

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Dr. Walter Friedrich

in re Account of Emil and Marie Hammerschlag

Claim Number: 501801/CU

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Emil Hammerschlag (“Account Owner Emil Hammerschlag”) and Marie Hammerschlag (“Account Owner Marie Hammerschlag”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).¹

All awards 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.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owners as his maternal grandparents, Emil Hammerschlag and Marie Hammerschlag, née Bardach. The Claimant indicated that Emil Hammerschlag was born on 8 November 1866 in Vienna, Austria, and that Marie Hammerschlag was born on 1 January 1873. The Claimant further stated that his grandparents, who were Jewish, married on 11 February 1900 in Vienna, and that they resided at Neustiftgasse 3 in Vienna. The Claimant indicated that his grandfather was a bank director in Vienna. According to the Claimant, his grandparents had one child: [REDACTED] (the Claimant’s mother), who was born on 23 November 1907 in Vienna.

The Claimant indicated that Emil Hammerschlag died in 1948 in London, the United Kingdom and that Emil and Marie Hammerschlag’s daughter [REDACTED] has passed away. The

¹ The CRT notes that on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), the name Emil Hammerschlag appears twice. Upon careful review, the CRT has determined that the second Emil Hammerschlag is not the same person addressed in the current decision and, consequently, Claimant Michael Grenby (the “Claimant”) did not identify this other account owner as his relative. The CRT further has ascertained that the Bank’s records indicate that the account at issue was held jointly by Emil Hammerschlag and Marie Hammerschlag.

Claimant submitted copies of documents, including: (1) an excerpt from his grandfather's census declaration of assets, which is more thoroughly described below, indicating that Emil Hammerschlag was Jewish, that he was born on 8 November 1866, and that he resided at Neustiftgasse 3 in Vienna; (2) an excerpt of a marriage book of the Jewish Community in Vienna, indicating that [REDACTED] married engineer [REDACTED] on 30 May 1930 in Vienna, and that [REDACTED]'s parents were Emil Hammerschlag and Marie Hammerschlag, née Bardach, and that they lived at Neustiftgasse 3; (3) his father's certificate of name change, indicating that [REDACTED] formally changed his name to [REDACTED] on 4 June 1947; and (4) his own birth certificate, indicating that [REDACTED] was born on 18 February 1941 in Hampstead, England, and that his parents were [REDACTED] and [REDACTED], née [REDACTED].

The Claimant indicated that he was born on 18 February 1941 in London.

Information Available in the Bank's Records

The Bank's records consist of a report from 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"). According to this report, the Account Owner was Emil Hammerschlag, who resided in Vienna, Austria. The auditor's report indicates that the Account Owner held a custody account, numbered 10286, which was opened on 29 October 1930. The auditor's report indicates that the account was closed on 22 August 1938. The amount in the account on its date of closure is unknown.

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 obtain additional information about this account ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of a list of accounts held by the Bank, and an extract from the Bank's ledger of archived (*abgelegten*) custody accounts. These documents indicate that the custody account numbered 10286 was jointly owned by Emil Hammerschlag and his wife, Marie Hammerschlag, both from Vienna, and that the account was closed on 22 August 1938.

There is no evidence in the Bank's records that the Account Owners or their heirs closed the account and received the proceeds themselves.

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 Emil Hammerschlag and Marie Hammerschlag, numbered 16411 and 16412, respectively.

Emil Hammerschlag

These records indicate that Emil Hammerschlag was born on 8 November 1866, that he was Jewish, and that he was married to Marie Hammerschlag, née Bardach. The records further indicate that Emil Hammerschlag was a retired deputy director of the *Oesterreichische Boden Credit-Anstalt* in Vienna, Austria, and that he resided at Neustiftgasse 3. These records also indicate that Emil Hammerschlag owned numerous securities with a total value of 28,003.00 Reichsmark (“RM”). The records include a letter from the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or “VVSt.”), dated 5 August 1938, advising Emil Hammerschlag to offer his declared securities to the *Reichsbankstelle Vienna* for sale.

The records contain a letter signed by Emil Hammerschlag on 9 December 1938 in Vienna, indicating that his asset ownership had changed through the sale of four securities with a total value of RM 6,212.11. Emil Hammerschlag further indicated that his asset ownership was further reduced because of his financial support of his daughter’s move abroad.

The register of assets also indicates that Emil Hammerschlag’s assets before 27 April 1938 amounted to RM 56,231.76 and on 22 March 1939 amounted to RM 14,746.90. The records also include several lists of valuables which Emil Hammerschlag was forced, as a Jewish person, to sell in Vienna on 4 May 1939. These records further contain an internal memorandum from the Reichs Governor (*Reichstatthalter*) in Vienna, dated 5 April 1941, indicating that the Governor was in the process of deciding whether to open an absentee trusteeship (*Abwesenheitspflegschaft*) over the assets of Emil and Marie Hammerschlag, who were at that time living abroad in “enemy territory”.

These records make no mention of assets held in a Swiss bank account.

Marie Hammerschlag

These records, numbered 16412, indicate that Marie Hammerschlag was born on 1 January 1873, and that she resided at Neustiftgasse 3 in Vienna. The records further indicate that Marie Hammerschlag, who was Jewish, was a housewife and that she was married to Emil Hammerschlag. These records also indicate that Marie Hammerschlag owned numerous securities with a total value of RM 9,338.00. The records include a letter from the VVSt., dated 5 August 1938, advising Maria [sic] Hammerschlag to offer her declared securities for sale to the *Reichsbankstelle Vienna*. The records contain a letter signed by Marie Hammerschlag on 9 December 1938 in Vienna, indicating that her assets had changed through the sale of bank assets and cash, securities with a total value of RM 3,227.70, and even the sale of a piano. Finally, the records include several lists of valuables which Maria Hammerschlag was forced, as a Jewish person, to sell in June and July 1938.

These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's grandfather's name and city and country of residence match the published name and city and country of residence of Account Owner Emil Hammerschlag. The Claimant also identified the name and city and country of residence of Account Owner Marie Hammerschlag, which match unpublished information about the account contained in the Bank's records.

In support of his claim, the Claimant submitted documents, including an excerpt from a marriage book of the Jewish Community in Vienna, providing independent verification that the persons who are claimed to be the Account Owners had the same names and resided in the same town recorded in the Bank's records as the names and city of residence of the Account Owners.

The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different city and country of residence, or a different birth year or profession than the city and country of residence, birth year and profession of Account Owner Emil Hammerschlag.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they resided in Vienna, Austria, following the incorporation of Austria into the Reich in March 1938 (the "Anschluss").

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were the Claimant's maternal grandparents. These documents include an excerpt from a marriage book of the Jewish Community of Vienna and his own birth certificate.

The Issue of Who Received the Proceeds

The Bank's records indicate that the account was closed on 22 August 1938.

Given that the Account Owners resided in Vienna, Austria following the *Anschluss*; that there is no record of the payment of the Account Owners' account to them; that the Account Owners and their heirs would not have been able to obtain information about their 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 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.

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 Owners were his grandparents, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owners 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 13,000.00 Swiss Francs (“SF”). 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 a total award amount of SF 162,500.00.

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
8 October 2008