

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Davide Zerega

in re Accounts of Emmy Herzfeld

Claim Numbers: 220880/BW; 220881/BW¹

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to that published accounts of Emmy Herzfeld and Joseph Herzfeld.² This award is to the published accounts of Emmy Herzfeld (the “Account Owner”), over which Joseph Herzfeld (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).³ On 6 February 2004, the Court approved an award to the Claimant for two accounts held by the Power of Attorney Holder (the “February 2004 Award”), but did not make a determination regarding the disposition of two accounts held by the Account Owner, pending further consideration. This award addresses the two accounts held by the Account Owner that were held for further consideration in the February 2004 Award.

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 Owner and the Power of Attorney Holder as her paternal great-grandparents, Emmy (Emilie, Emilia) Herzfeld, née Kautz, who was born on 27 May 1868 in Neu Gross Rischow, Germany, and Joseph (Giuseppe)

¹ The Claimant submitted four Claim Forms, which were registered under the Claim Numbers 215224, 215225, 220880 and 220881. The CRT has determined that claims 215224 and 220881 are duplicate claims and that 215225 and 220880 are duplicate claims as well. Therefore, the CRT is treating these claims under the consolidated Claim Numbers 220880 and 220881.

² In a separate decision, the CRT awarded the accounts of Joseph Herzfeld to the Claimant. See *In re Accounts of Joseph Herzfeld and Emmy Herzfeld* (approved on 2 June 2004).

³ 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”), Emmy Herzfeld is indicated as having one account. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of two accounts.

Herzfeld, who was born on 18 December 1853 in Neuss, Germany. The Claimant indicated that her great-grandparents had one son, the Claimant's paternal grandfather, [REDACTED], who was born on 22 September 1888 in Berlin-Charlottenburg, Germany and was married to [REDACTED], née [REDACTED]. According to the Claimant, her father, [REDACTED], who was born on 21 March 1925 in Berlin, was the only child of her paternal grandparents.

The Claimant stated that her great-grandparents, who were Jewish, lived in Berlin-Charlottenburg until 1931, when they fled to Collalbo, Italy, because the Claimant's great-grandfather, who was a lawyer, was a communist party deputy in the German government. The Claimant further stated that her great-grandparents lived at Villa Maria 107 in Collalbo until her great-grandfather's death on 27 July 1939. The Claimant added that her grandparents, [REDACTED] and [REDACTED], who were also Jewish, perished in a concentration camp at some point between 1942 and 1944. The Claimant indicated that her great-grandmother remained in Italy until her death on 18 April 1958 in Bolzano, Italy.

In support of her claim, the Claimant submitted copies of documents, including: (1) her great-grandparents' death certificates, which indicate that Giuseppe Herzfeld died in Renon, Italy on 27 July 1939, and that Emilia Kautz died in Bolzano on 18 April 1958; (2) the birth certificate of her paternal grandfather, [REDACTED], which indicates that his parents were Joseph Herzfeld and Auguste Emilie Herzfeld, née Kautz; (3) the birth certificate of her father, [REDACTED], which indicates that [REDACTED] was his father; (4) the Claimant's own birth certificate, which indicates that [REDACTED] was her father; and (5) documents from the Italian government in Rome, Italy and Bolzano regarding her father's request for naturalization. The Claimant also submitted two certified copies of documents issued by different Italian governmental organizations in the 1950s, which indicate that [REDACTED] died during the Second World War in a concentration camp in Germany.

The Claimant indicated that she was born on 16 February 1964 in Verbania, Italy. The Claimant previously submitted ATAG Ernst & Young claim forms in 1998, asserting her entitlement to a Swiss bank account owned by Joseph Herzfeld, Helene Eckart, and Paul Katzestein.⁴

Information Available in the Bank's Records

The Bank's records consist of a customer card and a printout from the Bank's database. According to these records, the Account Owner was *Frau* (Mrs.) Emmy Herzfeld, née Kautz, and the Power of Attorney Holder was Dr. Joseph Herzfeld, who both resided at Villa Maria in Collalbo-Bolzano, Italy. The Bank's records indicate that the Account Owner held a custody account and a demand deposit account in Swiss Francs, under the numbered account relationship 39256, which was opened by 19 November 1935, and closed on 7 February 1940. The amounts in the accounts on the date of their closure are unknown. There is no evidence in the Bank's records, which indicates that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

⁴ As noted above, the Claimant was awarded the accounts of Joseph Herzfeld in a separate decision. The CRT will treat the other claims in separate determinations.

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 two claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner and the Power of Attorney Holder. The Claimant's great-grandmother's name, maiden name, and city and country of residence match the published name, maiden name and city and country of residence of the Account Owner, and her great-grandfather's name matches the published name of the Power of Attorney Holder. The Claimant identified her great-grandparents' address in Collalbo, which matches unpublished information about the Account Owner and the Power of Attorney Holder contained in the Bank's records.

In support of her claim, the Claimant submitted numerous documents, including her great-grandparents' death certificates and her grandfather's birth certificate, providing independent verification that the persons who are claimed to be the Account Owner and the Power of Attorney Holder had the same names recorded in the Bank's records as the names of the Account Owner and the Power of Attorney Holder.

The CRT notes that the Claimant filed ATAG Ernst & Young claim forms in 1998 asserting her entitlement to a Swiss bank accounts owned by Joseph Herzfeld, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her present 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 relatives owned Swiss bank accounts prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

Furthermore, the CRT notes that one other claim to this account was disconfirmed because that claimant provided a different city of residence of the Account Owner than the city of residence of the Account Owner as contained in the Bank's records.

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, was forced to flee Berlin in 1931 for Italy, due to her husband's status as a communist party deputy in the German government, and that she subsequently resided in Nazi-allied Italy. The Claimant also indicated that the Account Owner's son and daughter-in-law perished in a concentration camp in Germany.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner and the Power of Attorney Holder by submitting specific information and documents, demonstrating that the Account Owner and the Power of Attorney Holder were the Claimant's great-grandparents. These documents include the birth certificate of her paternal grandfather, [REDACTED], which indicates that his parents were Joseph Herzfeld and Auguste Emilie Herzfeld, née Kautz; the birth certificate of her father, [REDACTED], which indicates that [REDACTED] was his father; and the Claimant's own birth certificate, which indicates that [REDACTED] was her father.⁵ There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner and the Power of Attorney Holder were Jewish, and fled Germany for Italy; that the Account Owner and Power of Attorney Holder both resided in Nazi-allied Italy during the Second World War; that there is no record of the payment of the Account Owner's accounts to her; that the Account Owner and her heirs would not have been able to obtain information about her accounts 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 (a), (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, the Power of Attorney Holder, 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 claims are 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 great-grandmother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one custody account and one demand deposit 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") and the average value of a demand deposit account was SF 2,140.00, for a total 1945

⁵ The CRT notes that [REDACTED] and [REDACTED] are German and Italian variations of the same name.

average value of SF 15,140.00. 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 a total award amount of SF 189,250.00.

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 her claims to determine whether there are additional Swiss bank accounts to which she 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
9 November 2006