

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]

and to the [REDACTED 3]

in re Accounts of *Hermann Gerstl*

Claim Numbers: 218024/RS, 401255/RS, 704379/RS, 781993/RS^{1,2}

Award Amount: 190,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) to the account of *Hermann Gerstl*, and the claim of [REDACTED 3] (“Claimant [REDACTED 3]”) (together, the “Claimants”) to the account of Käthe Koessler.³ This award is to the published assets of *Hermann Gerstl* (the “Account Owner”), and to the unpublished account of *Hermann Gerstl* at the [REDACTED] (the “Bank”).⁴ The awarded unpublished account is from the Total Accounts Database (“TAD”) at the Bank.

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

¹ In a separate decision, the CRT awarded the account of Rudolf Friedl in part to Claimant [REDACTED 1]. See *In re Account of Rudolf Friedl (Decision on Appeal)* (approved on 11 April 2005).

² Claimant [REDACTED 3] did not submit a Claim Form to the CRT. However, in 1999 he submitted two Initial Questionnaires (“IQ”), numbered ENG 0468 029 and ENG 0468 030, to the Court in the United States. Although these IQ were not Claim Forms, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ’s were forwarded to the CRT and have been assigned claim numbers 781993 and 704379, respectively.

³ Claimant [REDACTED 3] provided documentation indicating that he had changed his surname from ‘[REDACTED]’ to ‘[REDACTED].’

⁴ The CRT has identified two assets belonging to the Account Owner. One asset was published on the List of Account Owners Published in 2005 (the “2005 List”), and one account was not published, as it was identified as part of the Total Accounts Database at the Bank.

Information Provided by the Claimants

Claimant [REDACTED 1] submitted two Claim Forms identifying the Account Owner *Hermann Gerstl* as a company, half of which was owned by Claimant [REDACTED 1]'s father, [REDACTED], and half of which was owned by Claimant [REDACTED 1]'s uncle, [REDACTED].⁵

Claimant [REDACTED 1] indicated that his paternal grandfather, Hermann Gerstl, who lived in Vienna, Austria, had three children: [REDACTED], [REDACTED], and [REDACTED]. Claimant [REDACTED 1] indicated that his father, [REDACTED], who was Jewish, was born on 13 November 1881 in Vienna, Austria, and married [REDACTED], née [REDACTED], on 14 April 1912 in Vienna. Claimant [REDACTED 1] stated that his father had two children, namely Claimant [REDACTED 1], and his sister [REDACTED 2], née [REDACTED], whom Claimant [REDACTED 1] is representing. Claimant [REDACTED 1] also stated that his parents resided at Billrothstrasse 47 in Vienna prior to the Second World War.

Claimant [REDACTED 1] stated that his father, [REDACTED], and Claimant [REDACTED 1]'s uncle, [REDACTED], were sole owners of the company *Hermann Gerstl*, which was founded by [REDACTED] and [REDACTED]'s father, Hermann Gerstl. Claimant [REDACTED 1] stated that *Hermann Gerstl* had its headquarters at Spiegelgasse 13 in Vienna I, and that the company imported British woolens and men's fashions. Claimant [REDACTED 1] indicated that he worked as a trainee at *Hermann Gerstl* in 1938. According to Claimant [REDACTED 1], in 1938, his father fled Nazi persecution in Austria by fleeing first to England, and then to the United States; Claimant [REDACTED 1] emphasized that his father left virtually all of his assets in Austria when he fled. Claimant [REDACTED 1] stated that his mother had planned on following her husband to England, but that she was imprisoned for several weeks in Austria before she could leave the country; ultimately she was allowed to leave Austria, and she settled in England, where she found work as a housekeeper. Claimant [REDACTED 1] indicated that his father settled first in New York City, and then in Connecticut, where he worked as a farmer. Claimant [REDACTED 1] stated that his father died on 1 August 1961, and that his mother died on 18 September 1988.

Claimant [REDACTED 1] indicated that his uncle [REDACTED], who was Jewish, did not have any children, and that he was married to [REDACTED]. Claimant [REDACTED 1] indicated that [REDACTED] lived in Connecticut following the War, and is now deceased.

In support of his claim, Claimant [REDACTED 1] submitted copies of: (1) [REDACTED]'s will, indicating that [REDACTED 1] was his nephew; (2) [REDACTED]'s will, indicating that [REDACTED] was his brother, and that [REDACTED 1] and [REDACTED 2] were his children; and (3) *Hermann Gerstl* stationery, indicating that the company sold English fabrics and men's fashions (*Englische Stoffe und Herren-Modewaren*), and that the company had an address of Spiegelgasse 13, in Vienna I.

⁵ Claimant [REDACTED 1] indicated in his claim forms that he and his uncle and father all changed the spelling of their name from '[REDACTED]' to '[REDACTED]' following their arrival in the United States. Accordingly, Claimant [REDACTED 1], his uncle [REDACTED], and his father [REDACTED] are all referred to herein as having the surname '[REDACTED].'

Claimant [REDACTED 1] indicated that he was born on 2 November 1920 in Vienna. Claimant [REDACTED 1] is representing his sister, [REDACTED 2], née [REDACTED], who was born on 14 August 1913 in Vienna.

Claimant [REDACTED 3] submitted two Initial Questionnaires, identifying his maternal grandfather as Hermann Gerstl of Vienna, Austria. Claimant [REDACTED 3] indicated that his mother, [REDACTED], née [REDACTED], was the sister of [REDACTED] and [REDACTED], and the daughter of Hermann Gerstl, who was the founder of *Hermann Gerstl*. According to Claimant [REDACTED 3], his mother, who was Jewish, was born on 25 January 1885 in Vienna. Claimant [REDACTED 3] indicated that his mother fled Nazi persecution in Austria in early 1939, and that she fled first to England, and then to Australia. Claimant [REDACTED 3] further indicated that his mother was forced to leave her monetary assets and property behind when she fled Austria.

In support of his claim, Claimant [REDACTED 3] submitted copies of: (1) his birth certificate, indicating that he was born on 14 December 1917, and that his mother's maiden name was [REDACTED]; and (2) his mother's marriage certificate, indicating that his mother's name was [REDACTED], née [REDACTED], that she was born in Vienna, and that her father's name was Hermann Gerstl.

Claimant [REDACTED 3] indicated that he was born on 14 December 1917 in Vienna. In a telephone call with the CRT, Claimant [REDACTED 1] indicated that Claimant [REDACTED 3] died on 19 February 2004.

Information Available in the Bank's Record

The Bank's record consists of an account card. According to this record, the Account Owner was the *Hermann Gerstl Company (Hermann Gerstl, Firma)*. The Bank's record indicates that the Account Owner held a custody account. The account card contains a notation dated 9 December 1938 made by the Bank's legal department. The notation indicates that the company's assets at the Bank should only be handled following advice of the Bank's legal department, given that *Hermann Gerstl* had been ceded to the *E. Topolansky* company of Vienna, Austria. The notation also states that no further assets, including securities, should be deposited in the account as of the date of the notation.

The Bank's record does not indicate when the account at issue was closed, nor does the record indicate the value of the account.

There is no evidence in the Bank's record that the Account Owner, its owners, or their heirs closed the account and received the proceeds themselves.

This account was not part of the Account History Database at the CRT, but was identified as a result of matching and research carried out at the Bank and using, as noted above, the TAD at the Bank. The TAD at the Bank is one of the several databases that comprise a total of

approximately 4.1 million accounts. These are part of the approximately 6.9 million accounts that were identified by the ICEP auditors as open or opened in the 1933-1945 period in Swiss banks, less the estimated 2.8 million accounts for which no records remain. These 4.1 million accounts, in databases located at the 59 ICEP audited Swiss banks,⁶ are composed of 1.9 million savings accounts with unknown values or a 1930-1940s value of 250.00 Swiss Francs or less and accounts with Swiss addresses, and 2.2 million accounts that ICEP concluded should not be included within the Account History Database, that is, within the 36,000 accounts that ICEP determined were “probably or possibly” owned by victims of Nazi persecution. The first account awarded is part of a group of accounts identified in the TAD.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962 (the “Federal Decree”), the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution (“the 1962 Survey”). In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the assets of the *Hermann Gerstl Company (Firma Hermann Gerstl)*, numbered 1’061. The custodian of these assets was Dr. H. Häberlin (the “Custodian”).

According to these records, lawyer Dr. Ernst Utzinger, of Zollikon, Switzerland, held a lawyer’s trust account at the Bank. The lawyer reported in the 1962 Survey that in his trust account, he had a credit of 321.95 Swiss Francs (“SF”) belonging to *Hermann Gerstl* of Spiegelgasse 13, Vienna I. According to a letter from Dr. Utzinger to the Swiss Department of Justice and Police, dated 4 September 1963, he transacted business with *Hermann Gerstl* during 1936, and he closed his accounts with that firm on 30 September 1939. Dr. Utzinger indicated that he had had no contact from *Hermann Gerstl* since 30 September 1939, and that the amount of SF 321.95 to *Hermann Gerstl*’s credit remained since that date, when he entered it into his ledger. The records do not contain any information about the ultimate disposition of these assets.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of [REDACTED], numbered 28300. These records indicate that [REDACTED] was born on 13 November 1881, that he was a company-owner, that he resided at Billrothstrasse 47 in Vienna, and that he was married to [REDACTED], née [REDACTED].

⁶ These 59 audited banks represent 254 banks that existed in the 1933-1945 period.

The records further indicate that as of 11 July 1938, [REDACTED] was the co-owner of *Hermann Gerstl*, located at Spiegelgasse 13 in Vienna 1, and that he held a fifty-percent stake, valued at 21,794.95 Reichsmark (“RM”), in that company. The records also indicate that [REDACTED] held a RM 10,041.13 stake in the company *Carl Friedl*. The records include a balance sheet for the *Hermann Gerstl* company dated 30 April 1938, which lists the various assets held by the company, including bank accounts, but does not indicate at which banks those accounts were held.

The records also include a letter from [REDACTED] to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or VVSt.) dated 28 November 1938. In that letter, [REDACTED] indicates that on 1 November 1938, he transferred ownership of *Hermann Gerstl* to an unnamed purchaser. [REDACTED] states that the full value of the company was not reflected in the relatively low total purchase price of RM 4,184.00, of which [REDACTED] received half, or RM 2,092.00. In the letter, [REDACTED] further indicated that the debts owed to the company prior to its sale were assigned to the banking and trust company *E. Topoloansky [sic]* of Vienna.

The records also contain a form indicating that, based on combined registered assets valued at RM 138,018.00, [REDACTED] and [REDACTED] were assessed flight tax (*Reichsfluchtsteuer*) in the amount of RM 34,504.00 on an illegible date in 1939.

The records of the Austrian State Archive also contain documents concerning the assets of [REDACTED], numbered 6462. Those records indicate that [REDACTED] was married to [REDACTED], that she resided at Billrothstrasse 47 in Vienna, and that she was the wife of a businessman. These records make no mention of assets held in a Swiss bank account. The records contain legal documents indicating that [REDACTED] was imprisoned from 4 February 1939 to 3 March 1939, and fined RM 2,120.00. The stated reasons for her imprisonment, according to the 1939 legal documents, were: (1) her failure to report her possession of one brooch and one ring, valued together at RM 70.00, in her 1938 asset declaration; (2) her failure to report the fact that she had given away as gifts one ring and two brooches, valued together at RM 624.00, following her reporting of those items in her asset declaration; and (3) her attempt to take jewelry valued at RM 505.00 abroad with her, without permission from the authorities.

In the records of the Austrian State Archive, there are also documents concerning the assets of [REDACTED], numbered 07633. These records indicate that [REDACTED] was born on 31 October 1886; that he was a company-owner; and that as of 12 July 1938, the date on which he signed the record in Vienna, he was not married. The records indicate that [REDACTED] was a fifty-percent owner of *Hermann Gerstl*, and that his stake in that company was valued as of 12 July 1938 at RM 26,581.27. The records also indicate that [REDACTED] held a RM 10,394.67 stake in the *Carl Friedl* company, and that he had previously held a stake in *Koessler & Co.*, until that company was dissolved in 1936.

The [REDACTED] records also include a 26 November 1938 letter from [REDACTED] to the VVSt. describing in part the sale of *Hermann Gerstl*; that letter is virtually identical to the 28 November 1938 letter that [REDACTED] wrote to the VVSt. The records also indicate that [REDACTED] held insurance policies, numbered 10510257 and 10.513.367, with the

Österreichische Versicherungs A.G. in Vienna. These records make no mention of assets held in a Swiss bank account.

The records indicate that based on declared assets of RM 103,000.00, [REDACTED] was assessed flight tax in the amount of RM 25,750.00 on 5 December 1939.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the claims of the two Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The name of Claimant [REDACTED 1]'s father's company and of Claimant [REDACTED 3]'s uncles' company matches the published name of the Account Owner. Claimant [REDACTED 1] also identified the Account Owner's street address in Vienna, Austria, which matches unpublished information about the Account Owner contained in the Swiss Federal Archive records and the Austrian State Archive records.

In support of his claim, Claimant [REDACTED 1] submitted documents, including a copy of *Hermann Gerstl* stationery, which includes the address Spiegelgasse 13, Vienna I, providing independent verification that the company that is claimed to be the Account Owner had the same name and street address recorded in the Swiss Archive Records and the Austrian State Archive records as the name and street address of the Account Owner.

In support of his claim, Claimant [REDACTED 3] submitted documents, including his birth certificate, indicating that his mother's maiden name was [REDACTED]; and his mother's marriage certificate, indicating that his mother's father was Hermann Gerstl.

The CRT notes that the name *Hermann Gerstl* appears only once on the List of Account Owners Published in 2005 (the "2005 List").

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

Status of the Account Owner as a Victim or Target of Nazi Persecution

The Claimants have made a plausible showing that the owners of *Hermann Gerstl* were Victims of Nazi Persecution. Claimant [REDACTED 1] stated that the owners of *Hermann Gerstl*, [REDACTED] and [REDACTED], were Jewish. Claimant [REDACTED 1] indicated that both [REDACTED] and [REDACTED] were forced to flee Nazi persecution in Austria; [REDACTED] fled first to England, and then to the United States, and [REDACTED] also fled

to the United States. Claimant [REDACTED 1] stated that his father and uncle were forced to leave many of their assets behind when they fled Austria. The Austrian State Archive records also indicate that [REDACTED]'s wife, [REDACTED], was imprisoned in Austria for one month for her failure to report items of jewelry in her 1938 asset declaration.

The CRT notes that the notation in the Bank's record that as of 9 December 1938, *Hermann Gerstl* had been ceded to another company, *E. Topolansky* of Vienna, indicates that control of *Hermann Gerstl* was transferred to a second company soon after the incorporation of Austria into the Reich in March 1938 (the "*Anschluss*"). Information contained in the Austrian State Archive records indicates that *Hermann Gerstl* was sold for a fraction of its value on 1 November 1938, and that the outstanding debts owed to the company were assigned to *E. Topoloansky* of Vienna.

Claimant [REDACTED 3] indicated that his mother, [REDACTED], was the daughter of Hermann Gerstl, and that she was Jewish. Claimant [REDACTED 3] indicated that his mother was also forced to flee Nazi persecution in Austria by fleeing first to England, and then to Australia, leaving money and property behind in Austria.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to [REDACTED] and [REDACTED], the owners of *Hermann Gerstl*, by submitting specific information and documents, demonstrating that the Account Owner was a company partially-owned by Claimant [REDACTED 1]'s father, and jointly-owned by Claimant [REDACTED 3]'s two uncles. Claimant [REDACTED 1] submitted documents including: (1) *Hermann Gerstl* stationery, signed by Hermann Gerstl; (2) [REDACTED]'s will, indicating that [REDACTED 1] was his nephew; and (3) [REDACTED]'s will, indicating that [REDACTED] was his brother, and that [REDACTED 1] and [REDACTED 2] were his children. Claimant [REDACTED 3] submitted documents including: (1) his birth certificate, indicating his mother's maiden name was [REDACTED]; and (2) his mother's marriage certificate, indicating that his mother's name was [REDACTED], née [REDACTED], that she was born in Vienna, and that her father's name was Hermann Gerstl.

There is no information to indicate that the owners of *Hermann Gerstl* have surviving heirs, other than the party whom Claimant [REDACTED 1] is representing.

The Issue of Who Received the Proceeds

The TAD Account

Given that the owners of the corporate Account Owner fled Austria in 1938; that the Bank's record and the Austrian State Archive record indicate that *Hermann Gerstl* was sold for a fraction of its full value to a second company in Vienna as of November 1938, and that such a transfer would follow the pattern of forced sales of Jewish-owned companies enforced by the Nazi Regime in Austria following the *Anschluss*; that there is no record of the payment of the corporate Account Owner's account to the company's owners, nor any record of a date of closure of the account; that the owners of the corporate Account Owner and their heirs would not have

been able to obtain information about the account after the Second World War from the Bank 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, its owners, or their 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.

The Swiss Federal Archive assets

The Swiss Federal Archive records indicate that *Hermann Gerstl* had assets of SF 321.95 held in a lawyer's trust account as of 30 September 1939. There is no evidence in the Swiss Federal Archive records that the company, its owners, or their heirs received these assets themselves. Given that the lawyer who held the assets in his trust account had no contact with *Hermann Gerstl* after 30 September 1939; that the company's name was published in the 1962 Survey; that there is no record of payment of the company's assets to its owners or their heirs; that the owners of the company and their heirs would not have been able to obtain information about the assets after the Second World War from the Bank 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 assets were not paid to the company, its owners, or their heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not asset owners or their heirs received assets belonging to them.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants and the party they represent. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was a company partially-owned by his father, and Claimant [REDACTED 3] has plausibly demonstrated that the Account Owner was a company partially-owned by his two uncles, and those relationships justify an Award. Third, the CRT has determined that it is plausible that the Account Owner, its owners, and their heirs, did not receive the proceeds of the claimed account and assets.

Amount of the Award

The TAD account

In this case, the Account Owner held one custody account. 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 custody account was SF 13,000.00. 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 an award amount of SF 162,500.00 for this account.

The Swiss Federal Archive assets

The Swiss Federal Archives records indicate that as of 30 September 1939, the value of the assets belonging to *Hermann Gerstl* that were held by the company’s lawyer was SF 321.95. The CRT considers these assets to have been held in an “other” type of account, as detailed in the Rules. According to Article 29 of the Rules, if the amount in an “other” type of account is less than SF 2,200.00, and in the absence of plausible evidence to the contrary, the value of the account shall be determined to be SF 2,200.00. 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, to produce an award amount of SF 27,500.00 for these assets.

The total award amount for both the TAD account and the assets described in the records from the Swiss Federal Archive is therefore SF 190,000.00.

Division of the Award

According to Article 23(3) of the Rules, if the Account Owner is a legal or other entity (such as a corporation, association, organization, etc.), the Award will be made in favor of those Claimants who establish a right of ownership to the assets of the entity. Claimant [REDACTED 1] indicated that *Hermann Gerstl* was jointly owned by [REDACTED] and [REDACTED], in equal shares. Accordingly, [REDACTED]’s heirs are entitled to one-half of the award amount, or SF 95,000.00, and [REDACTED]’s heirs are entitled to one-half of the award amount, or SF 95,000.00.

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner’s will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. Claimant [REDACTED 1] submitted the wills of both [REDACTED] and [REDACTED].

In his will, [REDACTED] designated Claimant [REDACTED 1], represented party [REDACTED 2], and Claimant [REDACTED 3] as the beneficiaries of equal shares of his estate. Accordingly, Claimant [REDACTED 1], represented party [REDACTED 2], and the Estate of Claimant [REDACTED 3] are each entitled to one-third of [REDACTED]’s share of the accounts, or SF 31,666.67 each.

In his will, [REDACTED] also designated Claimant [REDACTED 1], represented party [REDACTED 2], and Claimant [REDACTED 3] as the beneficiaries of equal shares of his estate. Accordingly, Claimant [REDACTED 1], represented party [REDACTED 2], and the

Estate of Claimant [REDACTED 3] are each entitled to one-third of [REDACTED]'s share of the accounts, or SF 31,666.66 each.

In summary, Claimant [REDACTED 1] is entitled to SF 63,333.33; represented party [REDACTED 2] is entitled to SF 63,333.33, and the Estate of Claimant [REDACTED 3] is entitled to SF 63,333.34.⁷

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 they 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) at banks other than the Bank.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
10 November 2007

⁷ The CRT notes that the discrepancy in the award amount division among the Claimants and represented party is due to the fact that the total award amount is not evenly divisible by three.