

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Ernst Hess

Claim Number: 789266/BW¹

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of Paul Siegfried Hess (the “Claimant”) to the published account of Ernst Hess (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).^{2,3}

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 identifying the Account Owner as his father, Ernst Hess, who was born on 1 September 1885. According to information provided by the Claimant, his father resided in Schwetzingen, Germany prior to the Second World War. The Claimant indicated that his father, who was Jewish, was a partner in the *Hess and Monatt* cigar factory, which was located on Koenigstrasse in Schwetzingen. The Claimant further indicated that his father’s factory was taken over by Nazi authorities, and that he and his father fled to the

¹ Paul Hess did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered ENG-0799151, 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 789266.

² The CRT notes that the name Ernst Hess appears three times 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”) and once on the List of Account Owners Published in 2005 (the “2005 List”). Upon careful review, the CRT has determined that the other Ernst Hess’ are not the same person addressed in the aforementioned decision and, consequently, the Claimant did not identify these other account owners as his relative.

³ The CRT notes that the ICEP List indicates Ernst Hess as having one account that remained open and dormant. Upon careful review, the CRT has concluded that the Bank’s record evidences the existence of two accounts, which are both closed.

United States,⁴ where his father died in New York, New York in 1968. The Claimant indicated that he was born on 2 February 1918.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Ernst Hess, who resided in Speyer am Rhein, Germany. The Bank's record indicates that the Account Owner held a demand deposit account, which was opened on 8 August 1935, and a custody account, numbered L12590, which was opened on 7 August 1935. The Bank's record indicates that the accounts were closed on 27 January 1938. The amounts in the accounts on the date of their closure are unknown. There is no evidence in the Bank's record that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant's father's name and country of residence matches the published name and country of residence of the Account Owner.⁵ Further, the CRT notes that the Claimant's father lived in Schwetzingen, which is a small town located only 18 kilometers from Speyer am Rhein, the city of residence of the Account Owner, and finds it plausible that the Claimant's father could have used Speyer am Rhein as his city of residence in his dealings with the Bank.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Ernst Hess, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of Victims of Nazi Persecution ("ICEP" or the "ICEP List"). This indicates that the Claimant has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his 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 other claims to these accounts were disconfirmed because those claimants provided a different country of residence than the country of residence of the Account

⁴ The CRT notes that it is not clear precisely when the Claimant and his father fled to the United States. At one point, the Claimant indicated that he attended school in New York beginning in 1934. However, the Claimant did not provide detail about the circumstances of his father's departure from Germany or the date by which he departed.

⁵ The CRT notes that the Claimant indicated that he attended school in New York beginning in 1934, and that the Bank's records indicate that the accounts were opened in 1935. However, as noted above, it is not clear precisely when the Claimant's father fled to the United States. The Claimant did not provide detail about the circumstances of his father's departure from Germany or the date by which he departed. The CRT finds it plausible that the Claimant's father left Germany after his son, or that the Claimant, who was a young child at the time, may not remember the exact circumstances or dates regarding his family's emigration.

Owner. 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 he resided in Nazi Germany, and that his factory was taken over by Nazis. The Claimant further indicated that the Account Owner fled Germany for the United States.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimant's father. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT further notes that the Claimant filed an Initial Questionnaire 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. 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 he has asserted in his Claim Form.

The Issue of Who Received the Proceeds

Given that the Account Owner resided in Nazi Germany until he fled to the United States after his factory was taken over by Nazi authorities; that there is no record of the payment of the Account Owner's accounts to him; that the Account Owner and his heirs would not have been able to obtain information about his 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 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 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 his father, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held a demand deposit account and a 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 ICEP (the “ICEP Investigation”) in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs (“SF”) and the average value of a custody account was SF 13,000.00. Thus, the combined 1945 average value of the two accounts at issue is 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 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
23 April 2007