

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

in re Accounts of Heinrich Hitschmann and *Nachlass* Heinrich Hitschmann

Claim Number: 221023/MBC¹

Award Amount: 753,204.25 Swiss Francs

This Certified Award is based upon the claim of Stefan Gustav Harpner (the “Claimant”) to the published accounts of Heinrich Hitschmann (the “Account Owner”) at the Zurich branch of the [REDACTED] (“Bank I”) and to the published account of *Nachlass* Heinrich Hitschmann (Estate of Heinrich Hitschmann) at the [REDACTED] (“Bank II”) (together the “Banks”). This Award is to the accounts of the Account Owner at Bank I.

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the names of the banks have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his great-uncle, Heinrich Hitschmann, who was born on 5 October 1873 in Vienna, Austria, to Mathias Hitschmann and Henriette Hitschmann, née Kadisch, and was the brother of the Claimant’s maternal grandfather, Maximilian Hitschmann. According to the information provided by the Claimant, his great-uncle never married or had any children. The Claimant stated that his great-uncle resided at Hörlgasse 6 in Vienna IX until 1944. The Claimant further stated that his great-uncle was an executive at the *Österreichische Creditanstalt*. The Claimant indicated that his great-uncle, who was Jewish, perished on 31 January 1944 in Theresienstadt concentration camp. The Claimant explained that his grandfather died on 15 October 1950 in Zurich, Switzerland.

In support of his claim, the Claimant submitted his own Austrian passport, indicating his Austrian nationality and birthplace as Vienna; and a family tree, indicating that his mother, Lisa Harpner, née Hitschmann, was the daughter of Maximilian Hitschmann, Heinrich Hitschmann’s

¹ The Claimant submitted an additional claim to the accounts of Max Hitschmann, which is registered under the Claim Number 221024. The award to these accounts was approved by the Court on 14 May 2002. See *In re Accounts of Max Hitschmann* (approved 14 May 2002).

brother. Additionally, in January 2003 the Claimant submitted extracts of his great-uncle's financial records from the Austrian State Archive, indicating various assets that his great-uncle held at banks in Switzerland and other countries.

The Claimant indicated that he was born on 5 July 1930. The Claimant is representing his sister, Lottie Enser, née Harpner, who was born on 24 March 1937 in Vienna. The Claimant is also representing his cousin, Roy Hitchman (or Hitschmann), who was born on 9 April 1944 in Bombay, India; his cousin Kathryn-Metzger Hitchman (or Hitschmann), who was born on 6 April 1946 in Bombay; and his cousin Sandra Wimmer-Hitchman (or Hitschmann), who was born 30 October 1960 in Zurich.

Information Available in the Bank's Records

Bank I

Bank I's record consists of a customer card. According to this record, the Account Owner was Heinrich Hitschmann, a *Direktor* (Director), who resided in Vienna, Austria. Bank I's record indicates that the Account Owner held three accounts: two demand deposit accounts and a custody account, numbered L 43836.

Bank I's record indicates that the demand deposit accounts were closed on 31 December 1938 and 31 December 1939 respectively, and that the custody account, numbered L 43836, was closed on 30 December 1939.

The amounts in the accounts on the dates of their closure are not known. There is no evidence in Bank I's record that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

Bank II

Bank's II records consist of internal correspondence, a memorandum and a printout from Bank II's database. According to these records, Dr. Robert Perten inquired at Bank II on 16 May 1946 about the assets of Heinrich Hitschmann on behalf of his client, Dr. Max Hitschmann, who was Heinrich Hitschmann's brother. These records also indicate that Bank II circulated an internal memorandum requesting various Bank II branch offices to report any accounts belonging to Heinrich Hitschmann. Bank II's records indicate that no branch office located an account belonging to Heinrich Hitschmann.

According to Bank II's record of Dr. Perten's inquiry, Dr. Perten stated that Heinrich Hitschmann, a 70-year-old bachelor who formerly resided at Hörlgasse 9 in Vienna, was deported to Theresienstadt in 1942, after which he was not heard from again. According to these records, Dr. Perten was told at the time of his inquiry that Bank II would not release any information without certification that the inquiring person was a qualified heir, even though it could take several years to obtain a certification of Heinrich Hitschmann's death from an

Austrian court.²

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required Jews residing within the Reich, including Austria, who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Heinrich Hitschmann, who was born on 5 October 1873 in Vienna, was unmarried, lived at Hörlgasse 6, District 9, in Vienna, and identified himself as a retired executive and bank director of the *Österreichische Creditanstalt*. Heinrich Hitschmann's file, which he signed on 14 July 1938, was assigned the number 39155. These documents contain evidence of substantial wealth located in Austria, Switzerland, and other countries. Regarding the assets located in Switzerland, references to assets held at Bank I are contained in a detailed annex to the asset census form which lists, in a section entitled "deposits located in Zurich" (*Depot loko Zürich*), securities, the values of which sum to a sub-total of SF 41,963.00 (or 23,998.64 Reichsmark (RM)). The list also contains one security denominated in Austrian schillings and valued at 2,900.00 Austrian Schilling (AS) (or SF 3,380.54) and another security located in Zurich (*Weiters loko Zürich*) valued at 490.00 Pounds Sterling (or SF 10,665.90). Finally, among the securities listed were *A.E.G. Union-Elektr.* debt warrants with a face value of AS 3,750.00 and rights to payments on interest arrears on Hungarian debt for which no market value could be obtained at the time. The total value of securities held by Heinrich Hitschmann's in Switzerland and reported to the Nazi authorities thus was equivalent to SF 55,976.34. The Annex on financial assets to the census form submitted by Heinrich Hitschmann further lists liquid assets, including a deposit of SF 530.65 at Bank I.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His great-uncle's name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant identified his great-uncle's occupation as a retired bank executive, which corresponds to unpublished information about the Account Owner's occupation contained in Bank I's records that the Account Owner was a *Direktor*. The Claimant also indicated that his great-uncle was an executive at the *Österreichische Creditanstalt* and that he resided at Hörlgasse 6 in Vienna. The CRT notes that these details also are contained in the information

² The Bank II official who spoke with Dr. Perten on 16 May 1946 made the following notes of his conversation: "Ich setzte Herrn Dr. P. auseinander, aus welchen Gründen wir solche Auskünfte nur gegen Vorlegung amtlicher, die Erbenqualität des Fragestellers dartuender Ausweise geben könnten. Herr Dr. P. erwiderte, das Verlassenschaftsverfahren könn[e] zur Zeit in Oesterreich nicht durchgeführt werden, da der Tod nicht feststehe und die Verschollenheitserklärung erst in einigen Jahren möglich wäre. Ich antwortete, dass, wenn nicht einmal ein österreichisch[es] Gericht den Tod als erwiesen betrachten würde, auch wir dies nicht [tun] könnten."

about the Account Owner found in the documentation available in the Austrian State Archive.³ The CRT notes further that the Claimant indicated in the family tree he submitted in support of his claim that his mother, Lisa Harpner, née Hitschmann, was the daughter of Maximilian Hitschmann, Heinrich Hitschmann's brother. This information matches unpublished information in the Bank's records, which indicates that the Account Owner had a brother named Max.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Heinrich Hitschmann and indicates that his date of birth was 5 October 1873 and that his address was Vienna IX, 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. Finally, 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 perished in the Theresienstadt concentration camp. Additionally, the CRT notes that the Account Owner filled out an Austrian census form, which the Nazi regime required for Jews residing within the Reich, including Austria, who held assets above a specified level. Finally, as noted above, a person named Heinrich Hitschmann 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 demonstrating that the Account Owner was his great-uncle. The CRT notes that the Claimant identified unpublished information about the Account Owner's profession, as contained in Bank I's records; that the Claimant identified Heinrich Hitschmann's exact street address, which matches information contained in the Austrian State Archive; and that the Claimant identified Heinrich Hitschmann's date of birth and the sector of Vienna in which he lived, which matches information contained in the Yad Vashem records. The CRT considers that this information, together with the submitted family tree, suffices to support its finding of a plausibly demonstrated family relationship. Apart from the Claimant's sister Lottie Enser, and his cousins Roy Hitchman, Kathryn Metzger-Hitchman and Sandra Wimmer-Hitchman, there is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With regard to Bank I, the facts of this case are similar to other cases that have come before the CRT, in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 census, and, subsequently, their accounts were closed unknown to whom or were transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds ultimately were paid to the Nazis; that the Account Owner

³ The CRT notes that the correspondence in Bank II's records indicates that the Account Owner resided at Hörlgasse 9 in Vienna. The CRT concludes that it is plausible that the drafter of the correspondence in Bank II's records accidentally put the District number "9" in the Account Owner's address in place of "6" for the house number.

reported accounts at Bank I in the asset census; that the Account Owner lived in Austria until he was deported to Theresienstadt, and therefore could not have received the proceeds of his accounts without losing control over them; that the Account Owner perished in Theresienstadt; that there is no record of the payment of the Account Owner's accounts to him; that the Account Owner's heirs would not have been able to obtain information about his accounts after the Second World War from Bank I due to the Swiss banks' practice of withholding or misstating information in their responses to inquiries by account owners because of the banks' concern regarding double liability and that the evidence in this case supports this presumption; and given the application of Presumptions (a)(ii), (d), (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 in this case 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 Bank II, the CRT notes that an account under the name *Nachlass* Heinrich Hitschmann (Estate of Heinrich Hitschmann) appeared on the list published in February 2001 of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of Victims of Nazi Persecution ("ICEP" or the "ICEP List"). However, according to the information provided to the CRT by the auditors who carried out the investigation of Bank II to identify accounts of Victims of Nazi Persecution pursuant to ICEP's instructions (the "ICEP Investigation"), the only records pertaining to Heinrich Hitschmann discovered at Bank II consist of an inquiry made on behalf of Heinrich Hitschmann's brother in 1946 and an internal Bank II memorandum directing various branch offices to search for accounts in Heinrich Hitschmann's name.⁴ Additionally, these documents show that neither branch reported the existence of an account, nor did Heinrich Hitschmann indicate in his Austrian census form that he owned an account at Bank II. Given the absence of any record indicating that an account owned by Heinrich Hitschmann existed at Bank II, the CRT is unable to conclude that he owned an account there.

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 his great-uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts at Bank I.

Amount of the Award

In this case, the Account Owner held two demand deposit accounts and one custody account at Bank I.

With regard to the demand deposit accounts, the Austrian State Archive records indicate that the

⁴ The inclusion of the name *Nachlass* Heinrich Hitschmann (Estate of Heinrich Hitschmann) on the ICEP List was based upon the records of this inquiry.

Account Owner declared the value of the accounts to be SF 530.65 on 14 July 1938. Pursuant to Article 29 of the Rules, if the amount in a demand deposit account is 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 CRT notes that the Account Owner himself declared the value of the demand deposit accounts in the census form he submitted to the Nazi authorities. However, there is no evidence regarding the circumstances of this declaration. As evidenced in a number of cases, the Account Owner may not have declared all his assets, or understated their value, in the belief that this might help him safeguard some of them. Accordingly, the CRT does not find that the value of the demand deposit accounts indicated in these records constitutes plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the combined value of these two demand deposit account shall be determined to be 4,280.00 Swiss Francs.

As for the custody account, the Austrian Census Records indicate that the Account Owner declared the value of his securities to be SF 55,976.34 on 14 July 1938. The CRT notes that there is no evidence regarding the circumstances of the Account Owner's declaration to the Nazi authorities and that Bank I's records do not indicate the value of the securities in his custody account. However, the CRT concludes that it would be inappropriate in this case to apply the presumptive value of SF 13,000.00 for custody accounts of unknown value provided for in Article 29 of the Rules, considering that, as discussed above, the Account Owner had reason to understate the value of his securities in his census form rather than to overstate their value. Considering, therefore, that the true value of the custody account is impossible to determine, but that the value is likely to be at least SF 55,976.34, based upon the two securities for which market values could be ascertained, which is the value declared by the Account Owner in his census form, the CRT concludes that the value of the custody account shall be determined to be SF 55,976.34. The CRT is continuing to review the value of the third security in the custody account.

The total value for the three accounts at issue is SF 60,256.34. The current value of the amount of the award is determined by multiplying this amount by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 753,204.25.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, the Claimant is representing his sister, Lottie Enser, and his cousins, Roy Hitchman, Kathryn Metzger-Hitchman and Sandra Wimmer-Hitchman. Accordingly, the Claimant and his sister are each entitled to one-quarter of the total award amount, and the Claimant's cousins are each entitled to one-sixth of the total award amount.

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
13 July 2004