

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Martin Isepp
also acting on behalf of Konstanze Becher

in re Accounts of Bertha Hammerschlag

Claim Number: 401416/SI

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of Martin Johannes Sebastian Isepp (the “Claimant”) to the published accounts of Bertha Hammerschlag (the “Account Owner”) 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 his maternal grandmother, Bertha Hammerschlag, née Breuer, who was born on 19 May 1870 in Vienna, Austria, and was married to Dr. Paul Hammerschlag. The Claimant indicated that his grandmother resided at Neustiftgasse 3, Vienna VII. The Claimant further indicated that in September 1938 his grandmother, who was Jewish, fled Austria for the United Kingdom, where she remained until 1942. The Claimant explained that in 1942 his grandmother emigrated from the United Kingdom to New York, the United States, where she died in 1962.

In support of his claim, the Claimant submitted documents, including a certificate from the Revenue Office (*Finanzamt*) of Vienna, dated 12 September 1938, indicating that Bertha Hammerschlag, born on 19 May 1938 and resident of Vienna, did not owe any taxes and was free to leave Austria; his mother’s birth certificate, indicating that Helene Hammerschlag was born in Vienna to Bertha Hammerschlag, née Breuer; his sister’s certificate of birth and baptism, and indicating that Konstanza Margarethe Isepp was born to Helene Isepp, née Hammerschlag; a deed of family arrangement, indicating that Helene Isepp's children are Martin Johanes [*sic*], Sebastian Isepp, and Konstanze Margerete Davidson.¹ The Claimant indicated that he was born

¹ The CRT notes that the Claimant’s sister, Konstanze Margerethe (Margerete) Becher, née Isepp, was previously known as Konstanze Margerethe (Margerete) Davidson.

on 30 September 1930 in Vienna. The Claimant is representing his sister, Konstanze Margarethe Becher, née Isepp, who was born on 4 August 1927 in Vienna.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record the Account Owner was *Frau* (Mrs.) Bertha Hammerschlag, who resided at Neustiftgasse 3, Vienna VII, Austria. The Bank's record indicates that the Account Owner held one custody account, numbered L45761, and one demand deposit account. The Bank's record indicates that the custody account was closed on 21 September 1938 and that the demand deposit account was closed on 20 September 1938. The Bank's record does not indicate the value of the accounts. There is no evidence in the Bank's record that the Account Owner or her heirs closed the accounts 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 Bertha Hammerschlag, numbered 22143. These documents indicate that Bertha Hammerschlag was born on 19 May 1870 and resided at Neustiftgasse 3, Vienna VII, Austria. The documents indicate that Bertha Hammerschlag owned a villa in Alt Aussee, Austria, valued at 21,372.00 Reichsmark ("RM"), was part-owner of a house in Zurich, Switzerland, her part being valued at RM 43,356.00, and that she held RM 88,202.76 worth of securities. The documents also contain a letter, dated 14 December 1938, from Bertha Hammerschlag to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle*) stating that, by the end of September 1938, she had left German-controlled territory to take up permanent residence in 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 has plausibly identified the Account Owner. The Claimant's grandmother's name matches the published name of the Account Owner. The Claimant identified the Account Owner's city of residence and exact street address which matches unpublished information about the Account Owner contained in the Bank's record and which is consistent with information contained in the Account Owner's 1938 Census declaration as well. The Claimant also identified the Account Owner's date of birth and the fact that she fled Austria for the United Kingdom in September 1938, which matches information contained in the 1938 Census declaration. In support of his claim, the Claimant submitted documents, including a certificate

from the Revenue Office of Vienna, Austria, indicating that Bertha Hammerschlag was a resident of Vienna; and his mother's birth certificate, indicating that Helene Hammerschlag was born in Vienna to Bertha Hammerschlag, née Breuer, 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 as the name and city of residence of the Account Owner. The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different country of residence than the country of residence of 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 and that she fled Austria for the United Kingdom in September 1938.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's grandmother. These documents include his mother's birth certificate, indicating that Helene Hammerschlag was born to Bertha Hammerschlag, née Breuer; his sister's certificate of birth and baptism, indicating that Konstanza Margarethe Isepp was born to Helene Isepp, née Hammerschlag; and a deed of family arrangement, indicating that Helene Isepp's children are Martin Johannes Sebastian Isepp and Konstanze Margerete Davidson. There is no information to indicate that the Account Owner has any surviving heirs who have filed a claim, other than the party whom the Claimant is representing.

The Issue of Who Received the Proceeds

Given that the Account Owner fled Austria in September 1938; that the accounts were closed in the same month; that there is no record of the payment of the Account Owner's accounts 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 (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 accounts' 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 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 his 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 accounts.

Amount of the Award

In this case, the Account Owner held one custody account and 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 Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a custody account was 13,000.00 Swiss Francs (“SF”) and the average value of a demand deposit account was SF 2,140.00. Consequently, the total 1945 average value of the two accounts is SF 15,140.00. 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 amount of SF 189,250.00.

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 Claimant is representing his sister, Konstanze Margarethe Becher. Accordingly, the Claimant and his sister are each entitled to one-half 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 his claim to determine whether there are additional Swiss bank accounts to which he 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
23 June 2006