

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]

in re Account of S. L. Epstein

Claim Numbers: 002700/HB; 400535/HB¹

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published account of S.L. Epstein (the “Account Owner”) at the [REDACTED] (the “Custodian”).²

¹ In a separate decision, the CRT awarded the account of S.L. Epstein to [REDACTED 1] (the “Claimant”). See *In re Account of S.L. Epstein* (approved on 31 December 2002).

² The CRT notes that it has jurisdiction over accounts at the [REDACTED] (the “Custodian”) under the Settlement Agreement reached by the parties to the Holocaust Victim Assets Litigation (the “Settlement Agreement”), even though the Custodian is not a bank and was not included in the investigation of Swiss banks carried out pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) in order to identify accounts of Victims of Nazi Persecution. According to the Settlement Agreement, “Deposited Assets means (1) any and all Assets actually or allegedly deposited ... with *any custodian, including, without limitation, a bank, branch or agency of a bank, other banking organization or custodial institution or investment fund established or operated by a bank incorporated, headquartered or based in Switzerland at any time (including, without limitation, the affiliated, subsidiaries, branches, agencies, or offices of such banks, branches, agencies, or offices of such banks, branches, agencies, custodial institutions, and investment funds that are or were located either inside or outside Switzerland at any time) in any kind of account* (including without limitation, a safe deposit box or securities account) prior to May 9, 1945, that belonged to a Victim or Target of Nazi Persecution ... and/or (2) *any and all Assets that the ICEP or the Claims Resolution Tribunal determines should be paid to a particular claimant or to the Settlement Fund because the Asset definitely or possibly belonged to an individual [or business entity] ... actually persecuted by the Nazi Regime or targeted for persecution by the Nazi Regime for any reason.*” [emphasis added] *In re Holocaust Victim Asset Litigation*, 105 F. Supp. 2d 139 (E.D.N.Y. 2000), Exhibit I to Plan of Allocation, Class action Settlement Agreement (26 January 1999), 2-3, text available at http://swissbankclaims.com/PDFs_Eng/exhibitItoPlanofAllocation.pdf. Furthermore, although it was not a party to the Holocaust Victim Asset Litigation, the Custodian is among the parties whose liability is released by the Settlement Agreement, since “Releasees means the Settling Defendants; the Swiss National Bank; Other Swiss Banks; the Swiss Bankers Association; the Swiss Confederation (including, without limitation, the Cantons and *all other political subdivisions and governmental instrumentalities in Switzerland*); *all business concerns (whether organized as corporations or otherwise) headquartered, organized, or incorporated in Switzerland as of October 3, 1996 ...*” [emphasis added] *Id.* at 3.

All awards 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 Custodian have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his paternal grandfather, Simon Levi Chmaja (Scmaje) Epstein, who was born on 30 January 1879 in Eichstetten, Germany, and was married to [REDACTED], née [REDACTED], on 15 May 1921 in Freiburg, Germany. The Claimant indicated that his grandfather's first wife, [REDACTED], née [REDACTED], died in 1919. The Claimant indicated that his grandfather was the owner of *S.L. Epstein - Epstein Metall*, a family owned business established in Freiburg, in 1830, which specialized in supplying metal products for plumbing. The Claimant indicated that the company had branches in Basel, Switzerland, Karlsruhe, Germany, and Strasbourg, France. The Claimant stated that his grandfather likely had commercial relations with other European countries, including Italy.

The Claimant stated that after the Nazis came to power, his father, [REDACTED], tried to convince the Claimant's grandfather to leave Germany and go to Palestine (today Israel), but his grandfather refused, saying he was a proud German. The Claimant indicated that his grandfather's business was totally destroyed after the "Night of the Broken Glass" ("*Kristallnacht*") pogrom in November 1938, and his grandparents were forced out of their house, which was set on fire by the Nazis. According to the Claimant, his grandparents tried to escape to Switzerland after this, but despite having a business in Basel, the Swiss authorities denied their entrance. The Claimant's grandfather then managed to escape to Italy, where he resided at Viale Campania 5, Milan, and later at Via Marcona 77, Milan. The Claimant indicated that his grandparents were shot in the street, in approximately 1941, after escaping from a train that was on its way to Auschwitz.

In support of his claim, the Claimant submitted copies of documents, including: (1) his father's birth certificate, indicating that [REDACTED] was born on 25 November 1910 in Freiburg to Simon Epstein and [REDACTED], née [REDACTED]; (2) receipts for two messages, dated 12 June 1941 and 20 November 1941, sent with the help of the Red Cross from [REDACTED] in Palestine to Simon Epstein in Italy, and [REDACTED], respectively; (3) his parents' will, indicating that [REDACTED 1] and [REDACTED 2] are the children and sole heirs of [REDACTED] and [REDACTED], née [REDACTED]; (4) a certificate issued by the State of Israel in August 1968, indicating that [REDACTED 1]'s former surname was [REDACTED 1]; and (5) a letter, dated 17 August 1934, on the stationery of his grandfather's business, which indicates that the business owned by Simon Epstein was *S.L. Epstein Freiburg I.B.* and that it held a post check account (*Postscheck-konto*) numbered V993 in Basel, Switzerland, a post check account numbered 3427 in Karlsruhe, Germany, and a post check account numbered 23106 in Strasbourg, France.

The Claimant indicated that he was born on 6 June 1941 in Israel. The Claimant is representing his sister, [REDACTED 2], née [REDACTED], who was born on 19 May 1951 in Israel. The

Claimant previously submitted an Initial Questionnaire to the Court in 1999, asserting his entitlement to a Swiss bank account owned by S. L. Epstein.

Information Available in the Custodian's Records

The CRT notes that the Custodian was not included in the investigation of Swiss banks carried out pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") in order to identify accounts of Victims of Nazi Persecution. The documents regarding this account were obtained from the Swiss Federal Archive, as described below.

Documents obtained from 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 registration of assets belonging to S.L. Epstein, numbered 1205. These records indicate that the Account Owner was S.L. Epstein, who resided at Viale Campania 5 in Milan. These records also indicate that the date of last contact between the Account Owner and the Custodian was in 1938.

According to these records, the Account Owner held a post check account (*Postcheckrechnung*), numbered V993, with a value 49.09 Swiss Francs ("SF") as of 27 November 1947. In addition, these documents indicate that an envelope containing an account statement, issued on 27 November 1947, was sent to the Account Owner; however this envelope was returned to the Custodian with the notation of "missing" ("*Verschollen*"). The records indicate that after the statement was returned, the Custodian held the funds in the account for five years for the benefit of the Account Owner, after which the amount in the account was incorporated by the Custodian for its own disposal, per the Swiss postal traffic law (*Postverkehrsgesetz*).³

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.

³ See Art. 37 *Postverkehrsgesetz*.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's grandfather's name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant also identified the Account Owner's account number and street address, which matches unpublished information about the Account Owner contained in the Swiss Federal Archive records.

In support of his claim, the Claimant submitted copies of his father's birth certificate, messages sent to his grandparents, and the letterhead from his grandfather's business referring to the same account identified in the records of the Swiss Federal Archive, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the archival records as the name and city of residence of the Account Owner, and that he held an account under the same number recorded in the archival records as the Account Owner's account number.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Simon Epstein, and indicates that he was born in 1879 in Germany, that he was a metal dealer from Freiburg, and that he resided in Italy, 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 Initial Questionnaire with the Court in 1999 asserting his entitlement to a Swiss bank account owned by Simon Levi Chmaja Epstein, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based his present claim on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant. The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different city and country of residence than the city and country of residence of the Account Owner.

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, and that in 1938 during the *Kristallnacht* pogrom his grandfather was forced out of his house, which was set on fire by the Nazis, and that his grandfather's business was totally destroyed by the Nazis. The Claimant indicated that his grandfather was shot in the street in 1941 after escaping from a train that was on its way to the Auschwitz concentration camp. As noted above, a person named Simon Epstein 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 information and documents, demonstrating that the Account Owner was the Claimant's paternal grandfather. These documents include his father's birth certificate, his parent's will, and letters from his father to his grandparents, demonstrating that the Account Owner is his paternal grandfather. There is no information to indicate that the Account Owner has other surviving heirs other than the party the Claimant is representing.

The Issue of Who Received the Proceeds

The records indicate that the amount in the account was incorporated by the Custodian for its own disposal five years after receiving a returned account balance statement sent on 27 November 1947.

The CRT notes that the letterhead submitted by the Claimant indicate that his grandfather's business also held a post check account numbered 3427 in Karlsruhe, Germany, and a post check account numbered 23106 in Strasbourg, France. These accounts, however, were held with the postal institutions of Germany and France, respectively. Because these institutions were not Swiss, and because the assets were not deposited in Switzerland, the CRT has no jurisdiction to address these two additional accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his grandfather, and that relationship justifies an Award. Third, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one post check account, which is a type of demand deposit account. The Custodian's records indicate that the value of the account as of 27 November 1947 was SF 49.09. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 45.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1947. Consequently, the adjusted balance of the account at issue is SF 94.09. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of the amount of the award is determined by multiplying the by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 26,750.00.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. In this case, the Claimant is representing his sister, [REDACTED 2]. Accordingly, the claimant and his sister are each entitled to one-half of the total award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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
27 February 2007