

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 Accounts of Julius Pollak

Claim Number: 221760/MBC

Award Amount: 261,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (the “Claimant”) to the published account of [REDACTED].¹ This Award is to the published accounts of Julius Pollak (the “Account Owner”), over which [REDACTED] (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (“Bank 1”), and to the Account Owner’s unpublished account at the [REDACTED] (“Bank 2”) (together, the “Banks”).

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 bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as Julius Pollak, the brother of her maternal uncle by marriage, [REDACTED]. The Claimant stated that Julius Pollak was the son of [REDACTED] and that he lived in Vienna, Austria. According to the Claimant, Julius Pollak’s brother [REDACTED] was married to [REDACTED], née [REDACTED], who was the sister of the Claimant’s mother, [REDACTED], née [REDACTED].

The Claimant stated that Julius Pollak and [REDACTED], who were Jewish, owned *[REDACTED] und Söhne*, a large textile company with a factory in Czechoslovakia and an office at Schmalzhofgasse 6 in Vienna. The Claimant further stated that the company had extensive international business and maintained bank accounts in Switzerland. The Claimant listed three factories that [REDACTED] co-owned and operated, including *[REDACTED] Schafwoll und Seidenwarenfabrik*, a wool and silk factory; *[REDACTED] Tücher und Modewarenfabrik*, a clothing factory; and *[REDACTED] Ziegelei*, a brick factory. The Claimant

¹ The CRT will treat the claim to this account in a separate decision.

stated that these factories were located in Czechoslovakia in Wildenschwert, Fulnek, and Thyrn, respectively.

In a telephone conversation on 5 April 2005, the Claimant stated that Julius Pollak had a daughter, [REDACTED], née [REDACTED], and that she had two children: [REDACTED] and [REDACTED]. The Claimant explained that, after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”), Julius Pollak, [REDACTED], and her two children fled Vienna. The Claimant further stated that, at that time, the property of Julius’s brother Ernst was confiscated by the Nazis, and that he and his wife Gisela were later deported to Theresienstadt, where they perished in 1942. In a telephone conversation on 27 April 2005, [REDACTED 2] (formerly [REDACTED 2]), stated that his grandfather, Julius Pollak, his mother, [REDACTED], and her children fled Vienna in approximately June 1938 and traveled to Fulnek, Czechoslovakia, Zurich, Switzerland, London, England, and finally to Canada, where they arrived in September 1940. [REDACTED 2] stated that he does not know whether his grandfather or his mother tried to contact the Bank when his family was in Zurich in 1938, because he was only twelve years old at the time. The Claimant stated that Julius Pollak died in Toronto.

The Claimant submitted the following documents in support of her claim:

1. an appraisal prepared in 31 December 1938 by *Treuhand-Vereinigung AG*, an accounting and management consulting firm in Berlin, indicating that as of 31 December 1935 the owners of [REDACTED], *Wien*, a company with factories in Hibetten and Fulnek, were [REDACTED] [sic], Julius Pollak, and [REDACTED];
2. a 1942 Gestapo report, confirming that all property and assets belonging to [REDACTED] and [REDACTED] were confiscated by the Gestapo in 1938;
3. records from the Council of Jewish Elders for Bohemia and Moravia-Silesia, confirming that both [REDACTED] and [REDACTED] died in Theresienstadt in 1942;
4. a copy of [REDACTED]’s last will, dated 26 September 1935 in Vienna, in which he names his wife [REDACTED] his sole heir;
5. a copy of an inheritance document issued in Vienna, indicating that the Claimant and her brother, [REDACTED], who were the niece and nephew of [REDACTED], are her only heirs.

The Claimant stated that she was born on 20 August 1922 in Budapest, Hungary. The Claimant stated that [REDACTED] recently passed away in Vienna. The Claimant is representing her relative, [REDACTED 2] (formerly [REDACTED 2]), who is the son of Julius Pollak’s daughter [REDACTED].

Information Available in the Banks’ Records

Bank 1

Bank 1’s records consist of a customer card and printouts from Bank 1’s database. According to these records, the Account Owner was Julius Pollak and the Power of Attorney Holder was *Frau*

(Mrs.) [REDACTED]. According to Bank 1's records, the Account Owner held one custody account, numbered 32985, and one account, the type of which is not specified. Bank 1's records indicate that the Account Owner provided an address in care of [REDACTED], Lindengasse 38, Vienna, Austria, and that he instructed Bank 1 to hold all correspondence as of 29 November 1937. According to Bank 1's records, the custody account was closed on 15 November 1938, and the unknown type of account was closed no later than 15 November 1938. Bank 1's records do not indicate the value of these accounts. There is no evidence in Bank 1's records that the Account Owner, the Power of Attorney Holder or their heirs closed the accounts and received the proceeds themselves.

Bank 2

The CRT notes that the auditors who carried out the investigation of this bank pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not report an account belonging to Julius Pollak during their investigation of Bank 2. The information regarding this account is available from the Austrian State Archive, and is more fully described below.

Information Available from the Austrian State Archive

Julius Pollak

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Julius Pollak, numbered 36802. These records indicate that Julius Pollak was born on 20 July 1868 in Vienna, that he lived in Vienna at Lindengasse 38 and in Fulnek, Czechoslovakia; and that he was an industrialist. According to these records, Julius Pollak was the co-owner of three factories, including [REDACTED] *Schafwoll und Seidenwarenfabrik*, [REDACTED] *Tücher und Modewarenfabrik*, and [REDACTED] *Ziegelei*, which were located in Czechoslovakia in Wildenschwert, Fulnek, and Thyrn, respectively. The records also indicate that the value of Julius Pollak's share in these factories, measured as of 31 December 1937, was 859,282.71 Reichsmark ("RM"), but that the share was considered to be overvalued, as most of it was in Czechoslovakia and the Czech crown had lost at least half its value. The records further indicate that Julius Pollak owned stocks and bonds with a total value of RM 665,675.00. The records indicate that Julius Pollak held RM 95,620.84 in cash assets at various European banks, including an account, the type of which is not specified, at Bank 2, the balance of which, as of 27 April 1938, was 22.00 Pound Sterling ("£"), which was then equivalent to RM 273.24. The records indicate that on 25 January 1939 Julius Pollak received an interim flight tax (*Reichsfluchtsteuer*) assessment of RM 220,517.00 based on total assets of RM 882,071.00. The records show that a final assessment was made on 21 October 1939, at which time his total assets were valued at RM 3,250,000.00 and the flight tax assessment was revised upward to RM 812,500.00. According to a report from the Vienna police department, dated 30 August 1940 and included in the files, Julius Pollak left Vienna for Switzerland in the autumn of 1938.

[REDACTED]

In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents, numbered 31675, concerning the assets of [REDACTED], née [REDACTED]. According to these records, [REDACTED] was born on 2 February 1901 and had residences in Vienna at Kärtnering 14 and in Fulnek. These records indicate that [REDACTED] had been divorced since 1927, that she had been married to a non-Jew, and that her two children, [REDACTED], who was born on 1 August 1925 in Vienna, and [REDACTED], who was born on 1 April 1927, also in Vienna, would have been considered half Jewish (*Mischling ersten Grades*). According to these records, [REDACTED] transferred her ownership of two buildings located at Lindengasse 38 and Mariahilferstrasse 64 in Vienna as a gift to her two children on 17 March 1938, keeping user rights, which in her asset declaration were valued over her lifetime at RM 268,860.00. She further declared owning securities worth RM 88,818.40 and RM 143,372.00 in cash and in savings account deposits. Official correspondence shows that the Nazi authorities did not consider the gift of real estate to the children of mixed parentage sufficient shelter and these assets were, together with all other assets belonging to [REDACTED] and her two children, confiscated on the basis of a denationalization procedure on 13 February 1941. The records indicate that only a short time earlier, on 4 February 1941, a final RM 500,000.00 flight tax (*Reichsfluchtsteuer*) assessment, based on a total asset valuation of RM 2,000,000.00, was sent to [REDACTED]. The correspondence in the file, however, indicates that [REDACTED] had left the Reich before that date. These records further indicate that [REDACTED] was a silent partner in *Firma [REDACTED], Wien*. These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The name and city and country of residence of the Claimant's uncle's brother match the published name and city and country of residence of the Account Owner. The name of the Claimant's uncle's niece matches the published name of the Power of Attorney Holder. The Claimant indicated that her relatives, Julius Pollak and [REDACTED], were co-owners of *Firma [REDACTED], Wien*, which is consistent with the unpublished address of the Account Owner.

In support of her claim, the Claimant submitted a copy of an appraisal document, dated 31 December 1938, which contains the names of the co-owners of *Firma [REDACTED], Wien*, providing independent verification that the persons who are claimed to be the Account Owner and the Power of Attorney Holder had the same names and were the owners of the company recorded in Bank 1's records as the names and address of the Account Owner and the Power of Attorney Holder. The CRT notes that there are no other claims to these accounts.

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 he fled Vienna in 1938 after the *Anschluss* and emigrated to Canada.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the brother of the Claimant's uncle. The CRT notes that the Claimant identified unpublished information about the Account Owner as contained in Bank 1's records. The CRT further notes that the Claimant submitted inheritance documents relating to [REDACTED] and [REDACTED], which provide independent verification that the Claimant's relatives bore the same family name and resided in the same city as the Account Owner. The CRT notes that the foregoing information and documents are of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member. Finally, the CRT notes that the family relationships noted above are also supported by the information contained in the 1938 Census files of Julius Pollak and [REDACTED]. All this information supports the plausibility that the Claimant and the represented party, [REDACTED 2], are related to the Account Owner, as the Claimant has asserted in her Claim Form.

The Issue of Who Received the Proceeds

With respect to the custody account at Bank 1, the CRT notes that Bank 1's records indicate that this account was closed on 15 November 1938, at which time, according to information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. However, given that Bank 1's records do not indicate to whom the account was closed; that the Account Owner and the Power of Attorney Holder fled Austria to escape Nazi persecution; that the Account Owner had relatives who remained in Austria, including his brother, [REDACTED], and his sister-in-law, [REDACTED], and that he may therefore have yielded to Nazi pressure to turn over this account to ensure his relatives' safety; that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from Bank 1, even for the stated purpose of obtaining indemnification from the German authorities, 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.

With respect to the account of unknown type at Bank 1, given that the Account Owner fled Austria after the *Anschluss*; that there is no record of the payment of the Account Owner's account to him, nor any specific date of closure of the account; that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from Bank 1, even for the stated purpose of obtaining indemnification from the German authorities, 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 (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT likewise concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs.

With respect to the account of unknown type at Bank 2, the facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that the Account Owner reported the account in the 1938 Census; that the Account Owner lived in Austria until fleeing the country in the autumn of 1938, and therefore could not have repatriated the accounts without losing ultimate control over their proceeds; and given the application of Presumptions (d), (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of [REDACTED 2]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant and [REDACTED 2] have plausibly demonstrated that the Account Owner was [REDACTED 2]'s grandfather and that relationship justifies an Award. Third, the CRT has determined that it is plausible that the Account Owner, the Power of Attorney Holder, and their heirs did not receive the proceeds of the claimed accounts.

Further, the CRT notes that [REDACTED 2], as the grandson of the Account Owner, has a better entitlement to the account than the Claimant, who is the niece by marriage of the Account Owner's brother.

Amount of the Award

In this case, the Account Owner held one custody account and one account of unknown type at Bank 1, and one account of unknown type at Bank 2. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here with respect to the custody account and the account of unknown type at Bank 1, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs ("SF"), and the average value of an account of unknown type was SF 3,950.00.

According to the Account Owner's 1938 Census declaration, the value of the account of unknown type at Bank 2 as of 27 April 1938 was £ 22.00, which was then equivalent to SF 470.14.² The CRT determines that it is unable to rely on the balance amounts declared in the 1938 Census as it has no evidence regarding the circumstances of the Account Owner's

² The CRT uses official exchange rates to calculate the account's value in Swiss Francs.

declaration. The CRT notes that, as evidenced in a number of cases, the Account Owner may not have declared all his assets, or understated their value, in the belief that this might help him safeguard some of them. Pursuant to Article 29 of the Rules, if the amount in an account of unknown type is 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. In this case, the CRT does not find that the value of the account indicated in the Account Owner's 1938 Census declaration constitutes plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the value of the Account Owner's account of unknown type shall be determined to be SF 3,950.00.

Consequently, the total value of the accounts is SF 20,900.00. 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 261,250.00.

Division of the Award

As indicated above, [REDACTED 2] has a better entitlement to the account than the Claimant. Accordingly, [REDACTED 2] is solely entitled to 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 her claim to determine whether there are additional Swiss bank accounts to which she 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
31 August 2005