

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Robert Heller

Claim Number: 770970/MBC¹

Award Amount: 10,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Richard Heller.² This Award is to the published account of Robert Heller (the “Account Owner”), over which [REDACTED] (the “Power of Attorney Holder”) held power of attorney, 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 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 an Initial Questionnaire (“IQ”) identifying the Account Owner as her maternal uncle, Robert Heller. In a telephone conversation with the CRT, the Claimant stated that her uncle, who was Jewish, was born approximately between 1890 and 1895 in Vienna, Austria, that he was a medical doctor and that, to her best of her knowledge, he was not married at the time of the incorporation of Austria into the Third Reich in March 1938 (the “*Anschluss*”). According to the Claimant, all of her uncle’s assets were confiscated by the Nazis. In the above mentioned telephone conversation, the Claimant further stated that, following the *Anschluss*, her uncle, who resided in Vienna, fled Austria, first for Italy, and then for England.

¹ [REDACTED] (the Claimant) did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered ENG 0035 187, to the Court in the United States. Although this IQ was not a Claim Form, 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 was forwarded to the CRT and has been assigned claim number 770970.

² The CRT will treat the claim to this account in a separate determination.

In support of her claim, the Claimant submitted a copy of her own birth certificate, issued by the Jewish Community of Vienna, indicating that [REDACTED] was the daughter of [REDACTED], née [REDACTED].

The Claimant indicated that she was born on 21 August 1922 in Vienna.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form, a statement regarding securities held by the Account Owner, and printouts from the Bank's database. According to these records, the Account Owner was Robert Heller, who resided at Taborstrasse 6 in Vienna, Austria, and the Power of Attorney Holder, who was appointed in 1924, was [REDACTED], who resided at Getreidermarkt 3 in Vienna. The Bank's records indicate that the Account Owner held one custody account, numbered 20974, which contained a number of securities, and which was closed on 18 February 1925.

According to 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") contained in the file delivered to the CRT, the Account Owner also held one passbook/savings account. The auditors did not report any further information about this account because of the "small savings" rule, which provided that savings accounts with a 1930-1940s value of 250.00 Swiss Francs or less or with no known value were to be excluded from further ICEP reporting requirements.

The CRT's Analysis

Identification of the Account Owner

The Claimant's uncle's name and city and country of residence match the published name and city and country of residence of the Account Owner.

The CRT notes that the name Robert Heller appears only once 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 CRT notes that the Claimant filed an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Robert Heller prior to the publication of the ICEP list. This indicates that the Claimant has based her claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

The CRT notes that the Claimant did not identify the Power of Attorney Holder. However, the CRT notes that the Claimant was a minor for most of the Second World War and that there is no indication that the Account Owner and the Power of Attorney Holder were related, and therefore determines that it is plausible that the Claimant would not know the name of all of her uncle's acquaintances and business associates, and that the Claimant's failure to identify the Power of Attorney Holder does not adversely affect the plausibility of her identification of the Account Owner.

The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different country of residence than the country of residence of the Account Owner or because they indicated a date of birth for the Account Owner which would have made him too young to sign a form granting power of attorney. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

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, that the Nazis confiscated all of his assets and that, some time following the *Anschluss*, he fled Vienna, first for Italy and then for England.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimant's uncle.

The CRT further notes that the Claimant filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List. The CRT further notes that the Claimant submitted a copy of her own birth certificate, indicating that her mother's maiden name was Heller, which provides independent verification that the Claimant's relatives bore the same family name as the Account Owner and that they resided in Vienna. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Form.

There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds and Jurisdiction

With regard to the custody account numbered 20974 held by the Account Owner, the Bank's records indicate that the account was closed on 18 February 1925. The CRT notes that Article 14 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") provides that the CRT shall have jurisdiction to resolve claims to the Accounts of Victims open or opened in Swiss banks during the Relevant Period and to certify to the Court for the payment of the

value of Accounts. The Relevant Period is defined in Article 46(20) of the Rules as the period from 1 January 1933 to 31 December 1945. Accordingly, because it was closed in 1925, which is prior to the Relevant Period, this account falls outside the CRT's jurisdiction.

While the CRT makes no conclusions regarding the disposition of accounts outside its jurisdiction, it does note that the account was closed before the Nazi regime came to power in Germany in 1933. Therefore, the CRT determines that the Account Owner was able to access his account and that the Account Owner closed the account and received the proceeds himself.

With regard to the passbook/savings account held by the Account Owner, no further information was made available regarding the disposition of the account. The records do not indicate if or when the account was closed, or who received the proceeds. Given that the Bank's records do not indicate to whom the account was closed or a date of closure of the account, that the Account Owner fled his country of origin due to Nazi persecution, that the Account Owner and his heirs would not have been able to obtain information about his account after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 (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 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 her uncle, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed passbook/savings account.

Amount of the Award

In this case, the Account Owner held one passbook/savings 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 ICEP Investigation, in 1945 the average value of a passbook/savings account was 830.00 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 10,375.00.

Certification of the Award

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

Claims Resolution Tribunal
3 June 2009