

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED],
represented by [REDACTED]

in re Accounts of Joseph Herzfeld and Emmy Herzfeld

Claim Numbers: 220880/ZP; and 220881/ZP¹

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Joseph Herzfeld ("Account Owner Joseph Herzfeld") and Emmy Herzfeld ("Account Owner Emmy Herzfeld") (together the “Account Owners”) 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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owners as her paternal great-grandfather, Joseph Herzfeld, who was born on 18 December 1853 in Neuss, Germany, and her paternal great-grandmother, Emmy Herzfeld, née Kautz, who was born on 27 May 1868 in Nue Gross Rischow, Germany. The Claimant stated that her great-grandparents had one son, the Claimant’s grandfather, [REDACTED], who was born on 22 September 1888 in Berlin-Mittein and was married to [REDACTED], née [REDACTED]. The Claimant added that [REDACTED] was killed some time between 1942 and 1944 in a concentration camp. According to the Claimant, her father, [REDACTED], who was born on 23 May 1925 in Charlottenburg, Berlin, Germany, was the only child of her paternal grandparents.

The Claimant explained that her great-grandparents lived at Nieburstrasse 8, Charlottenburg in Berlin, until 1931, when they were forced to flee from Berlin to Collalbo, Italy, because they were Jewish and because the Claimant’s great-grandfather

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 claims 215225 and 220880 are duplicate claims as well. Therefore, the CRT is treating these claims under the Consolidated Claim Numbers 220880 and 220881.

was a communist deputy. The Claimant further stated that her great-grandfather was a lawyer and that while in Italy, they lived at Villa Maria 107, Collalbo, until her great-grandfather's death on 27 July 1939. The Claimant indicated that her great-grandmother died on 18 April 1958 in Bolzano.

In support of her claim, the Claimant submitted her birth certificate, which states that [REDACTED] was her father; the birth certificate of her father, which states that [REDACTED] was his father; the birth certificate of her paternal grandfather, which states that his parents were Joseph and Emmy Herzfeld; her great-grandparents' death certificates; and documents from the Italian government in Rome and Bolzano regarding her father's request for naturalization. The Claimant also submitted documents including two certified copies of documents created by different Italian governmental organizations in the 1950s which confirm that [REDACTED] died during the war in a concentration camp ("ON./LE Ministero Dell 'Interno, Direzione Generale della P.S. Divisone FF. TT. Sezione II, Divisone Aff. Gen. Sez. III, Roma" on 29 May 1951 and "ON./LE Ministero Dell 'Interno, Direzione Generale della P.S. Div. Aff. Gen. Sezione Stranieri, Roma" on 20 October 1955).

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

Information Available in the Bank's records

Account Owner Emmy Herzfeld's Accounts

The Bank's records consist of an account opening card and a printout from the Bank's database. According to these records, Account Owner Emmy Herzfeld 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 Account Owner Emmy Herzfeld held a custody account and a demand deposit account in Swiss Francs, both numbered 39256, which were opened on 19 November 1935 or earlier. According to the Bank's records, the accounts were 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 that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

Account Owner Joseph Herzfeld's Accounts

The Bank's records consist of a power of attorney form and printouts from the Bank's database. According to these records, the Account Owner was Dr. Joseph Herzfeld, who resided at Villa-Maria in Collalbo-Bolzano, Italy, and the Power of Attorney Holder was *Herr* (Mr.) Wieland Herzfeld, who resided at Konviktska 5, in Prague, Czechoslovakia. The Bank's records indicate that the Account Owner held one custody account and one demand deposit account, which were opened on 23 August 1937. The Bank's records do

not indicate when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts.

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 find these accounts in the Bank’s system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the Bank’s records that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

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 four claims of the Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners, Dr. Joseph Herzfeld and Emmy Herzfeld, of the separate custody and demand deposit accounts. Her great-grandparents’ names match the published names of the Account Owners, and her grandmother’s name matches the published name of the Power of Attorney Holder to Account Owner Joseph Herzfeld’s account.² The Claimant identified her great-grandparent’s address at Villa Maria, Collalbo, Italy, which matches unpublished information about the Account Owners contained in the Bank’s records. In support of her claim, the Claimant submitted numerous documents including her birth certificate, which states that [REDACTED] was her father; the birth certificate of her father, which states that [REDACTED] was his father; the birth certificate of her paternal grandfather, which states that his parents were Joseph and Emmy Herzfeld; and her great-grandparents’ death certificates.

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

² The CRT notes that the Claimant did not mention in her Claim Forms the Power of Attorney Holder, Wieland Herzfeld, to Account Owner Joseph Herzfeld’s accounts. The CRT concludes that despite not having identified the Power of Attorney Holder, the Claimant has plausibly identified the Account Owners as her great-grandparents.

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.

Furthermore, the CRT notes that one other claim to this account was disconfirmed because the other claimant provided inconsistent information about the Account Owner as contained in the Bank's records. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owners.

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 were forced to flee Germany in 1931. The CRT notes that the Account Owners' son, the heir to the Account Owners' accounts, was killed some time between 1942 and 1944 in a concentration camp. In support of her claim, the Claimant submitted documents including two certified copies of documents created by different Italian governmental organizations in the 1950s which confirm that Ernst Herzfeld died during the war in a concentration camp ("ON./LE Ministero Dell 'Interno, Direzione Generale della P.S. Divisone FF. TT. Sezione II, Divisone Aff. Gen. Sez. III, Roma" on 29 May 1951 and "ON./LE Ministero Dell 'Interno, Direzione Generale della P.S. Div. Aff. Gen. Sezione Stranieri, Roma" on 20 October 1955).

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents demonstrating that Joseph Herzfeld was her great-grandfather and Emmy Herzfeld was her great-grandmother. These documents include her birth certificate, which states that [REDACTED] was her father; the birth certificate of her father, which states that [REDACTED] was his father; and the birth certificate of her paternal grandfather, which states that his parents were Joseph and Emmy Herzfeld. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Regarding the custody account and a demand deposit account held by Account Owner Emmy Herzfeld and closed in November 1940, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner, Power of Attorney Holder or their heirs received the proceeds of these accounts.

Regarding the custody account and demand deposit account held by Account Owner Joseph Herzfeld, given that there is no record of dates of closure of these accounts nor any record of the payment of the Account Owner's accounts to him; that the Account Owners fled Germany in 1931 due to the persecution against Jewish citizens in Germany at that time; that the Account Owners were German nationals, Account Owner Joseph

Herzfeld was a communist deputy and Jewish, and therefore the Account Owners were subject to more intense Nazi pressure; the death of Account Owner Joseph Herzfeld in 1939; that the Account Owners' son was killed in a concentration camp some time between 1942 and 1944; that the Account Owner and his heirs would not have been able to obtain information about his closed 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 (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 Owners, 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.³

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 her great-grandparents, and those relationships justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, Account Owner Josef Herzfeld held one custody account and one demand deposit account.⁴ 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, and the average value of a demand deposit account was 2,140.00 Swiss Francs. 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 189,250.00 Swiss Francs.

³ As noted above, the Claimant did not identify in her Claim Forms the Power of Attorney Holder, Wieland Herzfeld, to Account Owner Joseph Herzfeld's accounts. The CRT concludes that given the Bank's records indicate that the Power of Attorney Holder resided in Prague, Czechoslovakia, which was occupied by the Nazis on 15 March 1939, it is plausible that the Power of Attorney Holder did not receive the proceeds of the accounts.

⁴ As noted above, regarding the custody account and demand deposit account held by Account Owner Emmy Herzfeld, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner, Power of Attorney Holder or their heirs received the proceeds of these accounts.

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 claim 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
6 February 2004