

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]¹

in re Accounts of Wilhelm Witrael

Claim Numbers: 221832/NB; 750972/NB; 750973/NB²

Original Award Amount: 181,680.00 Swiss Francs

Award Amendment Amount: 94,625.00 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to the accounts of Ferenc (Franz) Fischer and Ilona (Ileana) Witrael; and the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Wilhelm Witrael. This Certified Award Amendment is to the published accounts of Wilhelm Witrael (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

¹ On 17 March 2003, the Court approved an award to [REDACTED 2] (“Claimant [REDACTED 2]”) for the accounts of Wilhelm Witrael (the “March 2003 Award”), which is the subject of this Award Amendment.

² [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) did not submit a CRT Claim Form. However, in 1998 she submitted two ATAG Ernst & Young claim forms (“ATAG Forms”), numbered C-BSL-I-80-327-082-527, and C-BSL-I-80-327-085-018 to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). Claimant [REDACTED 1]’s ATAG Forms were forwarded to the CRT and have been assigned Claim Number 750972 and 750973, respectively. Claimant [REDACTED 1] also submitted an Initial Questionnaire (“IQ”), numbered GER-0059143, 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 710351. In a decision dated 26 June 2007, the CRT treated Claimant [REDACTED 1]’s claim to the accounts of Franz Fischer, [REDACTED 1], and Ileana Witrael.

All award amendments are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relative of the claimants other than the account owner, and the bank have been redacted.

Procedural History

On 17 March 2003, the Court approved an Award to Claimant [REDACTED 2] for one custody account and one demand deposit account held by the Account Owner (the “March 2003 Award”). In this Award Amendment, the CRT amends its findings to address the entitlement of Claimant [REDACTED 1] to these accounts. The CRT notes that although Claimant [REDACTED 1] had filed timely claims to the awarded accounts, her claims were not available for consideration in the March 2003 Award. Subsequent review of Claimant [REDACTED 1]’s claims indicates that she is entitled to share in the original award amount, as detailed below.

The March 2003 Award

In the March 2003 Award, the CRT determined that the Account Owner owned one custody account and one demand deposit account. The CRT further determined that Claimant [REDACTED 2] plausibly identified the Account Owner, that he plausibly demonstrated that he was related to the Account Owner, that the Account Owner was a Victim of Nazi Persecution, and that it was plausible that the Account Owner did not receive the proceeds of his accounts. The CRT determined that the combined value for the two accounts at issue was 15,140.00 Swiss Francs (“SF”), and that the March 2003 Award amount was SF 181,680.00. Finally, the CRT determined that Claimant [REDACTED 2] was entitled to the entire award amount.

Information Provided by Claimant [REDACTED 2]

As described in the March 2003 Award, Claimant [REDACTED 2] identified the Account Owner as his godfather, Wilhelm Witrael, and the husband of his cousin, [REDACTED]. Claimant [REDACTED 2] explained that Wilhelm Witrael, who was Jewish, was born on 13 February 1877 in Oradea, Romania, and was married to [REDACTED] on 22 March 1925 in Oradea. Claimant [REDACTED 2] explained that [REDACTED]’s mother, [REDACTED], née [REDACTED], was the sister of his maternal grandmother, [REDACTED]. Claimant [REDACTED 2] stated that Wilhelm Witrael resided at number 7 or 9 Koschut Street in Oradea, where he worked as a textile technician in a business a few doors from their residence. Claimant [REDACTED 2] stated that Wilhelm and [REDACTED] had one child, [REDACTED], who was born on 10 September 1929, and that they also raised him (Claimant [REDACTED 2]) as their son and financed his education. Claimant [REDACTED 2] explained that he was separated from them in 1944, when he was deported to a concentration camp. Claimant [REDACTED 2] stated that Wilhelm Witrael and his family were deported to concentration camps, where they all perished.

Claimant [REDACTED 2] indicated that he was born on 6 May 1926 in Marghita, Romania.

Information Provided by Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted two ATAG Ernst & Young claim forms (“ATAG Forms”), identifying the Account Owner as her uncle, Wilhelm Witrael, who was born in 1880 in Romania. Claimant [REDACTED 1] explained that Wilhelm Witrael was married to her father’s sister, [REDACTED], who was born on 4 July 1897 in Romania to [REDACTED] and [REDACTED], née [REDACTED]. Claimant [REDACTED 1] explained that her father, Dr. [REDACTED] was Ilona Witrael’s brother. Claimant [REDACTED 1] indicated that Ilona Witrael, who was Jewish, resided at Avram Jancu 2 in Nagyvárad (Oradea), Hungary (today Romania), and that she and her family were deported in 1944 to Auschwitz, where they perished.

In support of her claims, Claimant [REDACTED 1] submitted copies of: 1) a letter dated 1947 to the International Tracing Service from the Swedish section of the World Jewish Congress, seeking information on behalf of [REDACTED 1] regarding [REDACTED], née [REDACTED] (born on 18 June 1896 in Hungary), [REDACTED], née [REDACTED] (born on 4 July 1897 in Romania), Wilhelm Witrael (born in 1880 in Romania), [REDACTED] (born 10 September 1929 in Romania), and [REDACTED] (born 1933 or 1934 in Romania); 2) her own birth certificate, which indicates that [REDACTED 1], who was Jewish, was born on 3 October 1920 to Dr. [REDACTED] and [REDACTED]; 3) her father’s death certificate, which indicates that Dr. [REDACTED] was Jewish, that his parents were [REDACTED] and [REDACTED], that he was married to [REDACTED], that he was a doctor and that he died at the age of 53 on 15 February 1944, in Oradea, Hungary; and 4) Claimant [REDACTED 1]’s father’s probate certificate, dated 19 June 1947, which indicates that [REDACTED] and [REDACTED 1] were the legal heirs of Dr. [REDACTED].

Claimant [REDACTED 1] indicated that she was born on 3 October 1920 in Budapest, Hungary.

Information Available in the Bank’s Records

As detailed in the March 2003 Award, the Bank’s records consist of a list of dormant accounts and reporting forms, prepared in connection with the 1962 Survey of Heirless Assets in Switzerland (the “1962 Survey”),³ other lists of dormant accounts, and printouts from the Bank’s database. These records indicate that the Account Owner was Wilhelm Witrael, that he resided at 2 Avram Jancu in Oradea, Hungary (today Romania), and that the Bank’s last contact with him was in 1938. These records further indicate that the Account Owner held one demand deposit account, which was closed on an unknown date, and a custody account, which was closed on 13 December 1986.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts (“Voluntary Assistance”). Following the approval of the March 2003 Award, the Bank provided the CRT with additional documents.

³ 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”).

These documents consist of a power of attorney form, and indicate that the Account Owner granted power of attorney over his custody account to *Frau* (Mrs.) [REDACTED], née [REDACTED], (the “Power of Attorney Holder”) on 1 June 1933. The documents received through Voluntary Assistance do not contain any additional information regarding the value or disposition of these accounts.

The CRT’s Analysis

Joinder of Claims

According to Article 37(1) of 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 three claims of the Claimants in one proceeding.

Claimant [REDACTED 1]’s Identification of the Account Owner

Claimant [REDACTED 1] has plausibly identified the Account Owner and the Power of Attorney Holder. Her uncle’s name and city of residence match the published name and city of residence of the Account Owner. Moreover, Claimant [REDACTED 1] identified her aunt’s name, her exact street address, and the relationship between her aunt and uncle, which match unpublished information about the Account Owner and the Power of Attorney Holder included in the Bank’s records.

In support of her claims, Claimant [REDACTED 1] submitted documents, including a 1947 letter to the International Tracing Service, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same country recorded in the Bank’s records as the name and country of residence of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Vilmos Vitrael, and indicates that he was married to [REDACTED], that he resided in Romania, where he was a merchant, and that he was deported to the Nagyvarad ghetto, which matches the information about the Account Owner provided by Claimant [REDACTED 1]. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that Claimant [REDACTED 1] filed two ATAG Forms in 1998, as well as an Initial Questionnaire (“IQ”) with the Court in 1999, asserting her entitlement to a Swiss bank account owned by [REDACTED], prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that Claimant [REDACTED 1] has based her present claims not simply on the fact that an individual identified on the ICEP List as owning 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 [REDACTED 1] had reason to believe that her relative owned a

Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 1].

Status of the Account Owner as a Victim of Nazi Persecution

As detailed in the March 2003 Award, the CRT determined that the Account Owner was a Victim of Nazi Persecution.

Claimant [REDACTED 1]'s Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was her uncle.

The CRT further notes that Claimant [REDACTED 1] identified unpublished information about the Account Owner as contained in the Bank's records; that Claimant [REDACTED 1] filed ATAG Forms in 1998 as well as an IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 1], prior to the publication in February 2001 of the ICEP List; and that Claimant [REDACTED 1] also identified information which matches information contained in the Yad Vashem records. The CRT further notes that Claimant [REDACTED 1] submitted a copy of her birth certificate, as well as a copy of her father's death certificate, which provide independent verification that Claimant [REDACTED 1]'s father bore the same family name as the Power of Attorney Holder's maiden name, and that they resided in Romania. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Power of Attorney Holder and the Account Owner were well known to Claimant [REDACTED 1] as family members, and all of this information supports the plausibility that Claimant [REDACTED 1] is related to the Account Owner and the Power of Attorney Holder, as she has asserted in her Claim Forms.

The Issue of Who Received the Proceeds

As detailed in the March 2003 Award, the CRT has concluded that it is plausible that the accounts' proceeds were not paid to the Account Owner or his heirs.

Amount of the March 2003 Award

As detailed in the March 2003 Award, the Account Owner held one custody account and one demand deposit account. The bank records do not indicate a value for the custody account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, the average value of the same or a similar type of account in 1945 is used to calculate the present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00.

With regard to the demand deposit account, the records show that it had a balance of SF 765.00 as of 7 September 1959. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 225.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1959. Consequently, the adjusted balance of the account at

issue is SF 990.00. 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.

Consequently, the combined 1945 value for the two accounts was determined to be 15,140.00. According to Article 31 of the Rules, account values are multiplied by an adjustment factor to bring award amounts up to current value. At the time of the March 2003 Award, the adjustment factor was 12, and the resulting award amount was SF 181,680.00. Since the March 2003 Award, the adjustment factor has been raised to 12.5.

Basis for the Award Amendment

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, Claimant [REDACTED 1]'s claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that she is the Account Owner's niece, and that relationship justifies an Award. Third, the CRT determined in the March 2003 Award that it was plausible that neither the Account Owner nor his heirs received the proceeds of the accounts.

New Division of the Award

According to Article 23(1)(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23(1)(a-f) has submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity. Accordingly, Claimant [REDACTED 2], who is the daughter of the Account Owner's wife's cousin, is entitled to one-half of the award amount, and Claimant [REDACTED 1], who is the niece of the Account Owner's wife, is entitled to one-half of the award amount.

The CRT notes that in the March 2003 Award, Claimant [REDACTED 2] was determined to be entitled to the entire award amount, and that she is now determined to be entitled to only one-half of the award amount. Recognizing that seven years have passed since the March 2003 Award, the CRT does not seek outright repayment of the overpayment from Claimant [REDACTED 2]. However, the amount of overpayment shall be deducted from any award adjustment that may be forthcoming to Claimant [REDACTED 2].

Amount and Division of the Award Amendment

As detailed above and in the March 2003 Award, the 1945 value of the two accounts at issue was determined to be SF 15,140.00. Claimant [REDACTED 1] is entitled to one-half of the award amount, or SF 7,570.00. 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 a total Award Amendment amount of SF 94,625.00. As detailed above, Claimant [REDACTED 1] is entitled to the entire Award Amendment amount.

Certification of the Award Amendment

The CRT certifies this Award Amendment for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
16 April 2010