

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Pedro Enrique Schwed,
also acting on behalf of Adela Kafka,

and to Claimant Adela Kafka

in re Account of Fritzi Schwed

Claim Numbers: 500718/UM, 741096/UM¹

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of Pedro Enrique Schwed (“Claimant Schwed”) to the published account of Fritzi Schwed, and the claim of Adela Kafka, née Schwed (“Claimant Kafka”) to the account of Leopold Schwed. This Award is to the published account of Fritzi Schwed (the “Account Owner”), over which Leopold Schwed (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).²

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

Information Provided by the Claimants

Claimant Schwed

Claimant Schwed submitted a Claim Form identifying the Account Owner as his mother, Fritzi Schwed, née Kleinberger, who was born on 3 February 1899 in Vienna, Austria, and was

¹ Claimant Adela Kafka did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered SPA 0004 186, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned Claim Number 741096.

² The CRT did not locate an account belonging to Claimant Kafka’s relative, Leopold Schwed, in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Claimant Kafka should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information provided by Claimant Kafka or upon information from other sources.

married to Leopold Schwed in Vienna in 1922. Claimant Schwed stated that his parents resided at Neustiftgasse 24 in Vienna, and that they had two children, both born in Vienna: Claimant Kafka, who was born on 11 August 1924; and Claimant Schwed, who was born on 7 March 1931. In addition, Claimant Schwed stated that his mother, who was Jewish, was a housewife, and that his father, who was also Jewish, was a shop owner. Claimant Schwed specified that his father's store was located at Reimdorfgasse 17, in Vienna. Claimant Schwed also indicated that his mother owned an account at the Bank as of the 1930s, and that his father held power of attorney to the account. Moreover, Claimant Schwed stated that his parents fled from Austria to Buenos Aires, Argentina, in June 1938. Finally, Claimant Schwed stated that his mother died in Buenos Aires on 30 June 1983, and that his father also died in 1983 in Buenos Aires.

Claimant Schwed submitted his own birth certificate, identifying his parents as Leopold Schwed and Friederike Schwed, née Kleinberger; his mother's obituary, identifying her as Fritzi Schwed; and a document, dated 17 May 1938, issued by a shipping company, confirming that property belonging to Friederike Schwed was to be transported from Neustiftgasse 24 in Vienna to Argentina. Claimant Schwed is representing his sister, Claimant Kafka, who also submitted a claim.

Claimant Kafka

Claimant Kafka submitted an Initial Questionnaire ("IQ") identifying the Power of Attorney Holder as her father, Leopold Schwed, who was born on 10 May 1896. Claimant Kafka stated that her father resided at Neustiftgasse 24, in Vienna. In addition, Claimant Kafka stated that her father was a tailor, who owned a business located at Reimdorfgasse in Vienna XIV. Moreover, Claimant Kafka stated that her father abandoned his business on 5 June 1938, and subsequently fled the country, in order to avoid Nazi persecution. Finally, Claimant Kafka stated that her father settled in Buenos Aires in August 1938, and that he lived there until his death, on 11 February 1983.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form and a husband's consent form regarding the maintenance of accounts at the Bank. According to these records, the Account Owner was *Frau* (Mrs.) Fritzi Schwed, née Kleinberger, and the Power of Attorney Holder was Leopold Schwed, the Account Owner's husband, both of whom resided at Neustiftgasse 24 in Vienna VII.

The Bank's records indicate that the Account Owner held a demand deposit account. The Bank's records further indicate that the account was opened no later than May 1933 and closed on 4 April 1938. The Bank's records do not indicate the value of this account. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder, or their 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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner and the Power of Attorney Holder. The Claimants' mother's name and city and country of residence match the published name and city and country of residence of the Account Owner. In addition, the Claimants' father's name matches the published name of the Power of Attorney Holder. The Claimants identified the Account Owner's and the Power of Attorney Holder's street address, and Claimant Schwed indicated that the Account Owner and Power of Attorney Holder were married, which matches unpublished information about the Account Owner and Power of Attorney Holder contained in the Bank's records.

In support of his claim, Claimant Schwed submitted documents, including his own birth certificate, identifying his parents as Leopold Schwed and Friederike Schwed, née Kleinberger; his mother's obituary, identifying her as Fritzi Schwed; and a document issued by a shipping company, confirming that property belonging to Friederike Schwed was to be transported from Neustiftgasse 24 in Vienna to Argentina. These documents provide independent verification that the person who is claimed to be the Account Owner had the same name and resided at the same address recorded in the Bank's records as the name and street address of the Account Owner, that the person who is claimed to be the Power of Attorney Holder had the same name recorded in the Bank's records as the name of the Power of Attorney Holder, and that these two individuals were married, as indicated in the Bank's records.

The CRT notes that the names Fritzi Schwed and Leopold Schwed appear only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably those of victims of Nazi persecution. The CRT further notes that Claimant Kafka filed an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her father, Leopold Schwed, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant Kafka has based her claim not simply on the fact that an individual identified on the ICEP List as having power of attorney over a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that Claimant Kafka had reason to believe that her relative owned, or held power of attorney over, a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant Kafka. Finally, the CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that both the Account Owner and the Power of Attorney Holder were Victims of Nazi Persecution. The Claimants stated that the Account Owner and Power of Attorney Holder were Jewish, and that they were forced to abandon the Power of Attorney Holder's business and flee Austria after the country was annexed by Nazi Germany (the "*Anschluss*"), in order to avoid Nazi persecution.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner and the Power of Attorney Holder by submitting specific information and documents, demonstrating that the Account Owner was the Claimants' mother, and that the Power of Attorney Holder was the Claimants' father. These documents include Claimant Schwed's own birth certificate, identifying his parents as Leopold Schwed and Friederike Schwed, née Kleinberger, and his mother's obituary, identifying her as Fritzi Schwed. There is no information to indicate that the Account Owner and Power of Attorney Holder have other surviving heirs.

The CRT notes that Claimant Kafka identified unpublished information about the Power of Attorney Holder as contained in the Bank's records, and that Claimant Kafka filed an IQ with the Court in 1999, identifying the relationship between the Power of Attorney Holder and Claimant Kafka, prior to the publication in February 2001 of the ICEP List. The CRT further notes that the foregoing information is of the type that family members would possess and indicates that the Power of Attorney Holder was well known to Claimant Kafka as a family member, and all of this information supports the plausibility that Claimant Kafka is related to the Power of Attorney Holder, as she has asserted in her IQ, as well as to the Account Owner, who was married to the Power of Attorney Holder.

The Issue of Who Received the Proceeds

Given that the Account Owner's account was closed after the *Anschluss*, and that the Account Owner and Power of Attorney Holder were forced to abandon the Power of Attorney Holder's business and flee the country in order to avoid Nazi persecution; that there is no record of the payment of the Account Owner's account to her or to the Power of Attorney Holder; that the Account Owner, the Power of Attorney Holder, and their heirs would not have been able to obtain information about the 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 Presumptions (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, 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 the Claimants. 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 their mother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one demand deposit account. 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 investigation carried out pursuant to the instructions of the ICEP (the "ICEP Investigation"), in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs ("SF"). 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 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 Account Owner's spouse is deceased, and Claimant Schwed is representing his sister, Claimant Kafka, who has also submitted her own claim. Accordingly, Claimant Schwed and Claimant Kafka are each entitled to one-half 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
18 November 2004