

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Michel Henri Louis Zimmern

in re Accounts of Hubert Herzfelder

Claim Number: 223000/AX

Award Amount: 53,500.00 Swiss Francs

This Certified Award is based upon the claim of Michel Henri Louis Zimmern (the “Claimant”) to the published accounts of Hubert Herzfelder (the “Account Owner”) at the [REDACTED] (the “Bank”).¹

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 godfather, Hubert Ferdinand Charles Herzfelder, who named the Claimant in his will and who was born on 21 May 1911 in Vienna, Austria. According to the Claimant, his godfather, who was Jewish and an Austrian national, was married to Gertrude Gisèle Hermine Herzfelder, née Czettel, on 24 December 1935, at which time he resided in Paris II, France. The Claimant indicated that Gertrude and Hubert Herzfelder had no children, and that from 1937 to 1940, and again after the end of the Second World War from 1945 to 1964, they resided at 77 rue des Saints-Pères, Paris VI. According to the Claimant, Hubert Herzfelder was a numismatist who often travelled to his customers in Basel, Switzerland. The Claimant stated that his godfather resided in Germany and moved to Austria after Adolf Hitler came to power in Germany. The Claimant stated that his godfather later fled to France. According to the Claimant, from 1940 to 1943, Hubert Herzfelder went into hiding in an unknown location in France until he managed to illegally cross the border to Switzerland sometime around 1943. In support of his claim, the Claimant submitted Hubert Herzfelder's marriage certificate, indicating that he was married to Gertrude Herzfelder and that he resided in Paris II; and Gertrude Herzfelder's last will, indicating that her husband was Hubert

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”), Hubert Herzfelder is indicated as having four accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of five accounts, among which is a debit account.

Herzfelder, and that her godson, the Claimant, is the sole heir to her estate. The Claimant indicated that he was born on 24 November 1934 in Saint Pierre les Elbeuf, France.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Hubert Herzfelder who resided at Mahlerstrasse 4 in Vienna, Austria; and later in London, the United Kingdom; and at rue Gaillon in Paris II, France. The Bank's records indicate that the Account Owner held a custody account, numbered 36782, three demand deposit accounts, and one debit account. The Bank's record indicates that the custody account was closed on 13 February 1936, and that one demand deposit account was closed on 30 September 1933 by way of transfer to the debit account, which was in turn closed on 31 March 1935, and the remaining balance was transferred to a demand deposit account. The remaining two demand deposit accounts were closed on 31 March 1939 and 20 October 1939. The amounts in the accounts on the date of their closure are unknown. There is no evidence in the Bank's record that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His godfather's name matches the published name of the Account Owner. The Claimant indicated that his godfather was from Vienna, which matches published information about the Account Owner contained in the Bank's record. The Claimant further indicated that his godfather subsequently resided in Paris II, which matches unpublished information about the Account Owner contained in the Bank's record. In support of his claim, the Claimant submitted documents, including his godfather's marriage certificate, indicating that his godfather's name is Hubert Herzfelder, that he was born in Vienna, and that he resided in Paris II, providing independent verification that the person who is claimed to be the Account Owner had the same name and addresses recorded in the Bank's records as the name and addresses of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Hubert Herzfelder, an Austrian national who was admitted as a civil refugee in Switzerland on 22 December 1942, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

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

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 he went into

hiding in France between 1940 and 1943. The Claimant further stated that the Account Owner found refuge in France, and that he eventually illegally crossed the border to Switzerland. As noted above, a person named Hubert Herzfelder was included in the CRT's database of victims.

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 godfather. These documents include Hubert Herzfelder's marriage certificate, indicating that he was married to Gertrude Herzfelder, and Gertrude Herzfelder's will, indicating that her husband was Hubert Herzfelder, and that the Claimant is her sole heir. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With regard to the two demand deposit accounts, the Bank's records indicate that they were closed on 31 March 1939 and 20 October 1939, at which time, according to information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. However, given that the Bank's record does not indicate to whom the account was 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, 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 or his 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.

With regard to the custody account, closed on 13 February 1936, the CRT notes that this account was closed prior to the incorporation of Austria into the Reich in March 1938. Consequently the CRT concludes that the Claimant was able to access this account and receive the proceeds himself. With regard to the remaining demand deposit account, the CRT notes that this account was transferred on 30 September 1933 to the Account Owner's debit account, which was subsequently closed on 31 March 1935, a date that also precedes the incorporation of Austria into the Reich. The CRT further notes that the above account activity shows that, the Account Owner, in any event, did not hold any positive assets in his accounts at that time.

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 godson of the Account Owner. According to Article 23 (2)(c) of the Rules, if a claimant bases a claim of entitlement on a chain of inheritance but has not submitted an unbroken chain of wills or other inheritance documents, the CRT may use the general principles of distribution established in Article 23(1) to make allowance for any missing links in the chain, consistent with principles of fairness and equity. In this case, although the Claimant is not related to the Account Owner through blood or marriage, the Account Owner had no children and the Claimant is the godson of the Account Owner. Further, the Claimant submitted the will of the Account Owner's wife, Gertrude Herzfelder, indicating that she bequeathed her entire estate to the Claimant. Accordingly, consistent with principles of fairness and equity, the CRT determines it is appropriate to award the accounts of the Account Owner to the Claimant, as he is the godson of the Account Owner and the sole heir to the estate of the Account Owner's wife. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of two of the demand deposit accounts.

Amount of the Award

In this case, the Account Owner is being awarded two demand deposit accounts. 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 demand deposit account was 2,140.00 Swiss Francs ("SF"). Thus, the total 1945 average value of two demand deposit accounts is SF 4,280.00. 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 53,500.00.

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 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
18 November 2004