

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Ernestine Apsler
represented by Ruby Apsler

in re Account of Hermann Apsler

Claim Number: 501456/SB

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of Ernestine Apsler, née Gerson, (the “Claimant”) to the published account of Hermann Apsler (the “Account Owner”), over which Helene Apsler (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).

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

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her father-in-law, Hermann Apsler, who was born on 22 July 1879 in Vienna, Austria, and was married to Helene (Hencie) Pasternak. The Claimant stated that her father-in-law, who was Jewish, resided with his wife and only child, Alfred, at Rembrandtstrasse 37, Vienna. The Claimant continued that her father-in-law and mother-in-law were deported to the Riga ghetto in 1941, where they perished.

In support of her claim, the Claimant submitted: (1) Alfred Apsler’s birth certificate, issued on 8 October 1939, which shows that his parents were Herman and Hentsche Apsler, née Pasternak; (2) the Claimant’s certificate of marriage to Alfred Apsler, issued 8 October 1939, which also states the names of Alfred Apsler’s parents and that Alfred Apsler resided at Rembrandtstrasse 37, Vienna and, (3) Alfred Apsler’s death certificate, issued 13 January 1982, which states that his wife was the Claimant and his parents were Herman Apsler and Helen Pasternak. The Claimant stated that she was born on 20 October 1912 in Poland.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form, signed on 27 August 1929, and printouts from the Bank's database. According to these records, the Account Owner was Hermann Apsler, and the Power of Attorney Holder was *Frau* (Mrs.) Helene Apsler, who both resided at Rembrandtstrasse 37, Vienna, Austria. The Bank's records indicate the Account Owner held one account, the type of which is not indicated. The Bank's records do not show when the account at issue was closed, nor do these records indicate the value of this account. 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 find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. 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.

Information Available from the Austrian State Archive

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 Hermann Apsler, numbered 8698, which indicate that he was born on 22 July 1879 and resided at Rembrandtstrasse 27, Vienna. The records further indicate that Hermann Apsler was a sales clerk and that he resided at Rembrandtstrasse 27 in Vienna with his wife, Helene Pasternak. The records further indicate that Hermann Apsler owned assets totaling 29,971.81 Reichsmark ("RM") as of 27 April 1938, and that he wrote to the authorities on 9 December 1938, claiming that his assets had been reduced by RM 3,000.00 by taxes and the sum he paid for his son and daughter-in-law's emigration. 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 Claimant's father-in-law's name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant's mother-in-law's name matches the published name of the Power of Attorney Holder. The Claimant identified the Account Owner's street address, which matches unpublished information about the Account Owner contained in the Bank's records. In support of her claim, the Claimant submitted documents, including Alfred Apsler's birth and death certificates, which show that his father was Herman Apsler, and the Claimant's certificate of marriage to Alfred Apsler, which states that Alfred Apsler resided at Rembrandtstrasse 37, Vienna, providing 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 address of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Hermann Apsler, and indicates that his date of birth was 22 July 1879 and place of birth was Vienna, 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 name Hermann Apsler 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") and that there are no other claims to this account.

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 was deported to Riga ghetto in 1941, where he perished. As noted above, a person named Hermann Apsler was included in the CRT's database of victims.

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 father-in-law. These documents include the Claimant's certificate of marriage to Alfred Apsler, which shows that Hermann Apsler was Alfred Apsler's father, and Alfred Apsler's death certificate, which states that his wife was the Claimant and his father was Herman Apsler. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner was deported to the Riga ghetto, where he perished; that there is no record of the payment of the Account Owner's account to him, nor any record of a date of closure of the account; that the Account Owner and his heirs would not have been able to obtain information about his 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 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.

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 her father-in-law, 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 an account of unknown type. 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 an account of unknown type was 3,950.00 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 49,375.00.

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 March 2005