

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

Claimant [REDACTED 1]
represented by Stephen M. Harnik

and to Claimant [REDACTED 2]
also acting on behalf of [REDACTED],
[REDACTED], and [REDACTED]

in re Account of Heinrich Novak

Claim Number: 221048/GO/AC; 222438/GO/AC

Award Amount: 46,657.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to the account of Josef Novak and the claim of [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together “the Claimants”) to the account of Heinrich (Jindrich) Novak. This Award is to the published accounts of Heinrich Novak (the “Account Owner”) at the Geneva branch of the [REDACTED] (the “Custodian”).^{1,2}

¹ This account comes from a group of accounts administered by the *Unéve SA* (the “Custodian”) in Geneva under an alias for a Jewish banker in Paris, *Edmond Cassel & Cie*, and his partner in London, *Cassel Arenz & Co. Ltd*. The CRT notes that the Custodian no longer exists. The account was transferred in 1963 to a trust account at another Swiss bank under the names of the two owners of the Custodian, Josef H. Dasser and Dr. Werner Kraft.

² The CRT notes that it has jurisdiction over accounts at the Custodian, under the Settlement Agreement reached by the parties to the Holocaust Victim Assets Litigation (the “Settlement Agreement”), even though the Custodian is not a bank and was not included in the investigation of Swiss banks carried out pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) in order to identify accounts of Victims of Nazi Persecution. According to the Settlement Agreement, “Deposited Assets means (1) any and all Assets actually or allegedly deposited . . . with any custodian, including, without limitation, a bank, branch or agency of a bank, other banking organization or custodial institution or investment fund established or operated by a bank incorporated, headquartered or based in Switzerland at any time (including, without limitation, the affiliates, subsidiaries, branches, agencies, or offices of such banks, branches, agencies, custodial institutions, and investment funds that are or were located either inside or outside Switzerland at any time) in any kind of account (including, without limitation, a safe deposit box or securities account) prior to May 9, 1945, that belonged to a Victim or Target of Nazi Persecution . . . and/or (2) any and all Assets that the ICEP or the Claims Resolution Tribunal determines should be paid to a particular claimant or to the Settlement Fund because the Asset definitely or possibly belonged to an individual [or business entity] . . . actually persecuted by the Nazi Regime or targeted for persecution by the Nazi Regime for any reason.” [emphasis added] *In re Holocaust Victim Asset Litigation*, 105 F. Supp. 2d 139 (E.D.N.Y. 2000), Exhibit I to Plan of Allocation, Class Action Settlement Agreement (26 January 1999), 2-3, text available at http://www.swissbankclaims.com/PDFs_Eng/exhibitItoPlanofAllocation.pdf.

Furthermore, although it was not a party to the Holocaust Victim Assets Litigation, the Custodian is among the parties whose liability is released by the Settlement Agreement, since “Releasees means the Settling Defendants; the

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

Information Provided by the Claimants

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as her father-in-law, Heinrich (Jindrich) Novak, who was born on 5 November 1881 in Hostomice, Austria-Hungary (today Czech Republic) and was married to [REDACTED], née [REDACTED], on 18 December 1919 in Prague, Czechoslovakia (now Czech Republic). Claimant [REDACTED 2] indicated that her father-in-law, who was Jewish, and her mother-in-law resided in Prague, that they had two biological children, Sonja Novak and Robert Novak, and that they also adopted her mother-in-law's nephew, [REDACTED] (Claimant [REDACTED 2]'s late husband). According to Claimant [REDACTED 2], the family resided at Kanalska 5 in Prague, where her father-in-law owned a clothing store. Claimant [REDACTED 2] indicated that in 1938, her father-in-law visited his daughter [REDACTED], who was residing in Switzerland. Claimant [REDACTED 2] further indicated that her father-in-law, mother-in-law and brother-in-law [REDACTED] were deported on 31 October 1941 to Lodz, Poland, but that they did not survive the deportation, and were all declared dead as of 30 April 1942. Claimant [REDACTED 2] indicated that [REDACTED] died on 16 September 1942 in Cambridge, the United Kingdom. Claimant [REDACTED 2] further indicated that her husband, [REDACTED], died on 5 October 1995 in Zurich, Switzerland, and that she and their three children [REDACTED], [REDACTED], née [REDACTED], and [REDACTED] are his only heirs.

In support of her claim, Claimant [REDACTED 2] submitted copies of:

- (1) her in-laws' marriage certificate, issued by the Registry of Jewish Faith Matrimonies in Prague ("*Matrika oddanych zid. nabozenske obce v Praha*"), indicating that Jindrich Novak and [REDACTED] were married on 18 December 1919 in Prague,³ and that [REDACTED] was the daughter of [REDACTED] and [REDACTED];
- (2) her mother-in-law's birth certificate, indicating that [REDACTED] was born on 13 October 1885, and that her parents were [REDACTED] and [REDACTED];
- (3) her husband's biological mother's birth certificate, indicating that [REDACTED] was born on 19 August 1879, and that her parents were [REDACTED] and [REDACTED];

Swiss National Bank; Other Swiss Banks; the Swiss Bankers Association; the Swiss Confederation (including, without limitation, the Cantons and *all other political subdivisions and governmental instrumentalities in Switzerland*); *all business concerns (whether organized as corporations or otherwise) headquartered, organized, or incorporated in Switzerland as of October 3, 1996 . . .*" [emphasis added] *Id.* at 3. Additionally, the CRT has previously awarded an account held at a Swiss bank which was not included in the ICEP Investigation and was not among the Settling Defendants (*in re Account of Martin Frank*, approved 10 September 2004).

³ The CRT notes that the ending -ova is a common ending for Czech and Slovak feminine surnames and that, accordingly, the surname [REDACTED] corresponds with the surname [REDACTED].

- (4) her husband's biological parents' marriage certificate, indicating that [REDACTED] and [REDACTED] were married on 5 June 1911, and that [REDACTED] was the daughter of [REDACTED] and [REDACTED];
- (5) her husband's birth certificate, indicating that [REDACTED] was born on 21 August 1919, and that his mother was [REDACTED], née [REDACTED];
- (6) transportation cards issued on 7 October 1996 by The Federation of Jewish Citizens in Czech Republic ("*Federace Zidovskych Obci v Ceske Republice*"), indicating that Jindrich Novak, [REDACTED] and [REDACTED] were deported on 31 October 1941 from Prague to Lodz, and that they did not survive their deportation;
- (7) her father-in-law's, mother-in-law's and brother-in-law's death certificates, indicating that Jindrich Novak, [REDACTED], née [REDACTED], and [REDACTED] were all declared dead as of 30 April 1942;
- (8) her sister-in-law's death certificate, indicating that [REDACTED] died on 16 September 1942 in Cambridge;
- (9) her own marriage certificate, indicating that [REDACTED] and [REDACTED 2] were married on 2 March 1949 in Prague, and that [REDACTED] was the son of [REDACTED] and [REDACTED];
- (10) her children's birth certificates, indicating that [REDACTED] was born on 18 September 1949 in Prague, that [REDACTED] was born on 8 July 1954 in Prague, that [REDACTED] was born on 19 November 1951 in Prague, and that their parents were [REDACTED] and [REDACTED 2], née [REDACTED];
- (11) a document issued on 18 April 1966 by the State Notary for Second District of Prague ("*Statni Notarstvi pro Prahu 2*"), indicating that [REDACTED] is [REDACTED]'s only heir; and
- (12) her husband's death certificate, indicating that [REDACTED] died on 5 October 1995 in Zurich, Switzerland.

In addition, Claimant [REDACTED 2] submitted documents from the Swiss Federal Department of Foreign Affairs ("*Eidgenössisches Departament für Auswärtige Angelegenheiten*") issued in Bern, Switzerland, concerning the registration of assets belonging to Heinrich Novak which were held in Swiss banks and reported in the 1962 survey of assets held in Switzerland by foreigners or stateless persons who were or who were believed to have been victims of racial, religious or political persecution, conducted by Swiss banks pursuant to a Federal decree in 1962 (the "1962 Survey"). These documents were also obtained by the CRT from the Swiss Federal Archive and are described in full below. According to these records, Josef Dasser and Dr. Werner Kraft held an account, which included assets belonging to Heinrich Novak with a value of 960.00 Swiss Francs ("SF") as of 1 September 1963. These records further indicate that [REDACTED] was Heinrich Novak's adopted son and nephew. In addition, these records indicate that [REDACTED 2], [REDACTED], [REDACTED] and [REDACTED] received payment totaling SF 2,718.00 for the account on 15 June 2000.

Claimant [REDACTED 2] indicated that she was born on 30 October 1927 in Tvrdosovce, Czechoslovakia (now Slovakia). Claimant [REDACTED 2] is representing: her daughter, [REDACTED], née [REDACTED], who was born on 18 September 1949 in Prague, her daughter [REDACTED], who was born on 19 November 1951, and her son, [REDACTED], who was born on 8 July 1954 in Prague.

Claimant [REDACTED 2] previously submitted an Initial Questionnaire (“IQ”) to the Court in 1999, asserting her entitlement to a Swiss bank account owned by Jindrich Novak.

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form asserting that her father, Professor Dr. [REDACTED], owned a Swiss bank account. In her claim form, Claimant [REDACTED 1] did not identify Heinrich Novak as her relative. However, a comparison of the information provided by Claimant [REDACTED 1] and Claimant [REDACTED 2] about Heinrich Novak reveals that Claimant [REDACTED 1]’s father was the brother of Heinrich Novak, who was Claimant [REDACTED 2]’s father-in-law.

Claimant [REDACTED 1] stated that her father, Prof. Dr. [REDACTED], was born on 28 February 1879 and was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 1] indicated that her parents had three children: [REDACTED], [REDACTED] and [REDACTED 1] (Claimant [REDACTED 1]). Claimant [REDACTED 1] further indicated that her father, who was Jewish, resided at Schwarzspanierstrasse 6 in Vienna, Austria, and that he was a gynecologist. Claimant [REDACTED 1] added that her father resided in Vienna until 1938, when he fled first to Prague, Czechoslovakia (today Czech Republic), then to Weybridge, the United Kingdom, and subsequently settled in New York, the United States. Claimant [REDACTED 1] stated that her mother died in May 1972 in the United States and that her father died on 29 December 1983 in Greenwich, the United States.

Information Available in the Custodian’s Records

The CRT notes that 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”) did not report an account belonging to Heinrich Novak during their investigation. The documents evidencing an account belonging to Heinrich Novak were obtained from the Swiss Federal Archive and are further described below.

Documents obtained from the Swiss Federal Archive

In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the registration of assets belonging to Heinrich Novak. These records indicate that the Account Owner was Heinrich Novak, who resided in Prague, Czechoslovakia, and whose assets were administered by *Edmond Cassel & Cie*, 7 Bvd. Hausmann in Paris, France and *Cassel Arenz & Co. Ltd*, Dashwood House, 69 Broad Street in London, the United Kingdom. These records further indicate that the administrators were never in direct contact with the Account Owner. According to these records, the Account Owner held an account, the type of which is not indicated. These records also indicate that the last withdrawal from the account was dated 23 May 1939 in favor of Sonja Novak c/o “*Préalpina*” *Inst. De Jeunes Filles*,⁴ Chexbres, Switzerland in the amount of SF 877.10. These records indicate that the account was transferred

⁴ “Préalpina” Institute for Young Girls.

to a demand deposit account held at another Swiss bank by the Custodian. The records also indicate that the amount of the Custodian's account which was attributed to the Account Owner as of 1 September 1963 was SF 960.00. The documents indicate that the account was reported by the Swiss bank in the course of the 1962 Survey. According to a document, dated 6 May 1966, the Registration Office for Assets of Missing Foreigners ("*Meldestelle für Vermögen verschwundener Ausländer*") requested that the Guardianship Authorities of the city of Zurich ("*Vormundschaftsbehörde der Stadt Zürich*") entrust the assets to a custodian, as prescribed by the 1962 Federal decree, and that such a custodian was appointed in 1966. The records from the Swiss Federal Archive do not refer to the ultimate disposition of the assets.

The CRT's Analysis

Identification of the Account Owner

Claimant [REDACTED 2] has plausibly identified the Account Owner. Claimant [REDACTED 2]'s father-in-law's name matches the published name of the Account Owner. Claimant [REDACTED 2] identified the Account Owner's city and country of residence, and the name of the Account Owner's beneficiary, which match unpublished information about the Account Owner contained in the records of the Swiss Federal Archive. As noted above, although Claimant [REDACTED 1] did not identify the Account Owner, it is clear from the information she provided regarding her father that the Account Owner was her paternal uncle.

In support of her claim, Claimant [REDACTED 2] submitted documents, including the decision from the Federal Department of Foreign Affairs issued on 15 June 2000 in Bern, Switzerland, indicating that [REDACTED 2], [REDACTED], [REDACTED] and [REDACTED] received payment related to Heinrich Novak's account, which was reported in the 1962 Survey, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Swiss Federal Archive records as the name of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Heinrich Novak, and indicates that his date of birth was 5 November 1881 and place of birth was Hostomice, Czechoslovakia, which matches the information about the Account Owner provided by Claimant [REDACTED 2]. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that Claimant [REDACTED 2] filed an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Heinrich Novak, prior to the publication of the List of Account Owners determined by ICEP to be probably or possibly those of Victims of Nazi Persecution and published in 2005 (the "2005 List"). This indicates that Claimant [REDACTED 2] has based her present claim not simply on the fact that an individual identified on the 2005 List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the 2005 List. It also indicates that Claimant [REDACTED 2] had reason to believe that her relative owned a Swiss bank account prior to the publication of the 2005 List. This supports the credibility of the information provided by Claimant [REDACTED 2].

The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different city and country of residence than the city and country of residence of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 2] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 2] stated that the Account Owner was Jewish, that he was deported on 31 October 1941 to Lodz, Poland, and that he did not survive the deportation. Claimant [REDACTED 2] also submitted copy of the transportation card issued on 7 October 1996 by the Federation of Jewish Citizens in Czech Republic, indicating that Jindrich Novak was deported on 31 October 1941 from Prague to Lodz and that he did not survive the deportation. As noted above, a person named Heinrich Novak was included in the CRT's database of victims.

The Claimants' Relationship to the Account Owner

Claimant [REDACTED 2] has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant [REDACTED 2]'s father-in-law. These documents include: (1) a decision from the Federal Department of Foreign Affairs indicating that [REDACTED] is Heinrich Novak's adopted son and nephew, and (2) her own marriage certificate, indicating that [REDACTED] and [REDACTED 2] were married on 2 March 1949 in Prague. As noted above, the information provided by the Claimants indicates that Claimant [REDACTED 1] is the Account Owner's niece. There is no information to indicate that the Account Owner has surviving heirs other than the parties whom Claimant [REDACTED 2] is representing.

The Issue of Who Received the Proceeds

The records from the Swiss Federal Archive indicate that the account was included in the 1962 Survey. According to these records, account was transferred to a demand deposit account held at another Swiss bank by the Custodian. Finally, the decision submitted by Claimant [REDACTED 2] to the CRT and issued on 15 June 2000 by the Federal Department of Foreign Affairs in Bern, Switzerland, indicates that she and [REDACTED], [REDACTED] and [REDACTED] received payment of SF 2,718.00 for Heinrich Novak's account.

Basis for the Award

The CRT has determined that an Award may be made in favor of represented parties [REDACTED], [REDACTED], and [REDACTED]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules Governing the Claims Resolution Process (the "Rules"). Second, Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was her father-in-law, and that relationship justifies an Award. Third, the CRT has determined that the Account Owner's heirs did not receive the proceeds of the account, but for the payment of SF 2,718.00 in 2000.

Further, the CRT notes that represented parties [REDACTED], [REDACTED], and [REDACTED], as the Account Owner's grandchildren and direct descendants, have a better

entitlement to the account than Claimant [REDACTED 2], the Account Owner's daughter-in-law, and Claimant [REDACTED 1], the Account Owner's niece and descendant of the Account Owner's parents.

Amount of the Award

In this case, the Account Owner held one account of unknown type. The Swiss Federal Archive's records indicate that the value of the account as of 18 February 1964 was SF 960.00. According to Article 29 of the Rules, if the amount in an account of unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. 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. Consequently, the adjusted award amount in this case is SF 49,375.00.

The CRT further notes that Claimant [REDACTED 2] and the parties whom she is representing received payment in 2000 in the amount of SF 2,718.00. Therefore, that amount shall be deducted from the award amount to produce a total award amount of SF 46,657.00.

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. In this case, Claimant [REDACTED 2] is representing her children, [REDACTED], [REDACTED] and [REDACTED], who as grandchildren of the Account Owner, have a better entitlement to the account than Claimant [REDACTED 2], who is the Account Owner's daughter-in-law, and Claimant [REDACTED 1], who is the Account Owner's niece and descendant of the Account Owner's parents. Accordingly, [REDACTED], [REDACTED] and [REDACTED] are each entitled to one-third of the total award amount, and Claimant [REDACTED 2] and Claimant [REDACTED 1] are not entitled to share in the 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 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
23 March 2007