

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1],

to Claimant [REDACTED 2],

to Claimant [REDACTED 3],

and to Claimant [REDACTED 4]
all represented by Dr. Gabriel Stilman

in re Accounts of Hermine Marie Hordliczka

Claim Numbers: 401429/MBC; 401950/MBC; 401181/MBC; 401784/MBC

Award Amount: 354,074.13 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”); [REDACTED 2] (“Claimant [REDACTED 2]”); [REDACTED 3], née [REDACTED] (“Claimant [REDACTED 3]”); and [REDACTED 4], née [REDACTED] (“Claimant [REDACTED 4]”) (together the “Claimants”) to the published accounts of Hermine Hordliczka (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimants [REDACTED 3] and [REDACTED 4], who are siblings, submitted Claim Forms identifying the Account Owner as their paternal grandmother’s sister Hermine Hordliczka; and Claimants [REDACTED 2] and [REDACTED 1], who are cousins and who are the nieces of Claimants [REDACTED 4] and [REDACTED 3], identified the Account Owner as their grandfather’s aunt Hermine Hordliczka, née Philipp.

According to the Claimants, Hermine Hordliczka was born on 8 January 1875 in Vienna, Austria; was married to [REDACTED] and was Jewish. The Claimants indicated that Hermine and [REDACTED] Hordliczka had one daughter, [REDACTED], who was born on 7 September 1905 in Vienna and who died on 14 October 1932 in Vienna. The Claimants also indicated that Hermine Hordliczka resided at Marokkanergasse 21 in Vienna until 1939, when she fled Austria

for Paris, France and then hoped to emigrate to Sao Paulo, Brazil. However, according to the Claimants, Hermine Hordliczka died on 23 April 1939 in Paris.

In support of their Claims, the Claimants all submitted documents, including: (1) a copy of Hermine Hordliczka's birth certificate, indicating that Hermine Maria Philipp was born on 8 January 1875, that her parents were [REDACTED] and [REDACTED], who were both Catholic, and that Hermine Philipp was baptized as Catholic on 28 February 1875 in Vienna; (2) a copy of Hermine Hordliczka's death report dated 25 April 1939 and recorded by the office of the mayor of the 16th district of Paris, indicating that Hermine Maria Hordliczka, née Philipp, was born on 8 January 1875 in Vienna, that her parents were [REDACTED] and [REDACTED], that she was the widow of [REDACTED], that she resided at Avenue Friedland 38 in Paris, and that she died on 23 April 1939 in Paris; and (3) a copy of Claimants [REDACTED 4] and [REDACTED 3]'s father's death report, recorded on 14 June 1983 by the mayor of Grasse, France, indicating that [REDACTED] was born on 1 January 1902 in Vienna, that his parents were [REDACTED] and [REDACTED], that he resided in Sao Paulo, and that he died on 13 June 1983 in Grasse.

Claimant [REDACTED 1] indicated that she was born on 20 August 1952 in Bara, Sweden; Claimant [REDACTED 2] indicated that she was born on 14 January 1968 in Bara, Sweden; Claimant [REDACTED 3] indicated that she was born on 28 November 1925 in Vienna; and Claimant [REDACTED 4] indicated that she was born on 15 June 1921 in Munich, Germany.

Information Available in the Bank's Records

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 Hermine Hordliczka during their investigation of the Bank. The information evidencing the existence of accounts at the Bank was obtained from the Austrian State Archive.

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 Hermine Hordliczka, numbered 33957. According to these records, Hermine Hordliczka was born on 8 January 1875 and resided at Marokkanergasse 21 in Vienna III.

In her 1938 Census declaration, Hermine Hordliczka declared herself to be the owner of one custody account and two demand deposit accounts held at the Bank. According to this declaration, Hermine Hordliczka's custody account contained the following securities:

- 20 7% *cum. pref. American Can Company* shares, with a market value, according to her 1938 Census declaration, of 159.875 United States Dollars (“US \$”) each as of 27 April 1938;
- 100 *The North American Company cum.* shares, each with a market value of US \$17.00 as of 27 April 1938; and
- 20 *General Motors Corporation cum.* shares, each with a market value of US \$30.25 as of 27 April 1938.

The records further indicate that one of Hermine Hordliczka’s demand deposit accounts at the Bank had a value as of 27 April 1938 of 1,308.00 Swiss Francs (“SF”); and the other demand deposit account had a value as of 27 April 1938 of US \$104.00.

In addition to her declaration, Hermine Hordliczka submitted a letter to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (“*Vermögensverkehrsstelle*” or “*VVSt.*”), dated 2 August 1938, claiming that she had only reported her assets under the 1938 Census due to the fact that she was not yet in the possession of her certificate of Aryan origin (*Ariernachweis*). She further indicated that she would apply for copies of documents related to her maternal grandparents’ Aryan origin.

In another letter to the VVSt. dated 30 August 1938, Hermine Hordliczka stated that she had received her mother’s and her maternal grandparents’ baptism certificates, showing them to be Catholic and “Aryan,” and that her 1938 Census declaration should thus be invalidated. The 1938 Census records further contain various correspondence between different departments of the VVSt., the VVSt. and the Head Office of the Reichsbank (*Reichsbankhauptstelle*) in 1938, and the VVSt. and the office of the public prosecutor in Vienna, in which the VVSt. indicated that it considered Hermine Hordliczka to be Jewish, irrespective of the documents provided by her.

In addition, the records contain correspondence from the VVSt. to Hermine Hordliczka in Paris and to her legal representative in Vienna, including a letter dated 8 November 1938, demanding that she turn over her foreign securities by 17 December 1938.

Hermine Hordliczka responded to her legal representative, in a letter dated 28 November 1938, that she was aware that according to German law she was half Jewish (*Mischling I. Grades*), but that she considered the reporting of her assets and the subsequent request to turn over her foreign securities to be invalid.

The records further contain a protocol related to the seizure of Hermine Hordliczka’s apartment at Marokkanergasse 21 in Vienna, dated 14 December 1938. According to this protocol, the apartment was sealed and all remaining property of value was confiscated.

The protocol further indicates that Hermine Hordliczka’s nephew was [REDACTED], who resided in Paris and who had recently traveled to St. Anton am Arlberg in Germany (today Austria). In a letter to *Bank Pinschof und Co.* dated 15 December 1938, the VVSt. requested that Hermine Hordliczka’s account at this bank be transferred to a blocked account (*Sperrkonto*) at the *Creditanstalt-Wiener Bankverein* in the name of the VVSt.

On 20 December 1938, the VVSt. informed the Vienna office administering state pensions (*Versorgungsamt*) and the head office of the *Reichsbank* that Hermine Hordliczka was considered to be Jewish under the 1938 Census law, and that a criminal investigation had been opened against her for failing to hand over her foreign securities.

In a letter from the regional Office of the Nazi Party NSDAP (*Nationalsozialistische Deutsche Arbeiterpartei*) in St. Anton to the VVSt., dated 25 December 1938, the head of the office (*Ortsgruppenleiter*) informed the VVSt. that [REDACTED] was Hermine Hordliczka's sister, that her son [REDACTED] had arrived at St. Anton together with his children, and that he had moved into his mother's house. On 3 January 1939, the VVSt. requested that the local police observe the [REDACTED] family and that the regional office interrogate [REDACTED] about the assets of his mother [REDACTED] and his maternal aunt Hermine Hordliczka. On 8 January 1939, the local St Anton police reported that [REDACTED] and his three daughters [REDACTED], [REDACTED], and [REDACTED] arrived at St. Anton on 23 December 1938 and left for Switzerland on 30 December 1938. The police further reported that [REDACTED]'s wife [REDACTED] and their son [REDACTED] arrived at St. Anton on 6 January 1939; that [REDACTED] returned from Switzerland on 7 January 1939 and would leave for Paris on 8 January 1939; and that his wife and two of her children would stay in St. Anton. Finally, the police noted that Hermine Hordliczka and [REDACTED] had left St. Anton at the end of August 1938 and the beginning of October 1938, respectively.

On 17 August 1939, the VVSt. renewed the criminal complaint related to Hermine Hordliczka, indicating that although she provided documents, including baptismal certificates, which showed that her mother and her maternal grandparents were Catholic by confession, their names showed that they were certainly of the "Jewish race." "*Aus den für die mütterlichen Grosseltern erbrachten Taufscheinen geht hervor, dass diese zwar katholischen Bekenntnisses, aber dem Namen nach bestimmt jüdischer Rasse waren.*" The complaint also indicated that Hermine Hordliczka had emigrated to Brazil.

In an additional letter to the office of the public prosecutor, dated 28 August 1939, the VVSt. indicated that Hermine Hordliczka had died on 23 April 1939 in Paris, and that her heir was [REDACTED] (sic), who also formerly resided at Marokkanergasse 21 in Vienna. According to the letter, [REDACTED] did not succeed to the estate of Hermine Hordliczka.

By court order of the Vienna district court dated 13 November 1939, Hermine Hordliczka's seized movable belongings were confiscated for the benefit of the Reich and ordered to be sold.

The CRT's Analysis

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 Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Claimants [REDACTED 4] and [REDACTED 3]’s paternal grandmother’s sister’s name, and Claimants [REDACTED 1] and [REDACTED 2]’s grandfather’s aunt’s name matches the published name of the Account Owner. The Claimants further identified the Account Owner’s two cities and countries of residence and a country to which she intended to immigrate, as well as her street address in Vienna; her dates of birth and death; and the names of several of the Account Owner’s relatives, which match unpublished information about the Account Owner contained in the 1938 Census records.

In support of their claims, the Claimants submitted documents, including copies of Hermine Hordliczka’s birth certificate and death report, providing independent verification that the person who is claimed to be the Account Owner had the same name and dates of birth and death, and resided in the same cities recorded in the 1938 Census records as the name, date of birth, date of death, and cities of residence of the Account Owner. Claimants [REDACTED 4] and [REDACTED 3] further submitted their father’s death report, providing independent verification that the persons who are claimed to be the Account Owner’s relatives had the same names and countries of residence recorded in the 1938 Census records as the names and countries of residence of the Account Owner’s relatives.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and that in 1939, she fled from Vienna to Paris, where she died. The CRT notes that the Claimants submitted the Account Owner’s birth certificate, which indicates that her parents were Catholic and that she was baptized as Catholic in 1875 and that the 1938 Census records indicate that the Account Owner provided documents to the VVSt. in order to prove her Aryan background. However, the 1938 Census records indicate that the Nazi regime considered the Account Owner to be Jewish and therefore seized and confiscated her assets. Additionally, the Account Owner indicated that she was a “*Mischling*” according to the Nazi laws.¹ The CRT notes that Nazi authorities concluded that the Account Owner was Jewish, even though her maternal grandparents’ baptismal certificates showed them to be Catholic, because, according to their name, they were of the “Jewish race.” Article 46 (26) of the Rules defines the Term Victim of Nazi Persecution as: “any person or entity persecuted or targeted for persecution by the Nazi regime because they were or were believed to be Jewish...”. The 1938 Census records show that the Account Owner was

¹ The CRT notes that according to paragraph 1 of the decree on the report of Jewish-owned assets (*Verordnung über die Anmeldung des Vermögens von Juden*) of 26 April 1938, Jewish individuals as defined in paragraph 5 of the first decree to the citizen law of the Reich (*Erste Verordnung zum Reichsbürgergesetz*) had to report their assets. According to this paragraph, a person is considered to be Jewish if he or she is the descendant of at least three Jewish grandparents. Although - according to this law - the Account Owner would not have been considered to be Jewish in respect of the obligation to report Jewish assets, the CRT notes that so-called “half caste Jews” (*Mischlinge*) were subject to other forms of Nazi persecution.

persecuted by the Nazi regime because the authorities believed that she was Jewish. Consequently, according to Article 46 (26) of the rules, the CRT determines that the Account Owner was a Victim of Nazi Persecution.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information, demonstrating that the Account Owner was the Claimants' relative. The CRT further notes that the Claimants identified unpublished information about the Account Owner and her relatives as contained in the 1938 Census records. The CRT also notes that the Claimants submitted the Account Owner's birth certificate and death report, as well as her nephew [REDACTED]'s death report. The CRT notes that these documents are documents which most likely only a family member would possess. 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 Claimants as a family member, and all of this information supports the plausibility that the Claimants are related to the Account Owner, as they have asserted in their Claim Forms. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

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 the Account Owner reported the accounts in the 1938 Census; that the Account Owner lived in Austria until she fled Austria for France, and therefore could not have repatriated the accounts without losing ultimate control over their proceeds; and given the application of Presumptions (d), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (See Appendices A & C),² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her 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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was Claimant [REDACTED 3] and Claimant [REDACTED 4]'s paternal grandmother's sister, and Claimant [REDACTED 2] and Claimant [REDACTED 1]'s grandfather's aunt, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

² Appendix C appears on the CRT II website -- www.crt-ii.org.

Amount of the Award

In the 1938 Census declaration submitted by the Account Owner, the Account Owner reported one demand deposit account denominated in Swiss Francs, one Demand deposit account denominated in Unites States Dollars, and one custody account. The value of the Account Owner's Swiss Franc-denominated demand deposit account is specified in the 1938 Census declaration as SF 1,308.00 as of 27 April 1938. The value of the Account Owner's United States Dollars-denominated demand deposit account is specified as US \$104.00, which was equal to SF 454.48 as of 27 April 1938.³

The CRT determines that it is unable to rely on the balance amounts declared in the 1938 Census as it has no evidence regarding the circumstances of the Account Owner's declaration. The CRT notes that, as evidenced in a number of cases, the Account Owner may not have declared all of her assets, or understated their value, in the belief that this might help her safeguard some of them.⁴ Pursuant to Article 29 of the Rules, if the amount in a demand deposit account is less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. In this case, the CRT does not find that the value of the two demand deposit accounts indicated in the Account Owner's 1938 Census declaration constitutes plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the value of the Account Owner's demand deposit accounts shall be determined to be SF 2,140.00 for each of the two accounts, for a combined value of SF 4,280.00. The current value of the amount of the award is determine by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 53,500.00.

With respect to the custody account, the Account Owner reported the following securities in her 1938 Census declaration:

- 20 7% *cum. pref. stock American Can Company* shares, with a total market value of US \$3,197.50 as of 27 April 1938;
- 100 *The North American Company cum.* shares, with a total market value of US \$1,700.00 as of 27 April 1938; and
- 20 *General Motors Corporation cum.* shares, with a total market value of US \$605.00 as of 27 April 1938.

The combined nominal value of the securities is US \$ 5,502.50, which was equivalent to SF 24,045.93 in April 1938. The current value of this amount is determined by multiplying the historic value of the custody account by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount for the custody account of SF 300,574.13.

Consequently, the total award amount for the two demand deposit accounts, plus the custody account, is SF 354,074.13.

³ The CRT uses official exchange rates for the related year when making currency conversions.

⁴ See Memorandum & Order of October 12, 2004 ("Memorandum & Order Approving 15 Award Amendments Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund").

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, the Claimants are all descendants of the Account Owner's parents. Accordingly, the Claimants are each entitled to one-quarter of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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
16 October 2008