

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial upon Appeal and Request for Reconsideration

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2] and [REDACTED 3]
all represented by Jost von Trott zu Solz

**Claimed Account Owner: Lisa Esther Wainstein
and *Internationale Handelsbank Kommanditgesellschaft***

Claim Number: 402005/WT
Appeal Number: 3384, 3385

This Certified Denial upon Appeal and Request for Reconsideration is based upon the claim of [REDACTED 1] (the “Claimant”) to the published account of Lisa Esther Wainstein and to an unpublished account purportedly held by the company *Internationale Handelsbank Kommanditgesellschaft* (the “Claimed Account Owner”) at the Bern branch of the [REDACTED] (the “Bank”).

All denials 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.

Procedural History

In a decision approved by the Court on 3 November 2008, the Claimant’s claim to the published account of Lisa Esther Wainstein was deemed inadmissible for lack of information or documentation regarding Lisa Esther Wainstein and the Claimant’s relationship to this person (the “November 2008 decision”).

The Claimant subsequently requested reconsideration of the November 2008 decision and stated that she had submitted documents with her claim that showed that the company *Internationale Handelsbank Kommanditgesellschaft*, which was partly owned by her paternal grandfather, owned an account at the Bank. With her request for reconsideration, the Claimant submitted additional documents regarding this company. This decision addresses the Claimant’s appeal of the November 2008 decision and the documents submitted by the Claimant with her claim and in her request for reconsideration.

Information Provided by the Claimant

The Claimant submitted a Claim Form claiming that Lisa Esther Wainstein was an unspecified relative (*Angehörige*) of her paternal grandfather, [REDACTED]. The Claimants stated that her grandfather was born on 4 January 1883 in Yalta, Crimea (today the Ukraine), and married [REDACTED] on 19 August 1915 in Moscow, Russia. The Claimant explained that her grandfather, who was Jewish, had two children, [REDACTED], who was born on 21 February 1919 in Helsinki, Finland; and [REDACTED] (the Claimant's father), who was born on 14 July 1920 in Hango, Finland. The Claimant stated that [REDACTED] was the co-owner of a company, *Internationale Handelsbank Kommanditgesellschaft*, which was based in Berlin, Germany, and that his shares in the company were confiscated by the Nazis. The Claimant stated that [REDACTED] died on 13 March 1978 in Rome, Italy.

In support of her claim, the Claimant submitted documents, including:

- (1) her paternal grandparents' marriage certificate, indicating that [REDACTED], who was Jewish, married [REDACTED], née [REDACTED], on 19 August 1915 in Moscow;
- (2) an account balance statement dated 3 February 1936, indicating that *Konsul* (attorney) [REDACTED] of Helsinki held securities at the *Internationale Handelsbank Kommanditgesellschaft*, which included shares in the *Internationale Handelsbank Kommanditgesellschaft* with a nominal value of 213,020.00 *Reichsmark* ("RM");
- (3) her parents' marriage certificate, indicating that [REDACTED] married [REDACTED] on 24 September 1966 in Zuoz, Switzerland;
- (4) her grandfather's death certificate, indicating that [REDACTED], who was born on 4 January 1883, died on 13 March 1978 in Rome;
- (5) her grandmother's death certificate, indicating that [REDACTED], the widow of [REDACTED], died on 30 December 1982 in Rome;
- (6) her aunt's death certificate, indicating that [REDACTED] died on 28 December 2001 in Rome; and
- (7) her father's death certificate, indicating that [REDACTED] died on 23 April 1991 in Helsinki.

The Claimant did not provide any information or documents regarding Lisa Esther Wainstein.

In September 2008, the Claimant's representative submitted a single page from a February 1936 report made by the Berlin Finance Office, Currency Division (*Landesfinanzamt Berlin Stelle für Devisenbewirtschaftung*) of an audit that one of the division's employees had conducted of the company *Internationale Handelsbank Kommanditgesellschaft* (the "February 1936 Report"). This page of the February 1936 Report indicates that *A.B. Nordiska Ullkompaniet O/Y, Helsingfors* was a company owned by an individual named Wainstein (no first name is provided), as was a company named *Nordische Woll-Gesellschaft mbH, Berlin*. The page reads "RM [*Reichsmark*] assets belonging to foreign banks" ("*RM Guthaben ausländischer Banken*"), and states "the following accounts are notable: [the Bank], *Bern*, old deposit of RM 175,000.00, unchanged since 16 July 1931. Interest on the account is payable when due, presently to the Conversion Office, and permissions have been obtained." ("*Erwähnenswert sind folgende*

Konten: [the Bank], Bern. Altguthaben = RM 175,000.00, unverändert seit 16.7.31. Zinsen wurden bei Fälligkeit bezahlt (z. Zt. an die Konversionskasse). Genehmigungen sind eingeholt.”)

The Claimant indicated that she was born on 30 October 1973 in Helsinki. The Claimant is representing her sister, [REDACTED 2], who was born on 11 August 1971 in Helsinki, and her mother, [REDACTED 3], née [REDACTED], who was born on 10 June 1935 in Lohja, Finland.

Information Provided upon Appeal and with Request for Reconsideration

On 3 March 2009, the Claimant appealed the November 2008 decision. Specifically, the Claimant requested that the CRT consider documents she had submitted with her claim and subsequent to her original filing, which, according to the Claimant, indicated that her relative [REDACTED] owned shares in *Internationale Handelsbank Kommanditgesellschaft*, which in turn owned an account at the Bank. The Claimant stated that [REDACTED] resided in Berlin from 1932 to 1933, but subsequently fled to Rome and then to Helsinki, where he remained until 1950. According to the Claimant, in 1938, after [REDACTED] fled Berlin, he was forced to sell his shares in *Internationale Handelsbank Kommanditgesellschaft*, at which time he owned 42.604% of the shares of that company.

In support of her appeal and request for reconsideration, the Claimant submitted documents, including:

- (1) the full February 1936 Report, indicating that the audit conducted by the Berlin Finance Office Currency Division (*Landesfinanzamt Berlin Stelle für Devisenbewirtschaftung*) of the company *Internationale Handelsbank Kommanditgesellschaft* took place over a period of seventeen days in January and February 1936;
- (2) a letter dated 31 May 1940, from the Foreign Exchange Control Authority (the “*Devisenstelle*”) of the Berlin branch of the German Finance Office (*Oberfinanzpräsident*), to the manager (*Hausverwaltung*) of property located at von der Heydtstrasse 2, Berlin, inquiring whether the owner of the property, [REDACTED], was Jewish;
- (3) the property manager’s reply, dated 1 June 1940, indicating that [REDACTED], who had resided in Helsinki since 1923, was Jewish;
- (4) a letter dated 24 November 1944, from the manager of property located at von der Heydtstrasse 2, to the Berlin branch of the *Devisenstelle*, indicating that [REDACTED] held the title of *Kommerzienrat* (an honorary title bestowed upon prominent businessmen), that he lived in Finland, and that he owned property in Berlin which was destroyed during an air raid on 23 November 1943; the property manager wrote that Wainstein’s account did not contain funds sufficient for property taxes owed;
- (5) a document from a court in Rome dated 14 July 1999, indicating that [REDACTED], who was born on 14 July 1920 in Finland, died on 23 April 1991, and that his daughters were [REDACTED 1] and [REDACTED 2];
- (6) a document dated 9 April 2003 from the Finance Authorities in Berlin (*Oberfinanzdirektion Berlin*), indicating that according to their records, *Konsul* [REDACTED] was a shareholder of the company *Internationale Handelsbank*

Kommanditgesellschaft, which was a bank, and that in 1930 he held approximately 40 percent of the shares of that company, that he resided in 1935 through 1936 in Rome, and that in 1936 the Berlin finance authorities determined that he was a non-resident for tax and currency regulations purposes (“*devisen- und staatsrechtlicher Ausländer*”), and that in 1935 he was the sole owner of the companies *A.B. Nordiska Ullkomp., Helsingfors*, and *Nordische Woll GmbH., Berlin*;

- (7) a report dated 30 September 2003 entitled *Die Arisierung der Internationalen Handelsbank Kommanditgesellschaft auf Aktien (Interbank)* (“The Aryanization of the *Internationale Handelsbank Kommanditgesellschaft*”), prepared by a researcher (*Wissenschaftliche-Historische Recherche*) on behalf of the Claimant’s representative, which details the confiscatory measures and appropriation of [REDACTED]’s ownership of the company;
- (8) a decision dated 2 April 2008, issued by the German government (*Bundesamt für zentrale Dienste und offene Vermögensfragen*), indicating that [REDACTED] held 42.604% of the shares of the company *Internationale Handelsbank Kommanditgesellschaft* as of February 1936, and that the value of those shares in 1936 was RM 213,020.00, that *Konsul Wainstein*, who was Jewish, was forced to sell his shares in September or October 1936; and
- (9) the Claimant’s affidavit, dated 3 September 2008, indicating that [REDACTED] died on 28 December 2001 in Rome and that her heirs are her nieces [REDACTED 2] and [REDACTED 1], who are the daughters of [REDACTED]; and
- (10) the Claimant’s application for a certificate of inheritance, submitted on 6 May 2009 at the German embassy in Rome, indicating that [REDACTED], who was born on 4 January 1883 in Yalta, died in Rome on 13 March 1978, that his heir was his wife, [REDACTED], who died on 30 December 1982 in Rome, and that [REDACTED]’s heirs in turn were [REDACTED] and [REDACTED].

The Claimant did not provide any additional information or documents pertaining to Lisa Esther Wainstein.

Admissibility of the Appeal and Request for Reconsideration

According to Article 30 of the Rules, an appeal must be based upon a plausible suggestion of error regarding the CRT’s conclusions. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim.

With regard to the Claimant’s appeal of the inadmissibility decision regarding Lisa Esther Wainstein, the CRT concludes that the Claimant has not plausibly established that the CRT erred in the November 2008 decision. The Claimant did not provide any information whatsoever regarding Lisa Esther Wainstein in her original claim, in any materials submitted following her original claim, or on appeal. Specifically, the Claimant did not provide any biographical information regarding this person, or any information regarding her relationship to this person. Rather, the Claimant made only a vague reference that this person was a relative (“*Angehörige*”)

of her grandfather. Her claim was and remains based essentially on a statement that she and this person have the same or similar last name. The Claimant's appeal did not establish a plausible suggestion of error with regard to the November 2008 decision. Accordingly, the Claimant's appeal of the November 2008 Decision is summarily denied.

With regard to the documents submitted by the Claimant in her original claim and request for reconsideration, the CRT has reviewed these documents and has concluded that the information and documentation provided by the Claimant is not sufficient to demonstrate the existence of an account belonging to the *Internationale Handelsbank Kommanditgesellschaft* at the Bank.

According to Article 17 of the Rules, the CRT shall use the records and files available from the Account History Database, the Account Dossiers, and the Total Accounts Database, the information submitted by the claimants, and to the extent that the CRT deems relevant, other sources of information to determine whether an award is justified. Although the CRT has previously awarded accounts to claimants when the ICEP Investigation failed to locate an account belonging to their relative (an account not included in the Account History Database, the Account Dossiers, and the Total Accounts Database), the evidence submitted by these claimants falls into very limited categories. Article 17 of the Rules lists certain categories of evidence that the CRT has used to justify an award when an account is not identified in the ICEP Investigation. These categories include Austrian State Archives Records and other government records, records of the New York State Holocaust Claims Processing Office, and any other historical and factual material available to the CRT. Examples of facially reliable evidence submitted by claimants include actual bank documents, documents submitted to an official governmental agency, and official letterhead indicating a connection to a Swiss bank.

While the CRT bears in mind the difficulties of proving the existence of an account after the destruction of the Second World War, it has determined in this case that the February 1936 Report does not show that the *Internationale Handelsbank Kommanditgesellschaft* held an account at the Bank. On the contrary, the February 1936 Report indicates that the Bank held an account at the *Internationale Handelsbank Kommanditgesellschaft*. The February 1936 Report lists the Bank under the heading "Assets belonging to foreign banks" (emphasis added) ("*Guthaben ausländischer Banken*"). In other words, the Bank is listed as a foreign bank which held assets at the *Internationale Handelsbank Kommanditgesellschaft*. The relevant heading does not read "Assets held [by the *Internationale Handelsbank Kommanditgesellschaft*] at foreign banks." Thus, the February 1936 Report provided by the Claimant is insufficient to support the existence of a bank account held at a Swiss bank, and indicates rather that a Swiss bank held assets at the *Internationale Handelsbank Kommanditgesellschaft*. The CRT notes that none of the other documents submitted by the Claimant show that the *Internationale Handelsbank Kommanditgesellschaft* held a Swiss bank account. Accordingly, no award is appropriate in this case.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, the Claimant may appeal this decision or submit a request for reconsideration regarding the part of this decision dealing with the *Internationale Handelsbank*

Kommanditgesellschaft within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimant should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimant should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

The Rules do not provide for appeals or requests for reconsideration of summary denials of appeals. Thus, this decision constitutes the final decision with respect to the Claimant's appeal of the inadmissibility decision regarding Lisa Esther Wainstein.

Certification of the Denial

The CRT certifies this Denial upon Appeal and Request for Reconsideration for approval by the Court.

Claims Resolution Tribunal
17 December 2010