

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Frank Lewis Herz
represented by [REDACTED]

in re Accounts of Franz Herz

Claim Number: 220064/SJ¹

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of Frank Lewis Herz (the “Claimant”) to the published accounts of Franz Herz (the “Account Owner”) at [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.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying himself as the Account Owner. The Claimant, Frank Lewis Herz, who is Jewish, stated that he was born as Franz Ludwig Herz on 18 March 1908 in Heilbronn, Germany, and was married to [REDACTED], née [REDACTED], on 20 January 1940 in New York, New York, the United States. The Claimant stated that his parents were Hermann Herz and Jenny Herz, née Levi. The Claimant indicated that he was a lawyer in Germany until 1933, when he was forced by the Nazis to stop practicing law. The Claimant stated that he was thereafter forced to flee Germany, and that he lived at rue Pargaminières in Toulouse, France from 1933 until 1935, during which time he worked as a legal assistant. According to the Claimant, his parents fled from Germany to Paris in 1933, where they lived until 1935. The Claimant stated that in 1935 both he and his parents left France for the United States. The Claimant continues to live in the United States. The Claimant stated that he has a son, [REDACTED], who was born on 26 February 1946 and who represents him in these proceedings. In a telephone conversation with the CRT, [REDACTED] stated that his father and grandparents left France hastily with little time to put their affairs in order. Furthermore, he added that his father had stated that no attempts were made to close the accounts from the United States, rather the funds were assumed to have been lost.

¹ The CRT previously issued to the Claimant a Certified Award to accounts owned by Hermann Herz and Jenny Herz, which was approved by the Court on 21 April 2003. See In re Accounts of Hermann Herz and Jenny Herz.

In support of his claim, the Claimant submitted a copy of his birth certificate from Heilbronn and dated 21 November 1933, which indicates that he was born to Hermann and Jenny Herz, née Levi and that they named him Franz Herz; a copy of his family tree; a sample of his signature, and; a copy of his Certificate of Naturalization to the United States.

As stated above, the Claimant indicated that he was born on 18 March 1908 in Heilbronn.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form and a printout from the Bank's database. According to these records, the Account Owner was Franz Herz and the Power of Attorney Holders were Hermann Herz and Jenny Herz. The Bank's records indicate that the Account Owner resided at 56, rue Pargaminières in Toulouse, France, and that the Power of Attorney Holders resided at Hotel Richmond in Paris, France. 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 Holders also had an address in Toulouse, at 56, rue Pargaminières. The Bank's records indicates that the Account Owner held a demand deposit account, numbered 1003550, and a custody account, both of which were opened on 25 July 1935.

The Bank's records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts.

The auditors who carried out the ICEP Investigation did not find these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holders, or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified himself as the Account Owner. His name matches the published name of the Account Owner and his parents' names match the published names of the Power of Attorney Holders. The Claimant identified his address as rue Pargaminières in Toulouse, France, which matches unpublished information about the Account Owner contained in the Bank's records. In support of his claim, the Claimant submitted documents, including a copy of his family tree and his birth certificate, stating that his name at birth was Franz Herz and that he was born to Hermann and Jenny Herz. Finally, the Claimant submitted a sample of his signature, which matches the signature sample contained in the Bank's records. The CRT notes that the other claims to these accounts were disconfirmed due to the fact

that those claimants did not identify the Power of Attorney Holders to these accounts. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified himself as 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 he is Jewish, that he and his family were prevented from working in their native Germany and that they were eventually forced to flee the country.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is the Account Owner. The Claimant submitted identifying documentation, including his birth certificate and his Certificate of Naturalization to the United States, as well as a signature sample that matches the signature sample contained in the Bank's records.

The Issue of Who Received the Proceeds

Given that in 1933 the Nazis embarked on a campaign to seize the domestic and foreign assets of Jewish nationals in Germany through the enforcement of flight taxes and other confiscatory measures including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until after the Nazi rise to power and would not have been able to repatriate his accounts to Germany without their confiscation; that there is no record of the payment of the Account Owner's accounts to him, nor any record of a date of closure of the accounts; that the Account Owner would not have been able to obtain information about his 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; given the application of Presumptions (a), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A) and Appendix C,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or the Power of Attorney Holders. 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 he is the Account Owner and, therefore is entitled to an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor the Power of Attorney Holders received the proceeds of the claimed accounts.

² Appendix C appears on the CRT II website -- www.crt-ii.org.

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 demand deposit account was 2,140.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs. Thus, the total 1945 average value of the accounts at issue is 15,140.00 Swiss Francs. 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 189,250.00 Swiss Francs.

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
28 May 2004