

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Victoria Elaine Murphy
also acting on behalf of Elizabeth Marie Hamilton, Francesca Sophie von Zimmerman,
Anthony Bion Dolman, and Patricia Anne Dolman

and to Claimant Gwen Macdougall
also acting on behalf of Frank Eric Jonker

in re Account of E. De Boschan

Claim Numbers: 501507/LH; 501514/LH; 850069/LH; 850070/LH

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claims of Victoria Elaine Murphy, née Boschan, (“Claimant Murphy”) and Gwen Macdougall, née Jonker, (“Claimant Macdougall”)(together the “Claimants”) to the accounts of Elisabeth Boschan.¹ This Award is to the published account of E. De Boschan (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards 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 submitted substantially similar Claim Forms identifying the Account Owner as Claimant Murphy’s maternal grandmother and Claimant Macdougall’s stepfather’s first wife, Elisabeth de Boschan, née Penzig-Franz, who was born on 18 May 1903 in Vienna, Austria. The Claimants indicated that Elisabeth Boschan was married to Dr. Hans Victor Boschan (also known as Jean or John de Boschan), Claimant Murphy’s grandfather and Claimant Macdougall’s stepfather, on 8 September 1922 in Austria, with whom she had one child, Vera Marie Elisabeth Dolaman, née de Boschan, Claimant Murphy’s mother. The Claimants stated that Elisabeth Boschan and her husband, who were both Jewish, resided at Vordere Zollamtsstrasse 11 in Vienna until after the incorporation of Austria into the German Reich in March 1938 (the “Anschluss”), when they fled to Switzerland, where they resided at Renes-sur-Roche in Renes until 1939, when they emigrated to Canada.

¹ In a separate decision, the CRT awarded the accounts of Hans Boschan and Elisabeth Boschan to Claimant Murphy and the parties she represents. See *In re Accounts of Hans Boschan and Elisabeth Boschan* (approved on 10 August 2005).

The Claimants indicated that Elisabeth de Boschan died on 31 August 1940 in Vancouver, British Columbia, Canada, and that her husband subsequently remarried twice: first to Mildred Dietrich, whom he divorced on 15 December 1944, and later to Hester de Boschan, née Heybroek, Claimant Macdougall's mother, on 8 February 1955 in Vancouver. The Claimants further indicated that Hans de Boschan died on 15 May 1983 in White Rock, British Columbia, Canada, that Vera Marie Elisabeth Dolaman died on 12 February 1979 in Lytton, British Columbia, Canada, and that Hester de Boschan died in 1997 in Ottawa, Ontario, Canada.

In support of their claims, the Claimants submitted copies of documents, including: (1) Elisabeth and Hans Boschan's marriage certificate indicating that Dr. Johann Victor Boschan married Elisabeth Boschan, née Penzig-Franz, on 8 September 1922 in Vienna; (2) Elisabeth de Boschan's death certificate and will indicating that she died on 31 August 1940 in Vancouver, that she and her husband, Jean de Boschan, had one daughter named Vera, and that she bequeathed her estate to her husband; (3) Vera Maria Elisabeth Dolman's death certificate and will indicating that she died on 12 February 1979 in Lytton, and that she bequeathed her estate to her five children: Elizabeth Marie, Francesca Sophie, Victoria Elaine, Anthony Bion, and Patricia Anne; 4) John de Boschan's death certificate and will indicating that he died on 15 May 1983 in White Rock, that he had a stepson, Frank Jonker, and a stepdaughter, Gwen Macdougall, née Jonker, that he bequeathed 70 percent of his estate to his wife, Hester, and the remaining 30 percent to Vera's five children, in equal shares.

Additionally, Claimant Macdougall submitted a copy of her mother's will, indicating that Hester de Boschan bequeathed her estate to her children, Frank Jonker and Gwen Macdougall.

Claimant Murphy indicated that she was born on 15 December 1962 in Maple Ridge, British Columbia, Canada. Claimant Murphy is also representing her siblings, Elizabeth Marie Hamilton, who was born on 8 July 1957 in Vancouver, Francesca Sophie von Zimmerman, who was born on 20 March 1960 in Haney, British Columbia, Canada, Anthony Bion Dolman, who was born on 18 August 1968 in Lillooet, British Columbia, Canada, and Patricia Anne Dolman, who was born on 6 November 1970 in Lytton. Claimant Macdougall indicated that she was born on 27 July 1942 in Amsterdam, the Netherlands. Claimant Macdougall is representing her brother, Frank Eric Jonker, who was born on 9 October 1940 in Amsterdam.

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 (the "ICEP Investigation") did not report an account belonging to Elisabeth Boschan during their investigation. The documents evidencing an account belonging to E. De Boschan were obtained from the Swiss Federal Archive and are further described below.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962 (the "Federal Decree"), the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose

last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution (the “1962 Survey”). In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the assets of *Frau* (Mrs.) E. de Boschan, numbered 643.

The Swiss Federal Archive records indicate that the Account Owner was Frau E. de Boschan. The records do not indicate the Account Owner’s domicile. These records indicate that the Account Owner held an account, the type of which is not indicated, which had a balance of 67.00 Swiss Francs (“SF”) as of 1 September 1963. The records do not contain information about the disposition of this account. There is no evidence in these records that the Account Owner or her heirs closed the account 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 four claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant Murphy’s grandmother’s first initial and last name and Claimant Macdougall’s stepfather’s first wife’s first initial and last name match the published first initial and last name of the Account Owner. The Claimants identified the Account Owner’s title, which matches unpublished information about the Account Owner contained in the records from the Swiss Federal Archive. The CRT notes that the records from the Swiss Federal Archive do not contain any specific information about the Account Owner other than her title, first initial and last name.

In support of their claims, the Claimants submitted documents, including Elisabeth de Boschan’s death certificate and will, providing independent verification that the person who is claimed to be the Account Owner had the same first initial and last name recorded in the records from the Swiss Federal Archive as the first initial and last name of the Account Owner. The CRT notes that the name E. De Boschan appears only once on the List of Account Owners Published in 2005 (the “2005 List”).

The CRT further notes that the other claim to this account was disconfirmed because that claimant provided a different title than the title of the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, resided in Austria after the *Anschluss*, and that she subsequently fled to Switzerland before emigrating to Canada.

The Claimants' Relationship to the Account Owner

The Claimants have each plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant Murphy's grandmother and Claimant Macdougall's stepfather's first wife. These documents include Elisabeth de Boschan's will indicating that she was married to Jean de Boschan and that they had one daughter named Vera; and John de Boschan's will indicating that his daughter, Vera, had five children: Elizabeth, Francisco, Victoria, Claimant Murphy, Anthony, and Patricia, and that he had a stepson, Frank Jonker, and a stepdaughter, Gwen Macdougall, Claimant Macdougall. There is no information to indicate that the Account Owner has other surviving heirs other than the parties whom the Claimants are representing.

The Issue of Who Received the Proceeds

Given that the Account Owner resided in Austria after the *Anschluss*; that the Account Owner died in 1940 in Canada; that the account was included in the 1962 Survey; that there is no record of the payment of the Account Owner's account to her nor any record of a date of closure of the account; that the Account Owner's heirs would not have been able to obtain information about her account 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 Presumption (h), 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 or her 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 the Claimants and the parties they represent. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was Claimant Murphy's grandmother and Claimant Macdougall's stepfather's first wife, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one account of an unknown type. The records from the Swiss Federal Archive indicate that the value of the account as of 1 September 1963 was SF

67.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 285.00, which reflects standardized bank fees charged to an account of an unknown type between 1945 and 1963. Consequently, the adjusted balance of the account at issue is SF 352.00. According to Article 29 of the Rules, if the amount in an account of an unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. 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 49,375.00.

Division of the Award

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. Further, according to Article 23(2)(b) of the Rules, if none of the named beneficiaries has filed a claim, the CRT shall make an award to any claimant who has submitted an unbroken chain of wills or other inheritance documents, starting with the will of, or other inheritance documents pertaining to, the Account Owner. In this case, the Claimants submitted Elisabeth de Boschan's will, in which she bequeathed her entire estate to her husband, Jean de Boschan, and John de Boschan's will, in which he bequeathed 70 percent of his estate to his wife, Hester, and the remaining 30 percent to Claimant Murphy and her siblings, in equal shares. Additionally Claimant Macdougall submitted Hester de Boschan's will, in which she bequeathed her estate to Claimant Macdougall and to Claimant Macdougall's brother, Frank Jonker, in equal shares. As noted above, Claimant Murphy is representing her siblings: Elizabeth Marie Hamilton, Francesca Sophie von Zimmermann, Anthony Bion Dolman and Patricia Anne Dolman, and Claimant Macdougall is representing her brother, Frank Eric Jonker.

Accordingly, Claimant Macdougall and represented party Frank Eric Jonker, are each entitled to 35 percent of the total award amount, and Claimant Murphy and the parties she represents, Elizabeth Marie Hamilton, Francesca Sophie von Zimmermann, Anthony Bion Dolman and Patricia Anne Dolman are each entitled to six percent of the total award amount.

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
24 September 2008