

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 to Claimants [REDACTED 3]

and [REDACTED 4]

in re Account of Leontine Hacker¹

Claim Numbers: 200475/MBC;² 210097/MBC; 220367/MBC³

Award Amount: 15,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 3] (“Claimant [REDACTED 3]”), and [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”) to the published accounts of Leontine Hacker (the “Account Owner”) at the [REDACTED] (the “Bank”).

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.

¹ The CRT notes that on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Leontine Hacker is indicated as having two accounts. Upon careful review, the CRT concludes that the Bank’s records evidence the existence of four accounts, two of which were held jointly with [REDACTED] and were previously awarded to Claimants [REDACTED 1] and [REDACTED 3]. See *In re Accounts of Moritz Hacker and Leontine Hacker*, which was approved by the Court on 31 December 2003 (the “December 2003 Award”). The third account, a safe deposit box held solely by Leontine Hacker, was also previously awarded to Claimants [REDACTED 1] and [REDACTED 3]. See *In re Account of Leontine Hacker*, which was approved by the Court on 29 March 2002 (the “March 2002 Award”).

² Claimant [REDACTED 4] submitted two Claim Forms, which were registered under the Claim Numbers 200475 and 213380. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 200475.

³ Claimants [REDACTED 1] and [REDACTED 3] submitted additional claims to the accounts of [REDACTED], which are registered under the Claim Numbers 210098 and 211215, respectively. The CRT previously awarded these accounts to Claimants [REDACTED 1] and [REDACTED 3] in the December 2003 Award.

Information Provided by the Claimants

Claimant [REDACTED 1] and Claimant [REDACTED 3], who are cousins, submitted Claim Forms identifying the Account Owner as their paternal grandmother, Leontine Hacker, née Fischer, who was born on 10 December 1858 in Hungary and was married to [REDACTED] on 28 April 1878 in Budapest, Hungary. Claimant [REDACTED 1] indicated that his father was [REDACTED], who was born on 1 April 1882 in Vienna, Austria to Leontine Hacker, and who died on 28 December 1969 in Los Angeles, California, the United States. Claimant [REDACTED 1] indicated that his grandmother had inherited part ownership of *Metallwarenfabrik Moritz Hacker* from her husband. Claimant [REDACTED 1] indicated that his grandmother, who was Jewish, resided at Phorusplatz 7, Vienna IV, which was also the location of their family's factory. Claimant [REDACTED 1] stated that his grandmother was deported from Vienna to Theresienstadt, where she died in 1942. Claimant [REDACTED 1] submitted his birth certificate, indicating that his father was [REDACTED], and the birth certificate of his father, indicating that his parents were [REDACTED] and Leontine Hacker, née Fischer, who lived in Vienna. Claimant [REDACTED 1] indicated that he was born on 6 November 1919 in Vienna. Claimant [REDACTED 1] represents his cousin, [REDACTED 2], née [REDACTED].

Claimant [REDACTED 3] indicated that his father was [REDACTED], who was born on 28 December 1884 to Leontine Hacker in Vienna, and who died on 28 August 1975. Claimant [REDACTED 3] also indicated that his grandmother, who was Jewish, resided at Phorusplatz 7, Vienna IV, which was also the location of their family's factory. Claimant [REDACTED 3] stated that his grandmother was deported to a concentration camp. Claimant [REDACTED 3] submitted his birth certificate, indicating that his father was [REDACTED], and the marriage certificate of his father, indicating that he lived at Phorusplatz 7 in Vienna IV, and that his parents were [REDACTED] and Leontine Hacker, née Fischer. Claimant [REDACTED 3] indicated that he was born on 25 August 1923 in Vienna.

Claimant [REDACTED 3] previously submitted an Initial Questionnaire ("IQ") with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his father, [REDACTED].⁴

Claimant [REDACTED 4] submitted a Claim Form identifying the Account Owner as Leontine Hacker, who was married to his maternal grandfather's brother, his great-uncle [REDACTED]. Claimant [REDACTED 4] stated that his great-uncle owned a silverware manufacturing business at Phorusplatz in Vienna IV, Austria. Claimant [REDACTED 4] submitted his birth certificate, indicating that he was born [REDACTED], that he changed his last name in 1945 to [REDACTED], and that his mother was named [REDACTED] and his mother's death certificate, indicating that her father was named [REDACTED]. Claimant [REDACTED 4] also submitted a letter written in 1999 from Claimant [REDACTED 4] to the *Österreichische Postsparkasse AG*, in which he identified [REDACTED] and his son, [REDACTED], as possible account owners at that bank. Claimant [REDACTED 4] indicated that he was born on 30 June 1910 in Budapest.

⁴ The CRT will treat the claim to this account in a separate decision.

Information Available in the Bank's Records

The Bank's records consist of an opening contract, customer cards, numerous lists of account owners, documents relating to the 1945 freeze of assets held in Switzerland by nationals of Germany and the territories incorporated into the Third Reich, documents relating to an internal survey of dormant accounts in 1959, a register of closed numbered accounts, and printouts from the Bank's database. According to these records, the Account Owner was Leontine Hacker who resided at Phorusplatz 7, Vienna IV, Austria.

The Bank's records indicate that the Account Owner held two safe deposit boxes.⁵ According to the Bank's records, the safe deposit boxes were closed on 23 May 1939. The contents of the safe deposit boxes on the date of their closure is unknown. There is no evidence in the Bank's records that the Account Owner or her heirs closed the safe deposit boxes 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, and/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 Leontine Hacker, numbered 45322. These records show that Leontine Hacker, née Fischer, was born on 10 December 1856 in Budapest, lived at Phorusplatz 7 in Vienna IV and was widowed in 1932. These records also indicate that Leontine Hacker held real estate, worth approximately 250,604.00 Reichsmark ("RM"), in addition to other assets. The documents include a notification from the tax authorities, dated June 23, 1941, demanding immediate payment of RM 18,800.00 as security against flight tax given the indication that the recipient (Leontine Hacker) was likely to leave the country. This notification substituted for an earlier such demand for RM 58,400.00 dated 11 September 1939. In addition, the documentation includes a letter from the Generali insurance company to the *Vermögensverkehrsstelle* regarding an application made by Leontine Hacker and her son [REDACTED] for the purchase of a fully paid-up life policy. As this transaction could not be completed because the necessary funds had not been released from the applicants' blocked account at the Creditanstalt, Generali requested information regarding these difficulties. The records make no mention of assets held in a Swiss bank account.

⁵ The Bank's records indicate that more than one safe deposit box was closed (*Safes aufgehoben*). While these records show that the Account Owner held more than one safe deposit box, they do not indicate the number of safe deposit boxes held by the Account Owner. In the absence of precise information as to the number of safe deposit boxes held by the Account Owner, the CRT determines that the Account Owner held two safe deposit boxes. As indicated above, one of these safe deposit boxes was previously awarded to Claimants [REDACTED 1] and [REDACTED 2] in the March 2002 Award.

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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their relative's name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimants also identified the Account Owner's address, which matches unpublished information about the Account Owner contained in the Bank's record.

In support of his claim, Claimant [REDACTED 1] submitted documents, including the birth certificate of his father, indicating that his father's parents were [REDACTED] and Leontine Hacker, née Fischer, and lived in Vienna. Claimant [REDACTED 3], in support of his claim, submitted the marriage certificate of his father, indicating that he lived at Phorusplatz 7 in Vienna IV, and that his parents were [REDACTED] and Leontine Hacker, née Fischer; and Claimant [REDACTED 4] submitted a letter written in 1999 from Claimant [REDACTED 4] to the *Österreichische Postsparkasse AG*, in which he identified [REDACTED], Leontine Hacker's husband, as a possible account owner at that bank, providing independent verification that the person who is claimed to be the Account Owner had the same name and the family resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, Claimant [REDACTED 1] indicated that the Account Owner was deported from Vienna to Theresienstadt, where she died in 1942, and Claimant [REDACTED 3] indicated that the Account Owner was deported to a concentration camp, where she perished.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner. Claimant [REDACTED 1] and Claimant [REDACTED 3] have submitted specific information and documents, demonstrating that the Account Owner was their grandmother. Claimant [REDACTED 1] submitted documents including his birth certificate, indicating that his father was [REDACTED], and the birth certificate of his father, indicating that his parents were [REDACTED] and Leontine Hacker, née Fischer. Claimant [REDACTED 3] submitted his birth

certificate, indicating that his father was [REDACTED], and the marriage certificate of his father, indicating that his parents were [REDACTED] and Leontine Hacker, née Fischer.

Claimant [REDACTED 4] has plausibly demonstrated that he is related to the Account Owner by submitting specific information, demonstrating that the Account Owner was his great-aunt by marriage. The CRT notes that Claimant [REDACTED 4] submitted documents, including his birth certificate, indicating that he was born [REDACTED], that he changed his last name in 1945 to [REDACTED], and that his mother was named [REDACTED], and his mother's death certificate, indicating that her father was named [REDACTED], providing independent verification that his relatives bore the same family name as the Account Owner. Claimant [REDACTED 4] also submitted a letter written in 1999 from Claimant [REDACTED 4] to the *Österreichische Postsparkasse AG*, in which he identified [REDACTED] and his son, [REDACTED], as possible account owners at that bank. The CRT further notes that Claimant [REDACTED 4] identified unpublished information about the Account Owner as contained in the Bank's records. The CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to Claimant [REDACTED 4] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 4] is related to the Account Owner, as he has asserted in his Claim Form.

There is no information to indicate that the Account Owner has other surviving heirs other than the party which Claimant [REDACTED 1] represents.

The Issue of Who Received the Proceeds

According to the Bank's records, the Account Owner held two safe deposit boxes, which were closed on 23 May 1939. The CRT notes that in the Award *In re Account of Leontine Hacker*, which was approved by the Court on 29 March 2002, Claimant [REDACTED 1] and Claimant [REDACTED 3] were awarded one safe deposit box.

With regard to the other safe deposit box, given that the Account Owner resided in Austria after the incorporation of Austria into the Reich (the "*Anschluss*"); that there is no record of the payment of the Account Owner's account to her; that the Account Owner and her heirs would not have been able to obtain information about her 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 (a), (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 her 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 Claimant [REDACTED 1] and Claimant [REDACTED 3]. First, the claims are admissible in accordance with the criteria

contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] and Claimant [REDACTED 3] have plausibly demonstrated that the Account Owner was their grandmother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed safe deposit box. Further, the CRT notes that Claimant [REDACTED 1] and Claimant [REDACTED 3], as the Account Owner's grandchildren, have a better entitlement to the account than Claimant [REDACTED 4], the Account Owner's great-nephew by marriage.

Amount of the Award

In this case, the Award is to one 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a safe deposit box was 1,240.00 Swiss Francs. The current value of this amount is calculated by multiplying this amount by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of 15,500.00 Swiss Francs.

Division of the Award

As stated above, Claimant [REDACTED 1] and Claimant [REDACTED 3], as the grandchildren of the Account Owner, have a better entitlement to the Award than Claimant [REDACTED 4], the Account Owner's great-nephew by marriage. Pursuant to Article 23(1)(c), 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. Claimant [REDACTED 1] represents his cousin, [REDACTED 2]. Accordingly, Claimant [REDACTED 1], Claimant [REDACTED 3], and [REDACTED 2] are each entitled to one-third 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