

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

Claimant [REDACTED 1]
represented by Stephen M. Harnik

and to Claimant [REDACTED 2]
also acting on behalf of [REDACTED],
[REDACTED], née [REDACTED], and [REDACTED]

in re Account of Josef Novak

Claim Numbers: 222438/GO; 221048/GO

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to the account of Josef Novak and the claim of [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together “the Claimants”) to the account of Heinrich (Jindrich) Novak.^{1, 2} This Award is to the unpublished account of Josef Novak (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).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 claimants, any relative of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her father, Prof. Dr. Josef Novak, who was born on 28 February 1879 and was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 1] indicated that her parents had three children:

¹ The CRT will treat the claims to the account of Heinrich Novak in a separate determination.

² In a decision dated 28 June 2006, Claimant [REDACTED 1] was informed that the CRT had been unable to identify any accounts in the Account History Database, which was prepared pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP”), belonging to Dr. Josef Novak. That decision did not consider records from the Austrian State Archive that were submitted by Claimant [REDACTED 1] and that indicate that Dr. Josef Novak held an account at the Bank. This decision addresses the account identified in those records.

[REDACTED], [REDACTED] and [REDACTED 1] (the Claimant). Claimant [REDACTED 1] further indicated that her father, who was Jewish, resided at Schwarzspanierstrasse 6 in Vienna, Austria, and that he was a gynecologist. Claimant [REDACTED 1] added that her father resided in Vienna until 1938, when he fled first to Prague, Czechoslovakia (today Czech Republic), then to Weybridge, the United Kingdom, and subsequently settled in New York, the United States. Claimant [REDACTED 1] stated that her mother died in May 1972 in the United States and that her father died on 29 December 1983 in Greenwich, the United States.

In support of her claim, Claimant [REDACTED 1] submitted copies of documents concerning Josef Novak's asset registration with the Nazi authorities in Vienna in 1938, which are further described below.

Claimant [REDACTED 1] indicated that she was born on 17 January 1924 in Vienna.

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as her late spouse's paternal uncle, Prof. Josef Novak, who resided in Vienna. Claimant [REDACTED 2] indicated that Josef Novak, who was Jewish, was the brother of [REDACTED], who was Claimant [REDACTED 2]'s spouse's uncle and adoptive father. Claimant [REDACTED 2] further indicated that Josef Novak fled from Austria to the United States in 1938. Claimant [REDACTED 2] indicated that [REDACTED] was deported to Lodz, Poland, on 31 October 1941, that he did not survive the deportation, and that he was declared dead as of 30 April 1942. Claimant [REDACTED 2] added that Josef Novak obtained the affidavits necessary for his brother to flee from Europe, however his brother had already died.

In support of her claim, Claimant [REDACTED 2] submitted many documents, including copies of:

- (1) her father-in-law's death certificate, indicating that [REDACTED] was declared dead as of 30 April 1942;
- (2) her late spouse's birth certificate, indicating that [REDACTED] was born on 21 August 1919 in Prague;
- (3) her late spouse's death certificate, indicating that [REDACTED] died in Zurich, Switzerland, on 5 October 1995;
- (4) her children's birth certificates, indicating that [REDACTED] was born on 18 September 1949 in Prague, Czechoslovakia (today Czech republic), that [REDACTED] was born on 8 July 1954 in Prague, that [REDACTED] was born on 19 November 1951 in Prague, and that their parents were [REDACTED]k and [REDACTED 2], née [REDACTED];³
- (5) a decision from the Federal Department of Foreign Affairs ("*Eidgenössisches Departament Für Auswärtige Angelegenheiten*") issued in Bern, Switzerland, on 15 June 2000, indicating that [REDACTED 2], [REDACTED], [REDACTED] and [REDACTED] were entitled to compensation for [REDACTED]'s dormant Swiss

³ The CRT notes that the ending -ova is a common ending for Czech and Slovak feminine surnames and that, accordingly, the surnames [REDACTED] and [REDACTED] correspond with the surnames [REDACTED] and [REDACTED], respectively.

account, which was reported in the 1962 survey of assets held in Switzerland by foreigners or stateless persons who were or who were believed to have been victims of racial, religious or political persecution, conducted by Swiss banks pursuant to a Federal decree in 1962 (the “1962 Survey”).

Claimant [REDACTED 2] indicated that she was born on 30 October 1927 in TvrDOSovce, Czechoslovakia (today Czech Republic). Claimant [REDACTED 2] is representing her daughter, [REDACTED], née [REDACTED], who was born on 18 September 1949 in Prague, her daughter [REDACTED], who was born on 19 November 1951 in Prague, and her son, [REDACTED], who was born on 8 July 1954 in Prague.

Claimant [REDACTED 2] previously submitted an Initial Questionnaire to the Court in 1999, asserting her entitlement to a Swiss bank account owned by Jindrich Novak.

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 Josef Novak during their investigation of the Bank. The information regarding Josef Novak’s account at the Bank was obtained from the Austrian State Archive by Claimant [REDACTED 1], who forwarded it to the CRT.

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 Professor Dr. Josef Novak, numbered 30707. These records indicate that he was born on 28 February 1879 and that he lived at Schwarzspanierstrasse 6 in Vienna. In addition, the records indicate that Josef Novak was married to [REDACTED], née [REDACTED], and that he was a gynecologist. Furthermore, these records indicate that Josef Novak held an account, the type of which is not indicated, at the Bank with a value of 708.00 Swiss Francs (“SF”) as of 27 April 1938. The records contain no further information regarding the subsequent disposition of this account.

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 Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Claimant [REDACTED 1]'s father's and Claimant [REDACTED 2]'s father-in-law's brother's name and city and country of residence match the unpublished name and city and country of residence of the Account Owner. Moreover, the Claimants identified the Account Owner's title, which matches information about the Account Owner contained in the 1938 Census records, which were submitted to the CRT by Claimant [REDACTED 1]. The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 1] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish, that he resided in Nazi-controlled Austria, and that he fled from Austria to Czechoslovakia, the United Kingdom, and subsequently, the United States. The CRT notes that the Account Owner was required to register his assets pursuant to the 1938 Census.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was Claimant [REDACTED 1]'s father and Claimant [REDACTED 2]'s father-in-law's brother. The CRT notes that the Claimants identified unpublished information about the Account Owner as contained in the 1938 Census records. The CRT further notes that Claimant [REDACTED 2] submitted copies of her father-in-law's death certificate and her spouse's birth and death certificates, which provide independent verification that the Claimant's relatives had the same last name as the Account Owner. 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 surviving heirs other than Claimant [REDACTED 1], Claimant [REDACTED 2], and the parties whom Claimant [REDACTED 2] is representing.

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 he left it for the Czechoslovakia, the United Kingdom and the United States, and therefore could not have

repatriated the accounts without losing ultimate control over its proceeds; and given the application of Presumptions (d) and (h), 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 or his heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was her 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 account.

Further, the CRT notes that Claimant [REDACTED 1], as the Account Owner's daughter, has a better entitlement to the account than Claimant [REDACTED 2], the Account Owner's brother's daughter-in-law, and [REDACTED], [REDACTED], and [REDACTED], the Account Owner's brother's grandchildren.

Amount of the Award

In the 1938 Census declaration submitted by the Account Owner, the value of the Account Owner's account of unknown type is specified as SF 708.00 as of 27 April 1938. 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 his assets, or understated their value, in the belief that this might help him safeguard some of them. Pursuant to Article 29 of the Rules, if the amount in an account of unknown type is less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. In this case, the CRT does not find that the value of the account 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 account shall be determined to be SF 3,950.00. The current value of the amount of the award is determined 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 49,375.00.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 1], who is the daughter of the Account Owner, is better entitled to the award amount than Claimant [REDACTED 2], who is the Account Owner's brother's daughter-in-law, and [REDACTED], [REDACTED], and [REDACTED], who are the Account Owner's brother's grandchildren. Accordingly, Claimant [REDACTED 1] is entitled to the entire 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.

Claims Resolution Tribunal
23 March 2007