

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED]¹
represented by Dr. Walter Friedrich

in re Account of Friedrich Herz

Claim Number: 222552/MBC

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Friedrich Herz (the “Account Owner”), over which Ljubow Herz (the “Power of Attorney Holder”) held power of attorney, at the Geneva branch of 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.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her maternal uncle, Friedrich (Fritz) Herz, who was one of four children of [REDACTED] and [REDACTED], née [REDACTED]. The Claimant identified the other children as her mother, [REDACTED], née [REDACTED], [REDACTED] and [REDACTED]. In a letter to the CRT, the Claimant’s representative stated that the Claimant’s uncle was born on 14 October 1891 in Vienna, Austria. According to the Claimant’s representative, the Claimant’s uncle fought in the First World War and was subsequently a prisoner of war in Russia. The Claimant’s representative also indicated that the Claimant’s uncle was married to Ljubow (Ljuba) Herz, née Rabuchina, a Russian pianist, in Moscow, Russia, on 26 September 1925. The Claimant’s representative further stated that the Claimant’s uncle, who was Jewish, was a merchant and lived at Rotenturmstrasse 1 in Vienna from 1921 to 1930 and also for some time at Habsburgergasse 6 in Vienna and at Josefstädterstrasse 43, also in Vienna, from September 1935 to March 1938. The Claimant’s representative further indicated that the Claimant’s uncle went from Vienna to Trieste, Italy, on 5 March 1938, and that he subsequently emigrated to Africa. Finally, the Claimant’s representative indicated that the Claimant’s uncle was without issue.

¹ The CRT notes that Claimant [REDACTED] passed away on 31 July 2003.

The Claimant submitted her certificate of baptism, identifying her mother as [REDACTED], née [REDACTED], and two certificates issued by the Jewish Community of Vienna, identifying [REDACTED] and Friedrich Herz as the children of [REDACTED] and [REDACTED], née [REDACTED]. The Claimant stated that she was born on 5 March 1910 in Vienna.

Information Available in the Bank's Records

The Bank's records consist of a customer card, a power of attorney form signed in Geneva on 30 May 1939, an account statement, and an internal list of dormant accounts. According to these records, the Account Owner was Friedrich Herz, a sales representative, and the Power of Attorney Holder was Ljubow Herz. The Bank's records include two mailing addresses for Friedrich Herz, one at a hotel in Salisbury, Southern Rhodesia (now Harare, Zimbabwe) and one care of the Bank's London, United Kingdom, branch. According to the Bank's records, the Account Owner held one demand deposit account and a custody account, both numbered 22334, which were opened on 8 May 1939 in Geneva. The Bank's records also indicate that a deposit of 5,600.00 Swiss Francs ("SF") was made in favor of the Account Owner on an unknown date.

According to the account statement, dated 15 February 1940, as of that date the custody account contained 11 gold bars, which were deposited in the Bank's London branch. The records indicate that the custody account was closed on a date in April 1945 (the exact date is illegible). A stamp on the card notes that the account was closed before November 1956.

The Bank's records also indicate that the demand deposit account was deemed dormant by the Bank, that it was transferred to a suspense account for dormant assets on 21 July 1955, and that the balance of the account was SF 60.00 on that date. The account remains open in the Bank's suspense account.

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about this account/these accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of a power of attorney form, a form containing instructions regarding correspondence regarding accounts, and a confirmation of receipt of the Bank's rules regarding the deposit of securities. According to these records, the Account Owner was Friedrich Herz, who resided at Freyung 1 in Vienna I, as of the date that the power of attorney form was signed in Vienna on 24 May 1935. According to these documents, Friedrich Herz owned one custody account, numbered 40225, at the Basel branch of the Bank, over which A. Herz, who also resided at Freyung 1 in Vienna I, held power of attorney. The Bank's records do not show when this account was closed, nor do these records indicate the value of this account.

There is no evidence in the Bank's records that the Account Owner or his heirs closed either the demand deposit account or the custody account number 40225 and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's uncle's name matches the published name of the Account Owner. In addition, the Claimant identified the name of his uncle's wife, which matches the published name of the Power of Attorney Holder.² The Claimant stated that the Account Owner resided in Africa, which matches unpublished information about the Account Owner contained in the Bank's records. In support of her claim, the Claimant submitted documents, including a certificate from the Jewish Community of Vienna, identifying her uncle as Friedrich Herz, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank's records as the name of the Account Owner. The CRT notes that the name Friedrich Herz appears only once on the February 2001 published list of accounts determined by the investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") to be probably those of victims of Nazi persecution. The CRT further notes 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, that he left Austria shortly before Austria's incorporation into the Reich in March 1938 (the *Anschluss*), and that he ultimately fled Europe for South Africa.

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 paternal uncle. These documents include her own certificate of baptism, identifying her mother as [REDACTED], née [REDACTED], and two certificates issued by the Jewish Community of Vienna, identifying [REDACTED] and Friedrich Herz as the children of [REDACTED] and [REDACTED], née [REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

In this case, the Bank's records indicate the existence of three accounts: a custody and a demand deposit account, both numbered 22334, and a custody account numbered 40225.

With regard to the custody account numbered 22334, the Bank's records indicate that the account held 11 gold bars on deposit in the London branch of the Bank, and that the account was closed in April 1945. The CRT notes that the Account Owner was in contact with the Bank after he left Austria, and that the Bank's records reflect the Account Owner's addresses in London and South Africa. The CRT further notes that this account was closed approximately at the same

time that hostilities ended in Europe. Given these facts, the CRT concludes that the Account Owner remained in contact with the Bank, accessed the account, and received its proceeds.

With regard to the demand deposit account numbered 22334, the CRT notes that, consistent with Swiss banking practices, this account likely existed so that the maintenance fees for the custody account could be charged to it. Although the records do not so explicitly state, based upon the transactions reflected in the record, it appears that fees for the custody account were charged to the demand deposit account, reducing its balance, until the custody account was closed by the Account Owner. At that time, it appears that the Account Owner neglected to close the demand deposit account, because it remained open and dormant until it was transferred to a suspense account for dormant assets in 1955, where it remains today, even though the Account Owner could have accessed the account. The CRT notes, however, that the Bank had affirmative knowledge of the Account Owner's whereabouts, but apparently did not act to ensure that he received the proceeds. In any case, as the account remains suspended, it is clear that the Account Owner did not receive the proceeds of this account.

With regard to custody account 40225, the Bank's records do not indicate if or when the account was closed. Given that the Account Owner fled Europe to avoid Nazi persecution; 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 (f), (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, 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 paternal uncle, and that relationship justifies an Award. Third, the CRT has determined 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 award is for one demand deposit account and one custody account.

With regard to the demand deposit account, the Bank's records indicate that the value of the demand deposit account as of 21 July 1955 was SF 60.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 165.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1955. Consequently, the adjusted balance of the account at issue is SF 225.00. According to Article 29 of the Rules, if the

amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 26,750.00 for this account.

With regard to the custody account numbered 40225, the Bank's records do not indicate the value of the 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 SF 13,000.00. 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 an award amount of SF 162,500.00 for this account.

Consequently, the total award amount is SF 189,250.00.

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
26 November 2008