

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
represented by [REDACTED]

and Claimant [REDACTED 2]

in re Accounts of Fritz Heller¹

Claim Numbers: 601610/AX; 710448/AX^{2, 3, 4, 5}

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”) to the account of Fritz Heller, and the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Fritz Heller and [REDACTED].⁶ This Award is to the published accounts of Fritz Heller (the “Account Owner”), over which Tine Heller (the “Power of Attorney Holder”) held power of attorney, at the [REDACTED] (the “Bank”).

¹ The CRT notes that, on the February 2001 published 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”), Fritz Heller is indicated as having one account. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of two accounts.

² Claimant [REDACTED 1] submitted a claim, numbered B-02296, on 18 April 2001, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601610.

³ Claimant [REDACTED 1] submitted additional claims to the accounts of [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], which were all registered under Claim Number 601610. The CRT will treat the claims to these accounts in separate determinations.

⁴ Claimant [REDACTED 2] did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered GER 0063-043, 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 710448.

⁵ Claimant [REDACTED 2] submitted an additional IQ, claiming the accounts of [REDACTED] and [REDACTED], née [REDACTED], which was also forwarded to the CRT and has been assigned claim number 710447. The CRT will treat the claims to these accounts in separate determinations.

⁶ The CRT will treat the claim to the accounts of [REDACTED] in a separate determination.

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

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a claim to the Holocaust Claims Processing Office (“HCPO”), identifying the Account Owner as her paternal great-uncle, Fritz (Bedrich) Heller, who was born on 16 June 1879 in Kovac, Bohemia (today the Czech Republic), and was married to Tine Heller. Claimant [REDACTED 1] indicated that Fritz Heller, who was Jewish, was an engineer and inventor. According to Claimant [REDACTED 1], Fritz Heller lived in Prague, Czechoslovakia (today the Czech Republic), Gresten, Austria, and eventually Fribourg, Switzerland. Claimant [REDACTED 1] did not indicate when her great-uncle moved from Prague to Gresten, but indicated that he was living in Switzerland by 1942. Claimant [REDACTED 1] further indicated that Fritz and Tine Heller had two daughters, who both died during the 1920s, and that they later adopted another daughter, named [REDACTED]. Moreover, Claimant [REDACTED 1] indicated that Fritz Heller died on 26 April 1960. Claimant [REDACTED 1] indicated that she was born on 18 September 1941.

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted an Initial Questionnaire (“IQ”) with the Court in 1999, identifying the Account Owner as his maternal grandfather, Fritz Heller, who was born in 1879 and married to Leotine (Tine) Heller. Claimant [REDACTED 2] indicated that Fritz Heller, who was Jewish, was the director of, and majority shareholder in, *Vitrea spol. s.o.r. Prag.*, a company in Prague that manufactured glass products. In a telephone conversation with the CRT on 27 July 2005, Claimant [REDACTED 2] explained that his mother, [REDACTED], née [REDACTED], who was born on 23 March 1921, was adopted by Fritz Heller when she was approximately sixteen years old. Claimant [REDACTED 2] further indicated that Fritz Heller left Prague in 1938 and went to Austria, where he had a home in Gresten. In the telephone conversation on 27 July 2005, Claimant [REDACTED 2] stated that Fritz Heller and his wife escaped from Austria to Fribourg in September 1938. In his IQ, Claimant [REDACTED 2] indicated that this did not occur until 1941. Claimant [REDACTED 2] further indicated that Fritz Heller lived in Fribourg until his death on an unspecified date during the late 1950s.

Claimant [REDACTED 2] submitted forms completed by the *Creditanstalt Bankverein* in Vienna, Austria, and forwarded to the Gestapo in 1942, indicating that assets held at the *Creditanstalt Bankverein* by *Dip. Ing.* (“engineer”) Fritz Heller from Fribourg, who had previously lived in Gresten, were frozen in anticipation of their seizure by the Gestapo; a document from the head of the fiscal authorities in Vienna to the mayor of Gresten, dated 12 October 1944, indicating that they sought information on *Gen. Dir.* (“general director”) Fritz Heller; and an internal memo from the Gestapo, dated 15 January 1945, indicating that the

inquiry regarding Fritz Heller was forwarded to the security police in Prague. Claimant [REDACTED 2] indicated that he was born on 4 March 1942.

Information Available in the Bank's Records

The Bank's records consist of lists of *Spezial-Depots* ("special custody accounts") and correspondence from the Bank. According to these records, the Account Owner was *Directeur-Général* ("general director") Fritz Heller, who resided in Fribourg. 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") indicated that the Power of Attorney Holder was Tine Heller. The auditors further indicated that the Account Owner and Power of Attorney Holder used addresses in Prague, Gresten, and at the Hotel Timeo in Taormina, Italy. The Bank's records indicate that the Account Owner held one special custody account and one demand deposit account, both numbered 61403. The Bank's records further indicate that these two accounts were closed on 29 May 1940. The Bank's records do not show to whom the accounts were paid, nor do these records indicate the values of these accounts. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder or their heirs closed the accounts and received the proceeds themselves.

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"). On 21 January 2005, the Bank provided the CRT with additional documents. These documents include power of attorney forms, account cards and lists of closed accounts, and indicate that the Account Owner also used the title *Dipl. Ing.* ("engineer"), that the Account Owner and the Power of Attorney Holder were married, and that they resided in Gresten, Prague and Fribourg. However, these documents do not provide additional information regarding the disposition of the accounts at issue.

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. Claimant [REDACTED 1]'s great-uncle's and Claimant [REDACTED 2]'s grandfather's name matches the published name of the Account Owner, and their relative's wife's name matches the published name of the Power of Attorney Holder. The Claimants both indicated that Fritz Heller lived in Gresten, which matches

published information about the Account Owner contained in the Bank's records. The Claimants further indicated that the Account Owner was married to the Power of Attorney Holder, and that the Account Owner also resided in Prague and Fribourg, which matches unpublished information about the Account Owner contained in the Bank's records. Moreover, Claimant [REDACTED 1] indicated that Fritz Heller was an engineer, and Claimant [REDACTED 2] indicated that Fritz Heller was the director of a factory, which matches unpublished information about the Account Owner's titles and profession contained in the Bank's records.

In support of his claim, Claimant [REDACTED 2] submitted documents, including forms issued by the *Creditanstalt Bankverein* in Vienna, which identify his grandfather as *Dip.Ing.* Fritz Heller, who resided in both Fribourg and Gresten, and an internal memo from the Gestapo, indicating that the inquiry regarding Fritz Heller had been forwarded to the security police in Prague, providing independent verification that the person who is claimed to be the Account Owner by Claimant [REDACTED 2] had the same name, used the same professional title, and resided in the same cities recorded in the Bank's records as the name, professional title, and cities of residence of the Account Owner. The CRT also notes that Claimant [REDACTED 2] filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Fritz Heller, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED 2] has based his claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that Claimant [REDACTED 2] had reason to believe that his 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 2].

Moreover, the CRT notes that the name Fritz Heller appears only once on the ICEP List. Finally, 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, and that he fled from Austria to Switzerland after the incorporation of Austria into the Reich in March 1938 (the "*Anschluss*"). Claimant [REDACTED 2] also submitted documents indicating that the *Creditanstalt Bankverein* in Vienna froze the Account Owner's assets in anticipation of their seizure by the Gestapo, and that the Gestapo conducted an inquiry regarding the Account Owner's assets.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was Claimant [REDACTED 1]'s great-uncle, and Claimant [REDACTED 2]'s grandfather. The CRT notes that both Claimants identified unpublished information about the Account Owner as contained in the Bank's records. The CRT further notes that Claimant [REDACTED 2] filed an

IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 2], prior to the publication in February 2001 of the ICEP List. Moreover, the CRT notes that Claimant [REDACTED 2] submitted copies of forms issued by the *Creditanstalt Bankverein* in Vienna, and an internal memorandum from the Gestapo, both relating to Fritz Heller. The CRT notes that it is plausible that these documents are documents which most likely only a family member would possess. Finally, 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 the Claimants as a family member, and all of this information supports the plausibility that the Claimants are related to the Account Owner, as they have asserted in their Claim Forms. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The CRT notes that the Bank's records indicate that the accounts numbered 61403 were closed on 29 May 1940, at which time, according to information provided by the Claimants, the Account Owner may have been outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the accounts were closed; that the Account Owner fled his country of origin due to Nazi persecution; that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety, especially where, as here, documentation indicates that the Gestapo was aware that the Account Owner fled to Switzerland and that he owned assets in bank accounts and that it was seeking to confiscate those assets; that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 [REDACTED 2]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was his grandfather, 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 accounts. Further, the CRT notes that Claimant [REDACTED 2], as the Account Owner's grandson, has a better entitlement to the accounts than Claimant [REDACTED 1], the Account Owner's great-niece.

Amount of the Award

In this case, the Account Owner held one demand deposit account and one custody 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 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. 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. As noted above, Claimant [REDACTED 2] is the grandson of the Account Owner, while Claimant [REDACTED 1] is the great-niece of the Account Owner. Accordingly, Claimant [REDACTED 2] is entitled to 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
21 September 2005

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