

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Stefan Harpner
acting on behalf of himself and Lottie Enser, Roy Hitchman,
Kathryn Metzger, and Sandra Wimmer

in re Account of Max Hitschman

Claim Number: 221024/MD¹

Award Amount: 369,644.50 Swiss Francs

This Certified Award is based upon the claim of Stefan Harpner (the “Claimant”) to the account of Max Hitschman (the “Account Owner”) at the Zurich branch of [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank is redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his maternal grandfather. The family tree submitted by the Claimant indicates that Max Hitschman was also the grandfather of the individuals whom the Claimant represents. The Claimant stated that his grandfather, Max Hitschman, was born in 1870 in Vienna, Austria, married Helene Cohn in 1900, and had an address at Reichsratstrasse 9 in Vienna. According to the information in the Claim Form, Max Hitschman had two children: Lisa and Georg. The Claimant stated that his grandfather was a lawyer in Vienna and that he was the legal representative of the Bank in Austria. The Claimant stated further that Max Hitschman, who was Jewish, had to flee Austria in 1938 or 1939, and that he went to Nice, France, where he survived the Second World War. According to the information provided by the Claimant, Max Hitschman died in 1950 in Zurich, Switzerland, where his wife also died.

Information Available in the Bank Records

The bank records consist of a bank customer card and a list of accounts transferred to Austria after the *Anschluss* of March 1938. According to these records, the sole Account Owner was Dr. Max Hitschman who was a lawyer and had addresses in Vienna and Zurich. The bank

¹ The Claimant submitted an additional claim to the account of Heinrich Hitschmann, which is registered under the claim number 221023. The Tribunal will treat the claim to this account in a separate decision.

records indicate that the Account Owner held a demand deposit account and a custody account which were closed on 10 April 1938 and 27 October 1938, respectively. The securities in the custody account were valued by the bank at the date of closure at 30,003.00 Swiss Francs. The value of the demand deposit account as of the date of closure is unknown. The bank records show that the accounts were among those transferred to Austria after the *Anschluss*.

Information from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Max Hitschman. These documents indicate that the Account Owner declared his assets deposited with the Bank in the Austrian census of Jewish assets and that the value of these assets as of 27 April 1938 was 30,003.00 Swiss Francs. These documents indicate further that the Account Owner was married to Helene Hitschman, née Cohn, and that he had an address at Reichsratstrasse 9 in Vienna.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. He provided information about him, including his profession, his address in Vienna, and his wife's name, which matches exactly the unpublished information contained in the bank records and information in the Austrian census of Jewish assets.

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 fled Austria to avoid Nazi persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he and his relatives represented by him are related to the Account Owner by submitting documents, including birth certificates of his family members, demonstrating that he is a grandson of the Account Owner. He further submitted detailed family information and a family tree indicating that the relatives represented by him are also the Account Owner's grandchildren. There is no information to indicate that the Account Owner has other surviving heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning his and his relatives' relationship to the Account Owner.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the accounts at issue were paid to the Account Owner or his heirs, the Tribunal must consider the question of what happened to the funds in this case.

The historical evidence developed by the Independent Committee of Eminent Persons during its investigation of Swiss banks (the “ICEP Investigation”) demonstrates that the funds of Nazi victims in Swiss banks were disposed of in various ways. In some cases, the account owners and/or their families withdrew and received the funds. In other cases, Nazi authorities coerced account owners to withdraw the balances in their Swiss accounts and transfer the proceeds to banks designated by the Nazi authorities, and the funds fell into Nazi hands. For other accounts, no transfers occurred, but account values were consumed by regular and special bank fees and charges, which resulted ultimately in closure without any payment to the account owners. In still other cases, particularly after a period of inactivity or dormancy, the proceeds were paid to bank profits. Thus, since the funds in this case apparently were not paid to the Account Owner, there is a substantial likelihood that these funds went to the Nazis.

Although the Tribunal cannot determine with certainty who received the proceeds of the accounts, the Tribunal concludes that it is plausible that neither the Account Owner nor his heirs received the proceeds.² The application of confiscatory laws by the Nazi Regime in Austria after the *Anschluss* of March 1938, as described in more detail in the footnote below, makes it unlikely that the Account Owner received the proceeds himself. The Tribunal further notes that the Account Owner declared his custody account to the Nazi authorities, a fact that supports the Tribunal’s conclusion that the Account Owner did not receive the proceeds himself. In view of the fact that the Bank’s records indicate that the Account Owner’s account was transferred to Austria after the Anschluss, the Tribunal concludes that it is plausible that there was a coerced transfer to the Nazis. The Tribunal’s conclusion is also required by Article 34 (a) and (d) of the Rules Governing the Claims Resolution Process (the “Rules”), which provide that where an account was closed after the date of occupation of the country of residence of the Account Owner or the account had been declared in a Nazi census of Jewish assets, the Tribunal shall presume that neither the account owners nor their heirs received the proceeds of the claimed account. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the accounts and received the proceeds himself.

² In reaching this conclusion, the Tribunal is relying in part on research cataloguing more than forty different laws, acts, and decrees used by the Nazi Regime to confiscate Jewish assets abroad. After the annexation of Austria, German laws were extended to apply there as well, and these laws applied to foreign assets of Austrian citizens as a result of a law promulgated on 23 March 1938. Although many of the laws were facially non-discriminatory, the Nazi Regime enforced these laws on a discriminatory basis against Jewish asset holders. These laws included, for example, increasingly stringent registration and repatriation requirements for assets held outside the Reich and special confiscatory taxes for emigrants who wished to flee. After the occupation of Austria, wholesale and systematic Nazi expropriations of Jewish assets held in Swiss banks and elsewhere were widespread. A decree dated 26 April 1938 required Jews to register their assets, and subsequent to that date the Nazi Regime began to enact legislation and orders to repatriate and confiscate foreign assets both for Jews who sought permission to flee the Reich and for those unable to flee. A listing of the principal laws invoked by the Nazi Regime in specific confiscatory situations appears at the CRT-II website, www.crt-ii.org.

Basis for the Award

The Tribunal 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his and his relatives' grandfather and that those relationships justify an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

The Bank records indicate that the value of the assets in the custody account transferred to Austria in 1938 was 30,003.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic value by a factor of 11.5, in accordance with Article 37(1) of the Rules. Consequently, the award amount for the custody account in this case is 345,034.50 Swiss Francs.

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here for the demand deposit account, the average value of the same or similar type of account in 1945 is used to calculate the present 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. The present value of this amount is calculated by multiplying it by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce an award amount for the demand deposit account of 24,610.00 Swiss Francs, and a total award amount of 369,644.50 Swiss Francs.

In cases where the value of an account is based on the presumptions of Article 35 of the Rules, or where the Tribunal has determined that an account may be subject to later competing valid claims, claimants shall receive an initial payment of 35% of the total award amount. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 65% of the total award amount. In this case, there is the possibility of other competing claims and the value of the demand deposit account is based on the Article 35 presumptions. In this instance, 35% of the total award amount is 129,375.57 Swiss Francs.

Division of the Award

The Claimant is representing his sister and his cousins in these proceedings. According to Article 29 of the Rules, each of the relatives represented by the Claimant is entitled to receive one-fifth (1/5) of any payment made to the Claimant.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he and the relatives represented by him 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

At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a plausible case for entitlement to an award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same account will be forthcoming. Articles 37(3)(a) and (b) of the Rules provide that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, and/or the Tribunal determines that an account may be subject to later competing claims, the initial payment to the claimant shall be 35% of the Certified Award, and the claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. Thus, the Rules instruct and require the Tribunal to certify and recommend an initial 35% payment in awards submitted for Court approval in particular cases where either the Tribunal has used the value presumptions of Article 35 or it has determined that the account may be subject to later competing claims, or both.

In this case, the Tribunal has used the value presumptions of Article 35 of the Rules to calculate the account value and is of the opinion that the accounts at issue may be subject to later competing claims. On this basis, the Tribunal certifies this Award for approval by the Court and for payment by the Special Masters in accordance with Article 37(3) of the Rules.

8 May 2022

Date



Veijo Heiskanen
Senior Claims Judge