

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 Accounts of Friedrich and Edith Hertz

Claim Number: 501519/AV/AC

Award Amount: 325,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], formerly [REDACTED], (the “Claimant”) to the published account of Friedrich Hertz. This Award is to the published account of Friedrich Hertz (“Account Owner Friedrich Hertz”) at the Zurich branch of the [REDACTED] (“Bank 1”) and to the unpublished account of Account Owner Friedrich Hertz and Edith Hertz (“Account Owner Edith Hertz”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (“Bank 2”) (together the “Banks”).

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 father, Dr. Friedrich Otto Hertz, who was born on 26 March 1878 in Vienna, Austria, and his mother, Dr. Edith Hertz, née Hirsch, who was born on 11 November 1891. The Claimant indicated that his parents, who were Jewish, were married on 5 May 1914 in Vienna. According to the Claimant, his parents had two children: [REDACTED], née [REDACTED], who was born on 10 July 1916 in Vienna, and the Claimant. The Claimant stated that his father was a university professor and an author, and that he published at least one book in Zurich, Switzerland. The Claimant specified that his parents lived at [REDACTED] 17 in Vienna until 1930, that they lived in Halle, Germany, from 1930 to 1933, and that they lived at Brahmsplatz 2/3/6 in Vienna from 1933 to 1938 following the incorporation of Austria into the Reich in March 1938 (the “Anschluss”). The Claimant indicated that in 1938 his parents fled from Vienna to London, England. Finally, the Claimant indicated that his father died in London on 20 November 1964, and his mother died on 11 April 1970, also in London.

In support of his claim, the Claimant submitted documents obtained from the Austrian State Archive that were completed by his father pursuant to 1938 Nazi legislation. These documents are more fully described below.

The Claimant also submitted his birth certificate, indicating that his given name was [REDACTED], that his mother was Edith Hertz, née Hirsch, that his father was Otto Friedrich Hertz, and that his parents lived in Vienna. In addition, the Claimant submitted a certificate from the British Army, indicating that he changed his name from [REDACTED] to [REDACTED] on 6 May 1943, while serving in the field with the Pioneer Corps.

The Claimant indicated that he was born on 14 April 1920 in Vienna.

Information Available in the Banks' Records

Bank 1

Bank 1's record consists of a printout from Bank 1's database. According to this record, Account Owner Friedrich Hertz was *Prof. Dr.* Friedrich Hertz, who resided in Vienna, Austria. Bank 1's record indicates that Account Owner Friedrich Hertz held a custody account, numbered 17947, which was opened on 11 December 1933. Bank 1's record indicates that the account was closed on 7 April 1938. Bank 1's record does not indicate the value of this account. There is no evidence in Bank 1's record that Account Owner Friedrich Hertz or his heirs closed the account and received the proceeds themselves.

Bank 2

The CRT notes that 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") did not report an account belonging to Friedrich Hertz during their investigation of Bank 2. The account held at Bank 2 is based on information contained in the Austrian State Archive, detailed below.

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 Dr. Friedrich Hertz, numbered 32558. These documents indicate that Dr. Friedrich Hertz was born on 26 March 1878, that he used the title *Ministerialrat i.R.*,¹ that he lived at Brahmsplatz 2 in Vienna, and that he was married to Dr. Edith Hertz, née Hirsch, who was born on 11 November 1891. In addition, the documents include a detailed statement from the

¹ The CRT notes that *Ministerialrat* is a title bestowed on persons holding high administrative positions in an organization, and that the notation *i.R.* indicates that the individual was retired.

Oesterreichische Creditanstalt-Wiener Bankverein (the “*Creditanstalt*”), which indicate that as of 27 April 1938, Dr. Friedrich Hertz owned securities valued at 55,996.60 Reichsmark (“RM”). This statement indicates that a custody account, held jointly by Friedrich Hertz and Edith Hertz at the *Creditanstalt*, contained, among other securities, 25 privileged shares of the *Creditanstalt* and 25 certificates of redemption of the *Creditanstalt*, which were physically deposited at the Zurich branch of Bank 2. The statement also shows that Dr. Friedrich Hertz owed the *Creditanstalt* RM 11,296.57 as of 27 April 1938. Finally, the documents indicate that Dr. Friedrich Hertz fled from Vienna to England on 26 April 1938 and that he signed his asset declaration on 25 July 1938 in London.

The CRT’s Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant’s father’s name and city and country of residence match the published name and city and country of residence of Account Owner Friedrich Hertz. The Claimant identified his mother’s name and his father’s professional title, which matches unpublished information about the Account Owners contained in Bank 1’s record and in the 1938 Census records.

In support of his claim, the Claimant submitted documents, including his birth certificate, identifying his parents as Edith Hertz and Otto Friedrich Hertz,² from Vienna, providing independent verification that the persons who are claimed to be the Account Owners had the same names and resided in the same city recorded in Bank 1’s record and 1938 Census records as the names and city of residence of the Account Owners. The CRT notes that the name Friedrich Hertz appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably those of Victims of Nazi Persecution (the “ICEP List”). The CRT further notes that the other claims to these accounts were disconfirmed because those claimants provided a different country of residence or profession than the country of residence and profession of Account Owner Friedrich Hertz, or they provided a different country of residence, maiden name, or spouse’s name than the country of residence, maiden name, and spouse’s name of Account Owner Edith Hertz.

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 fled from Vienna to London in 1938. The CRT notes that 1938 Census records indicate that Friedrich Hertz fled Vienna on 26 April 1938 and that he filed his asset declaration on 25 July 1938 from London.

² The CRT notes that the birth certificate identifies the Claimant’s father as “Otto Friedrich Hertz” whereas Bank 1’s record identifies the Account Owner as “Friedrich Hertz.” However, the CRT further notes that both this birth certificate and the 1938 Census record for Dr. Friedrich Hertz identify his wife as Edith Hertz, née Hirsch, of Vienna, rendering it plausible that these documents refer to the same individual. Accordingly, the CRT concludes that this birth certificate further supports the Claimant’s identification of the Account Owners.

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 parents. These documents include the Claimant's birth certificate, indicating that the Claimant's parents were Friedrich and Edith Hertz.

The Issue of Who Received the Proceeds

With respect to Account Owner Friedrich Hertz's account at Bank 1, given that the account was closed on 7 April 1938, at which time Account Owner Friedrich Hertz was still residing in Nazi-controlled Austria; that there is no record of the payment of Account Owner Friedrich Hertz's account to him; that Account Owner Friedrich Hertz and his heirs would not have been able to obtain information about his account after the Second World War from Bank 1 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 (a), (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 Account Owner Friedrich Hertz 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.

With respect to the Account Owners' account at Bank 2, the facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that Account Owner Friedrich Hertz reported the account in his 1938 Census declaration; that the Account Owners lived in Austria until they fled to London in 1938, and therefore could not have repatriated the accounts without losing ultimate control over its proceeds; 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 parents, 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 accounts.

Amount of the Award

In this case, the Account Owners held two custody accounts. 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 custody account was 13,000.00 Swiss Francs (“SF”), for a total average value of SF 26,000.00 for two custody accounts. 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 325,000.00.

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
15 July 2005