the accounts of *Frl. (Miss) Clare Adler* to Claimant George Arnstein. See *In re Accounts of Frl. Clare Adler* (approved on 15 September 2003).

² Christine Celia Hackett (“Claimant Hackett”) submitted two additional claims, which are registered under the Claim Numbers 600370 and 217285. In separate decisions, the CRT awarded the accounts of Bertha Hirsch-Marchand and Helene Schweizer to Claimant Hackett. See *In re Accounts of Bertha Hirsch-Marchand* (approved on 18 August 2004) and *In re Account of Frau Helene Schweizer* (approved on 7 August 2003).

Claimant Arnstein indicated that Georgiana and Joseph Arnstein, who were Jewish, had three children: Nelly Arnstein; Arnold Arnstein (Claimant Arnstein's father), who later married Elisabeth Weil; and Ernst Arnstein. Claimant Arnstein also stated that Georgiana Arnstein was an American citizen who was born in the United States but who lived in Stuttgart for approximately 65 years.

Claimant Arnstein stated that Nelly Arnstein never married, and resided in Stuttgart with her mother. According to Claimant Arnstein, Nelly Arnstein fled Stuttgart for San Francisco together with her brother Arnold Arnstein and his family, including Claimant Arnstein, on 24 December 1938. Claimant Arnstein explained that Georgiana Arnstein, who was a widow by that time, fled Germany in approximately January 1939 for San Francisco.

Claimant Arnstein indicated that Nelly Arnstein passed away in San Francisco in December 1954, and that Georgiana Adler passed away in San Francisco in May 1949.

In support of his claim, Claimant Arnstein submitted documents, including: 1) his great-aunt's probate documents, indicating that Clara (Clare) Adler died in San Francisco on 14 December 1941 and that she left her entire estate to her sister, Georgiana Arnstein; 2) his grandmother's inheritance certificate, dated in Stuttgart on 22 April 1950, indicating that Georgiana Arnstein, née Adler, died on 13 May 1949 in San Francisco and that her heirs were her daughter, Nelly Arnstein, who lived in San Francisco and was entitled to one-half of the estate; and her grandchildren (the children of her deceased son, Arnold Arnstein), George Ernst Arnstein and Suzanne Carola Arnstein, who were each entitled to one-quarter of the estate; 3) a document relating to the probate of his aunt's will, dated 7 January 1955, indicating that George Ernest Arnstein was appointed as the executor of Nelly Arnstein's estate; and 4) a detailed family tree.

Claimant Arnstein indicated that he was born on 20 September 1924 in Stuttgart. Claimant Arnstein is representing his sister, Carole Anast, née Arnstein, who was born on 11 October 1927 in Stuttgart.

In support of her claim, Claimant Hackett submitted documents, including: (1) a detailed family tree, identifying Georgiana (Georgia) Adler as the sister of Cecilia Adler Nadenheim, and indicating that Georgiana Adler married Josef Arnstein; and (2) a family book, which includes a page indicating the birthday of Georgiana Adler on 20 September 1865.

Claimant Hackett indicated that she was born on 9 February 1939 in New York, New York, the United States.

Information Available in the Bank's Records

The Bank's records consist of a contract to deposit securities in a custody account, a customer card, and a power of attorney form. According to these records, the Account Owner was *Frl.* (Miss) Nelly Arnstein, and the Power of Attorney Holder was *Frau* (Mrs.) Georgiana Arnstein, the Account Owner's mother, both of whom resided at Alexanderstrasse 9a in Stuttgart, Germany. These records also indicate that the Account Owner formerly resided at

Augustenstrasse 39a in Stuttgart. Furthermore, these records indicate that the Account Owner instructed the Bank to hold correspondence, except in urgent cases, in which case correspondence regarding the account was originally to be sent to *Frau* Albert Weil-Arnstein at Seestrasse 4 in Zurich, Switzerland, and later to *Frau* Paula Reichenbach-Weil at the same address.

The Bank's records indicate that the Account Owner held a custody account, numbered 33321, and a savings/passbook account, numbered 13351, both of which were opened in August 1931. The Bank's records indicate that on 17 August 1931, the Account Owner deposited the following securities into the custody account: *4% Anleihe der Schweizerischen Eidgenossenschaft v. 1930* bonds, with a face value of 5,500.00 Swiss Francs ("SF").

The Bank's records indicate that the custody account was closed on 17 May 1933 and that the savings/passbook account was closed on 25 October 1933. The amounts in the accounts on the dates of their closure are unknown. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder or their heirs closed the accounts and received the proceeds themselves.

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

Claimant Arnstein has plausibly identified the Account Owner and the Power of Attorney Holder. The names and city and country of residence of Claimant Arnstein's aunt and grandmother match the unpublished names, city and country of residence of the Account Owner and the Power of Attorney Holder. Claimant Arnstein further identified the unpublished marital status of the Account Owner and the Power of Attorney Holder, and the unpublished relationship between the Account Owner and the Power of Attorney Holder. In addition, Claimant Arnstein's surname and his mother's maiden name match the unpublished surnames of individuals provided as a contact address on the accounts, indicating that those persons may also have been relatives of Claimant Arnstein.

In support of his claim, Claimant Arnstein submitted documents, including inheritance documents relating to the estates of his great-aunt, grandmother and aunt.

Claimant Hackett's grandmother's sister's name and country of residence match the unpublished name and country of residence of the Power of Attorney Holder.

In support of her claim, Claimant Hackett submitted documents, including a detailed family tree and a family book, providing independent verification that the person who is claimed to be the Power of Attorney Holder had the same name and resided in the same country recorded in the Bank's records as the name and country of residence of the Power of Attorney Holder.

The CRT notes that Claimant Hackett did not identify the Account Owner. However, the CRT notes that the family trees submitted by the Claimants indicate that Claimant Hackett's grandmother Cecilia Adler Nadenheim and Claimant Arnstein's grandmother Georgiana Adler Arnstein were sisters, and that the Claimants are consequently related.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner and the Power of Attorney Holder were Victims of Nazi Persecution. Claimant Arnstein stated that the Account Owner and Power of Attorney Holder were Jewish, that they lived in Germany, and that they fled to the United States in December 1938 and January 1939, respectively.

The Claimants' Relationships to the Account Owner

Claimant Arnstein has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant Arnstein's paternal aunt. These documents include a copy of his grandmother's inheritance certificate, indicating that the heirs of Georgiana Arnstein, née Adler, were her daughter, Nelly Arnstein, and her grandchildren (the children of her deceased son, Arnold Arnstein), George Ernst Arnstein and Suzanne Carola Arnstein; and a document relating to the probate of his aunt's will, indicating that George Ernest Arnstein was appointed as the executor of Nelly Arnstein's estate.

Claimant Hackett has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant Hackett's father's cousin. These documents include a copy of a detailed family tree and a family book, indicating that Claimant Hackett's grandmother Cecilia Adler and Power of Attorney Holder Georgiana Adler were sisters. The CRT notes that the documents submitted by Claimant Arnstein indicate that Power of Attorney Holder Georgiana Adler's daughter was the Account Owner.

There is no information to indicate that the Account Owner has surviving heirs other than Carole Anast, whom Claimant Arnstein is representing.

The Issue of Who Received the Proceeds

The Bank's records indicate that custody account 33321 was closed on 17 May 1933 and that savings/passbook account 13351 was closed on 25 October 1933.

Given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax- and other confiscatory measures, including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until late 1938, and would not have been able to repatriate her accounts to Germany without losing ultimate control over their proceeds; that there is no record of the payment of the Account Owner's accounts to her; that the Account Owner and her heirs would not have been able to obtain information about her accounts after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (a), (h), and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant Arnstein and represented party Carole Anast. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant Arnstein has plausibly demonstrated that the Account Owner was his paternal aunt, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed accounts.

Further, the CRT notes that Claimant Arnstein and represented party Carole Anast, as descendants of the Account Owner's parents, have a better entitlement to the account than Claimant Hackett, who, as the Account Owner's cousin's daughter, is a descendant of the Account Owner's grandparents.

Amount of the Award

In this case, the Account Owner held one custody account and one savings/passbook account.

According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the face value of bonds not in default shall be awarded if the market value was below the face value on the date the account owner is deemed to have lost control over the account. The CRT presumes that the account owner, if able to decide freely, could have opted to hold the respective bond to maturity to avoid a capital loss. The market value of bonds shall be awarded if that value was above the face value on the date the account owner is deemed to have lost control over the account. Stocks are valued at market value.

According to the Bank's records, the custody account contained 4% *Anleihe der Schweizerischen Eidgenossenschaft v. 1930* bonds with a face value of SF 5,500.00. These bonds were of good

quality and traded at 100.50 percent.³ Since these bonds were of good quality and had market values above their face value, the market value will be used to determine the value of this asset. The total market value of these bonds was SF 5,527.50.

According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 162,500.00 for this account.

With respect to the savings/passbook account, based on the ICEP Investigation, in 1945 the average value of a savings/passbook account was SF 830.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount for the savings/passbook account of SF 10,375.00.

Consequently, the total award amount for both accounts is SF 172,875.00.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, Claimant Arnstein is representing his sister, Carole Anast. Accordingly, Claimant Arnstein and his sister are each entitled to one-half of the total award amount.

As noted above, Claimant Hackett is not entitled to share in the award.

Scope of the Award

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 Award

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

Claims Resolution Tribunal
25 November 2008

³ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1933.