

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1]

and [REDACTED 2]

in re Account of Isak Haber

Claim Numbers: 150080/AV; 150081/AV

Award Amount: 322,807.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the published account of Isak Haber (the “Account Owner”) at the Zurich branch of the [REDACTED] (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.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as his father, Isak Haber, who was born on 18 March 1892 in Ottynia, Poland (today the Ukraine), and was married to [REDACTED], née [REDACTED], in 1920. Claimant [REDACTED 1] stated that his father, who was Jewish, had four brothers, including [REDACTED], [REDACTED], and [REDACTED]. Claimant [REDACTED 1] further stated that his father had four children: [REDACTED], née [REDACTED], who was born on 7 December 1922 in Vienna, Austria; [REDACTED]; Claimant [REDACTED 2], who was born on 18 January 1934 in Vienna; and Claimant [REDACTED 1].

According to Claimant [REDACTED 1], his father lived at Kirchengasse 13 in Vienna. Claimant [REDACTED 1] stated that his father was an owner of *Brüder Haber*, a large, family-owned store in Vienna, until the incorporation of Austria into the Reich in March 1938 (the “Anschluss”). Claimant [REDACTED 1] further stated that his father was twice imprisoned by the Nazis before he fled to Palestine with his family in August 1939. Claimant [REDACTED 1]

indicated that his mother passed away on 11 April 1967 in Kiryat-Bialik, Israel, and that his father passed away on 17 February 1981, in Haifa, Israel.

Claimant [REDACTED 1] submitted several documents in support of his claim, including his parents' marriage certificate, indicating that Isak Haber and his wife resided in Vienna. Claimant [REDACTED 1] also submitted his father's passport, issued in Vienna on 14 July 1939, identifying him as Isak Haber, specifying that he was a businessman (“*Kaufmann*”), identifying Claimant [REDACTED 2] and Claimant [REDACTED 1] as his children, and containing his signature; his father's immigration certificate from Palestine, identifying him as Isak Haber from Vienna; and his father's death certificate, indicating that Isak Haber died on 17 February 1981 in Haifa, Israel. Finally, Claimant [REDACTED 1] submitted his own birth certificate, identifying his parents as Isak Haber and [REDACTED], née [REDACTED].¹ Claimant [REDACTED 1] indicated that he was born on 14 September 1936 in Vienna.

Claimant [REDACTED 2]

Claimant [REDACTED 2], who is Claimant [REDACTED 1]'s sister, submitted a Claim Form identifying the Account Owner as her father, Isak (Isac) Haber, who was born to [REDACTED] and [REDACTED], née [REDACTED], on 18 March 1892 in Ottynia, and was married to [REDACTED], née [REDACTED], on 4 December 1921 in Vienna. Claimant [REDACTED 2] stated that her father, who was Jewish, had four children: [REDACTED], née [REDACTED], [REDACTED], Claimant [REDACTED 1], and Claimant [REDACTED 2].

According to Claimant [REDACTED 2], from 1933 to 1938, her father lived at Kirchengasse 13 in Vienna, and was one of the owners of *Brüder Haber*, a store located at Mariahilferstrasse 90. Claimant [REDACTED 2] stated that her father fled Austria in August 1939.

Claimant [REDACTED 2] submitted numerous documents in support of her claim, including several documents also submitted by Claimant [REDACTED 1], such as Claimant [REDACTED 2]'s parents' marriage certificate, her father's passport and immigration certificate, and her father's death certificate. Claimant [REDACTED 2] also submitted her birth certificate, identifying her parents as Isak Haber and [REDACTED], née [REDACTED]. Claimant [REDACTED 2] indicated that she was born on 18 January 1934 in Vienna.

Information Available in the Bank's Records

The Bank's records submitted to the CRT by 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”) consist of a power of attorney form signed on 9 November 1938 in Vienna, Austria, and two printouts from the Bank's database. Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), the CRT requested the voluntary assistance of the Bank to

¹ The CRT notes that Claimant [REDACTED 1] refers to himself as [REDACTED 1], and that the documents he submitted refer to him as [REDACTED 1] and [REDACTED 1]. The CRT further notes that these names are sufficiently similar to render it plausible that they refer to the same person.

obtain additional information about this account (“Voluntary Assistance”). On 7 July 2004, the Bank provided the CRT with additional documents. These documents consist of a customer card and a custody account opening form signed in Vienna on 25 September 1938.

According to the Bank's records, the Account Owner was Isak Haber, a businessman who resided at Kirchengasse 13 in Vienna. The Bank's records indicate that the Account Owner held a custody account, numbered 42271. The Bank's records indicate that the custody account was opened on 25 September 1938 and was closed on 25 November 1938.

The Bank's records do not indicate the value of the account. There is no evidence in the Bank's records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The power of attorney form included in the Bank's records is signed by both the Account Owner and [REDACTED], who is identified as a businessman living at Gustav Tschermakgasse 27 in Vienna. In that form, the Account Owner and [REDACTED] authorized Dr. Ludwig Schwarzmann, an attorney from Vienna, to open and inspect any safe deposit boxes rented by the Account Owner and [REDACTED]. The form, which is part of a letter addressed to the Bank, specifically states that if the Account Owner and [REDACTED] did not in fact own any safe deposit boxes at the Bank, the Bank should inform Dr. Ludwig Schwarzmann that this was the case. The remaining Bank's records do not indicate that a safe deposit box was ever opened.

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 Isak Haber, numbered 36170. The records state that Isak Haber was born on 18 March 1892, and that he was married to [REDACTED], née [REDACTED]. In addition, the records state that Isak Haber initially lived at Kirchengasse 13 in Vienna, and that he later lived at Gustav Tschermakgasse 27. According to the records, Isak Haber owned a one-fifth share of *Firma Brüder Haber*, which ran a group of department stores and was based at Neubaugasse 25 in Vienna. The records indicate that Isak Haber's share was valued at 133,000.00 Reichsmark (“RM”). In addition, the records indicate that by late 1938 *Firma Brüder Haber* had been aryanized, and that the aryanization proceeds were being deposited in the *Kontrollbank* in Vienna to serve as surety for tax liabilities. The records further indicate that Isak Haber and his wife received a preliminary flight tax (*Reichsfluchtsteuer*) assessment of RM 30,825.00 on 5 July 1939, and that the final figure, after taking account of an atonement tax (*Sühneabgabe*) assessment of RM 33,000.00, had been adjusted to RM 60,416.00 on 28 January 1941.

In addition, the records contain correspondence and judicial and administrative decisions, indicating that Isak Haber and his brother, [REDACTED], were investigated and subsequently criminally prosecuted for concealing assets from the Nazi authorities. The records indicate that both Isak Haber and his brother [REDACTED] were imprisoned in connection with these

proceedings. More specifically, the records show that Isak was in prison in July 1938, briefly released, but re-arrested on 28 October 1938 and released again on 28 March 1939.

According to the records of the court proceedings against Isak and [REDACTED] Haber, in particular the verdict of March 1939, the two brothers were accused of having breached regulations by allowing the transfer of securities held in Zurich and of not having reported their assets fully on their 1938 Census declaration. According to the court documents, Isak Haber had four brothers, all of whom lived in Vienna. The documents indicate that their parents had lived in Palestine at least since September 1938, and that three of the Haber brothers, [REDACTED], [REDACTED] and [REDACTED], did not hold German nationality and left Austria for Argentina in September 1938. The documents indicate that the family had set up a corporate entity named *Ortewa Aktiengesellschaft*, which was domiciled in Switzerland and whose only asset was a house in Vienna at Mariahilferstrasse 90. According to the documents, the corporate entity had issued 600 shares, of which 200 were owned by the parents and 80 by each of the five brothers. The documents indicate that these shares were held in a safe deposit box at the Bank, over which [REDACTED], Isak, and [REDACTED] Haber had signature power, but that required the authority of all three for transfers. According to the documents, after leaving Austria, [REDACTED], with a power of attorney from his two brothers, removed all the shares from the safe deposit box, and deposited the 160 shares belonging to Isak and [REDACTED] Haber in an account at the Bank. The documents indicate that Isak Haber told the court that he had been unaware of this transfer, and that his brother [REDACTED] argued that the transfer was in line with the regulations as, after reporting his ownership of the shares, he had received a notice from the *Reichsbank* in August 1938, telling him that they had to be transferred to a bank account. According to a report from the Customs Investigations Office (“*Zollfahndungsstelle*”) dated 7 December 1938, the shares at that time were deposited at the *Creditanstalt*, and all other assets had been confiscated by the Customs Investigations Office. The documents indicate that on 28 March 1939, the court sentenced the two brothers to a fine and imprisonment equal to time served. In its decision, the court noted that the brothers had reported ownership of the shares held in Switzerland on their 1938 Census declaration and that they subsequently had been surrendered to the *Reichsbank*, and that it considered these mitigating factors in the sentencing. The court’s verdict indicates that the shares were valued at RM 92.00 each as of 28 March 1939.

The CRT’s Analysis

Joinder of Claims

According to Article 37(1) of 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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants’ father’s name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimants also identified the Account Owner’s street address and

profession, which matches unpublished information about the Account Owner contained in the Bank's records. In addition, Claimant [REDACTED 1] identified [REDACTED], whose name appears in the Bank's records as the Account Owner's brother.

In support of their claims, the Claimants submitted documents, including their parents' marriage certificate and their father's immigration certificate to Palestine, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner. The Claimants also submitted a sample of their father's signature, which matches the signature samples contained in the Bank's records.

The CRT notes that the name Isak Haber appears only once on the February 2001 published list of accounts determined by ICEP to be probably those of Victims of Nazi Persecution (the "ICEP List"). Finally, the CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and that he lived in Nazi-controlled Austria until August 1939, when he fled to Palestine. Claimant [REDACTED 1] also stated that his father was twice imprisoned by the Nazis. The CRT notes that the 1938 Census records submitted by the Account Owner indicates that he was incarcerated after the *Anschluss*, that he was the subject of criminal prosecution by Nazi authorities, and that the business of which he was a partner was aryanized.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimants' father. These documents include the Claimants' birth certificates, identifying Isak Haber as the father of Claimant [REDACTED 1] and Claimant [REDACTED 2], respectively.

The Issue of Who Received the Proceeds

The CRT notes that the 1938 Census records submitted by the Account Owner indicate that the Account Owner was authorized, together with two of his brothers, to access a safe deposit box held at the Bank. The CRT further notes that the 1938 Census records indicate that [REDACTED], with his brothers' consent, withdrew all assets contained in that safe deposit box in September 1938 and that he deposited the shares owned by his two brothers, Isak and [REDACTED] Haber, in an account at the Bank. Given that the opening date specified in the Bank's records for the custody account held by the Account Owner corresponds closely with the opening date of the custody account documented by the Account Owner's 1938 Census records, and that both these accounts were custody accounts, the CRT determines that the account referred to in the Account Owner's 1938 Census records is the same account as the account evidenced by the Bank's records.

Regarding that custody account, given that the Account Owner was under arrest at the time the account was closed; that Nazi authorities conducted inquiries into the Account Owner's ownership of assets at the Bank; that the court decision adjudicating the Account Owner's failure to comply with the regulations governing these assets specifically states that the shares held at the Bank had been transferred to the *Creditanstalt* in Vienna and subsequently surrendered to the *Reichsbank*; that there is no record of the payment of the Account Owner's account to him; and given the application of Presumptions (a), (d), 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 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.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father, and that relationship justifies an Award. Third, the CRT 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

In this case, the Account Owner held one custody account. The 1938 Census records indicate that the account contained 160 shares of *Ortewa Aktiengesellschaft*, valued at RM 92.00 per share on 28 March 1939. Consequently, the value of the custody account as of 28 March 1939 was RM 14,720.00, which was equivalent to 25,824.56 Swiss Francs ("SF").² The current value of the amount of the award is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 322,807.00.

Division of the Award

The CRT notes that, according to the 1938 Census records, although the custody account was held in Isak Haber's name, the assets in it belonged to [REDACTED] and Isak Haber, in equal shares, and therefore the account may be considered to be held jointly by [REDACTED] and Isak Haber. According to Article 25(2) of the Rules, in cases where the joint account is claimed by relatives of only one or some of the joint account owners, it shall be presumed that the account was owned as a whole in equal shares by the accounts owners whose shares of the account have been claimed. Accordingly, the CRT presumes that the account was owned wholly by Isak Haber.³

² The CRT uses official exchange rates when converting the amounts in foreign currencies into Swiss Francs.

³ The CRT notes that [REDACTED] was the Claimants' paternal uncle, and that it has received no other claims to an account belonging to him. The Claimants, as descendants of [REDACTED]'s parents, would be entitled to his share of the account under Article 23(1)(d) of the Rules.

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 1] and Claimant [REDACTED 2] are both children of the Account Owner. Accordingly, Claimant [REDACTED 1] and Claimant [REDACTED 2] are each entitled to one-half of the total 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 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).

Certification of the Award

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

Claims Resolution Tribunal
31 August 2005