

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] and [REDACTED 3]
represented by Erez Bernstein

in re Accounts of Julius Schwarz

Claim Number: 501740/GO

Award Amount: 552,020.63 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED 1], (the “Claimant”) to the published account of Julius Schwarz. This Award is to the published account of Julius Schwarz (the “Account Owner”) at the [REDACTED] (“Bank I”) and to the unpublished account of the Account Owner at the London branch of the [REDACTED] (“Bank II”) (together the “Banks”).¹

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 her maternal grandfather, Julius Schwarz, formerly Berger, who was born on 1 September 1864 in Vienna, Austria, and was married to [REDACTED], née [REDACTED], on 28 February 1899 in Vienna. The Claimant indicated that her grandparents had three children: [REDACTED], [REDACTED] (formerly [REDACTED]), née [REDACTED], and [REDACTED], née [REDACTED] (the Claimant’s mother). The Claimant further indicated that her grandfather, who was Jewish, resided at Gustav Tschermakgasse 11 in Vienna. According to the Claimant, her grandfather, who was a jeweler, owned the *Schwarz und Steiner* jewelry shop, which was located on Kärntnerstrasse in Vienna. The Claimant indicated that her grandfather was imprisoned by the Nazis in the spring of 1938, after the incorporation of Austria into the Reich in March 1938 (the

¹ The CRT notes that the Claimant filed a claim to the account of Julius Schwarz, which was included on February 2001 published list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). Upon careful review of Bank I’s records and the records available from the Austrian State Archives, the CRT concluded that in addition to the published account, which was held at Bank I, Julius Schwarz held also one account at Bank II.

“Anschluss”), and that he was forced to sign over his Swiss accounts to the Nazis. The Claimant further indicated that her grandmother died on 15 March 1939 in Vienna, and that her grandfather was eventually released and fled Austria and subsequently resided in London, England, and in New York, New York, the United States, where he died on 15 September 1942. The Claimant indicated that her mother, aunt, and uncle are no longer alive and that she and her cousins, whom she represents, are the only surviving heirs of her grandfather.

In support of her claim, the Claimant submitted copies of documents, including: (1) her grandfather’s birth certificate, issued by the Jewish Community of Vienna, indicating that Julius Schwarz was born on 1 September 1864 in Vienna; (2) her aunt’s birth certificate, issued by the Jewish Community of Vienna, indicating that [REDACTED] was born on 23 December 1900 Vienna, and that Julius Schwarz, who was a jeweler, was her father; (3) her parents’ marriage certificate, issued by the Jewish Community of Vienna, indicating that [REDACTED], who was the daughter of Julius Schwarz, married [REDACTED] on 4 May 1924; (4) her aunt’s first marriage certificate, issued by the Jewish Community of Vienna, indicating that [REDACTED], who was the daughter of Julius Schwarz, married [REDACTED] on 29 June 1924; (5) her cousin’s birth certificate, issued by the Jewish Community of Vienna, indicating that [REDACTED 3] was born on 6 May 1925 in Vienna, and that her parents were [REDACTED] and [REDACTED]; (6) her aunt’s second marriage certificate, issued by the city of Prague, the Czech Republic, indicating that [REDACTED], née [REDACTED], who was the daughter of Julius Schwarz, married [REDACTED] on 10 June 1933; (7) her own birth certificate, issued by the Jewish Community of Vienna, indicating that [REDACTED 1] was born on 1 October 1934 in Vienna, and that her parents were [REDACTED] and [REDACTED]; (8) a copy of her parents’ tax clearance certificate (*Steuerliche Unbedenklichkeitsbescheinigung*), issued by the Tax Office (*Finanzamt*) in Vienna on 7 December 1938 for emigration purposes, indicating that [REDACTED], [REDACTED], née [REDACTED], and their daughter [REDACTED 1], who all resided at Gustav Tschermakgasse 11 in Vienna, had no tax obligations and could leave Austria; (9) her grandfather’s obituary, indicating that Julius Schwarz, who was a jeweler and born on 1 September 1864 in Vienna, died on 15 October 1943 in New York; (10) her cousin’s marriage certificate, issued by the Jewish Community of New York, indicating that indicating that [REDACTED 3] married [REDACTED] on 15 September 1946; and (11) copies of documents concerning Julius Schwarz’s asset registration with the Nazi authorities in Vienna, which are further described below.²

The Claimant indicated that she was born on 1 October 1934 in Vienna. The Claimant is representing her cousins, [REDACTED 3], née [REDACTED] (the daughter of [REDACTED]), who was born on 6 May 1925 in Vienna, and [REDACTED 2](the son of [REDACTED]), who was born on 16 August 1932 in Vienna.

² The CRT notes that 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”).

Information Available in the Banks' Records

Bank I

Bank I's record consists of a customer card. According to this record, the Account Owner was Julius Schwarz, who resided in Vienna, Austria. Bank I's record indicates that the Account Owner held a safe deposit box, numbered 1430, which was closed on 16 July 1938. Bank I's record does not indicate the value of the contents of the safe deposit box.

There is no evidence in Bank I's record that the Account Owner or his heirs closed the safe deposit box and received the proceeds themselves.

Bank II

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 ("ICEP" or the "ICEP Investigation") did not report an account belonging to Julius Schwarz during their investigation of Bank II. The information regarding Julius Schwarz's account at Bank II was obtained from the Austrian State Archive by the Claimant and was forwarded to the CRT.

Information Available from the Austrian State Archive

Julius Schwarz

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 Schwarz, numbered 39706. These records indicate that he was born on 1 September 1864 and that he lived at Gustav Tschermakgasse 11 in Vienna. In addition, the records indicate that Julius Schwarz was married to [REDACTED], née [REDACTED], with whom he had three children: [REDACTED], [REDACTED] and [REDACTED].

In his Census declaration, which he signed 30 June 1938, Julius Schwarz listed his assets, including a one-half share, worth RM 80,000.00, of a residence at Gustav Tschermakgasse 11 in Vienna, while the second half was given in 1933 to his children: [REDACTED], [REDACTED] and [REDACTED]. These records further indicate that Julius Schwarz owned a one-third share of *Schwarz u. Steiner prot. Firma*, valued at 379,262.28 Austrian Schillings ("S"); shares in *Terra und Grunderwerbs G.m.b.H.* valued at S 19,500.00 in 1927; and several securities and bank accounts held at banks in Austria, Czechoslovakia, the Netherlands and the United Kingdom. In addition, these records indicate that the business *Schwarz u. Steiner* was confiscated and taken over by a trust company (*Treuhandgesellschaft*) on 10 November 1938. According to these records, Julius Schwarz was assessed flight tax (*Reichsfluchtsteuer*) of 139,806.00 Reichsmark ("RM") on total assets of RM 559,224.00 on 31 March 1939.

Furthermore, Julius Schwarz indicated that he held a custody account at Bank II, which contained *War Loan* bonds with a nominal value of 2,000.0.0 Pound Sterling (“£”) and a market value of £2,008.10.0 as of 27 April 1938. The records contain no further information regarding the subsequent disposition of this account.

[REDACTED]

The records of the Austrian State Archive (Archive of the Republic, Finance) also contain documents from the 1938 Census concerning the assets of [REDACTED], numbered 32768. These records indicate that she was born on 24 July 1874, that she was married to Julius Schwarz, and that she lived at Gustav Tschermakgasse 11 in Vienna. These records also show that she owned a one-half share, worth RM 80,000.00, of a residence at Gustav Tschermakgasse 11 in Vienna. Additionally, the records show that [REDACTED] owned several securities and bank accounts held at banks in Austria, Czechoslovakia and the United Kingdom. These records make no mention of assets held in a Swiss bank account.

The CRT’s Analysis

Identification of the Account Owner

The Claimant’s grandfather’s name and country of residence match the published name and country of residence of the Account Owner. The Claimant identified the Account Owner’s city of residence, which matches unpublished information about the Account Owner contained in the Bank I’s record. Moreover, the Claimant identified her grandfather’s street address, spouse’s name and occupation, which matches information contained in the 1938 Census records.

In support of her claim, the Claimant submitted documents, including her grandfather’s birth certificate, her aunt’s birth certificate, her parents’ marriage certificate, her aunt’s first and second marriage certificate, her grandfather’s obituary and her grandfather’s 1938 Census records, 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 Bank’s record and in the documents evidencing the account and as the name and city of residence of the Account Owner.

The CRT notes that the name Julius Schwarz appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the “ICEP List”). Finally, the CRT notes that there are no other claims to these accounts. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified 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, that he resided in Nazi-controlled Austria, that he was arrested after the *Anschluss*, and that he fled from Austria to the United Kingdom afterwards. The Claimant also submitted grandfather’s birth certificate, her

aunt's birth certificate, her parents' marriage certificate, her aunt's first and second marriage certificate and her grandfather's obituary, which indicate that that the Account Owner was Jewish. The CRT notes that the Account Owner and his wife were required to register their assets pursuant to the 1938 Census, and that Account Owner's asset declaration indicates that certain assets belonging to him were confiscated by the Nazis.

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 Claimant's grandfather. These documents include a copy of the Claimant's parents' marriage certificate, indicating that her mother was [REDACTED], née [REDACTED], and that Julius Schwarz was her father, Claimant's own birth certificate, indicating that her mother was [REDACTED], née [REDACTED], and copies of Julius Schwarz's asset registration in 1938, indicating that [REDACTED] was Julius Schwarz's daughter. There is no information to indicate that the Account Owner has surviving heirs other than the parties whom the Claimant is representing.

The Issue of Who Received the Proceeds

With respect to the safe deposit box held by the Account Owner at Bank I, given that the Account Owner's account was closed after the *Anschluss*; that the Account Owner was arrested by the Nazis and fled from Austria after the *Anschluss*; that Nazi confiscatory legislation was in effect at the time the accounts were closed; that the Nazis had, at the time of the *Anschluss*, immediately embarked on a campaign to confiscate the assets of the Jewish residents of Austria, and the CRT has found that numerous such confiscations of Swiss bank accounts occurred at this time; that there is no record of the payment of Account Owner's account to him and his heirs would not have been able to obtain information about his 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 (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs.

With respect to the custody account which was reported by the Account Owner in his 1938 Census declaration, 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 records submitted by the Claimant indicate that certain assets belonging to the Account Owner were confiscated by the Nazis; that the Account Owner lived in Austria until he was fled to the United Kingdom after the *Anschluss*, and therefore could not have repatriated the accounts without losing ultimate control over its proceeds; and given the application of Presumptions (d) and (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 his 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 Claimant, represented party Stephan Schwarz, and represented party [REDACTED 3]. 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 her grandfather, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one safe deposit box and one custody account. With respect to the safe deposit box, pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, 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 safe deposit box account was SF 1,240.00. 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 of SF 15,500.00.

With respect to the custody account, in his 1938 Census declaration the Account Owner indicated that as of 27 April 1938 he held *British War Loans* with a nominal value of £2,000.00 and a market value of 100 7/16 percent, or £ 2,008.10.0, which was equivalent to SF 42,921.65.³ The CRT notes that there is no evidence regarding the circumstances of the Account Owner's declaration to the Nazi authorities and that Bank II's records do not indicate the value of the securities in his custody account; indeed, the Account Owner's 1938 Census declaration is the only source of information about the custody account. As for the custody account's value, as evidenced in a number of cases, in completing his 1938 Census form, the Account Owner may not have declared all of his assets, or understated their value, in the belief that this might help him to safeguard some of them.⁴ Therefore, the CRT determines that the value of the custody account is likely to be at least as much as the value reported by the Account Owner in his 1938 Census form. Consequently, the CRT concludes that it would be inappropriate in this case to apply the presumptive value of SF 13,000.00 for custody accounts of unknown value provided for in Article 29 of the Rules.

³ The CRT uses official exchange rates when making currency conversions.

⁴ See Memorandum & Order of October 21, 2004 ("Memorandum & Order Approving 15 Award Amendments Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund").

According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the nominal value of bonds not in default shall be awarded if the market value was below the nominal 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. Market value shall be awarded if the market value was above the nominal value on the date the account owner is deemed to have lost control over the account. In this case, the bonds were of good quality and traded above nominal value. Accordingly, the custody account in this case shall be valued according to the bonds' market value, or SF 42,921.65. The current value of this amount is calculated by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 536,520.63.

Consequently, the total award amount is SF 552,020.63.

Division of the Award

According to Article 23(1)(d) 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 her cousins, [REDACTED 3], née [REDACTED] (the daughter of [REDACTED]), and [REDACTED 2] (the son of [REDACTED]). Accordingly, the Claimant, represented party [REDACTED 2], and represented party [REDACTED 3], are each entitled to one-third 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 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
24 October 2008