

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2], [REDACTED 3],
[REDACTED 4], [REDACTED 5], [REDACTED 6],
[REDACTED 7], [REDACTED 8], and [REDACTED 9]
represented by Erez Bernstein

in re Account of Hugo Pater

Claim Number: 501775/GO

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the unpublished account of Hugo Pater (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).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 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 as his paternal great-uncle, Hugo Pater, who was born on 21 January 1882 in Vienna, Austria, and was married to [REDACTED] on 15 August 1921 in Vienna. The Claimant stated that his great-uncle had three brothers, [REDACTED], [REDACTED] and [REDACTED], and three sisters, [REDACTED], [REDACTED] and [REDACTED] (the Claimant’s paternal grandmother). The Claimant stated that his great-uncle, who was Jewish, resided at Meidlinger Hauptstrasse 16 in Vienna and had no children. According to the Claimant, his great-uncle was a merchant and co-owner of the company [REDACTED], which was located at Meidlinger Hauptstrasse 16 in Vienna. The Claimant explained that, after the incorporation of Austria into the Reich in March 1938 (the “Anschluss”), his great-uncle was forced to sign over his Swiss accounts to Nazi authorities. The Claimant stated that his great-uncle and his great-aunt were deported to Auschwitz, where they perished in 1944. The Claimant stated that his father, aunts and uncles are no longer alive and the he and his mother, sister and cousins, whom he represents, are the only surviving heirs of his great-uncle.

The Claimant submitted copies of documents, including: (1) his grandmother's birth certificate, issued by the Jewish Community of Vienna, indicating that [REDACTED] was born on 27 June 1875 in Meidling near Vienna, Austria, and that [REDACTED] and [REDACTED] were her parents; (2) his great-uncle's birth certificate, issued by the Jewish Community of Vienna, indicating that Hugo Pater was born on 21 January 1882 in Meidling near Vienna, and that [REDACTED] and [REDACTED] were his parents; (3) his grandparents' marriage certificate, indicating that [REDACTED 1] and [REDACTED], née [REDACTED], were married on 18 June 1901 in Vienna; (4) his father's birth certificate, indicating that [REDACTED] was born on 17 December 1902 and that [REDACTED] and [REDACTED], née [REDACTED], were his parents; (5) his own birth certificate, indicating that [REDACTED] was born on 5 November 1952 in Vienna, and that [REDACTED] was his mother, and that on 26 March 1954 he was adopted by [REDACTED]; (6) his parents' marriage certificate, indicating that [REDACTED] and [REDACTED], who was Jewish, were married on 7 July 1954 in Vienna, and that [REDACTED] and [REDACTED], née [REDACTED], were [REDACTED]'s parents; and (7) documents concerning his great-uncle's, Hugo Pater's, asset registration with the Nazi authorities in Vienna in 1938, which are further described below.

The Claimant indicated that he was born on 5 November 1952 in Vienna. The Claimant is representing: his mother, [REDACTED 7], née [REDACTED], formerly [REDACTED], who was born on 12 August 1932 in Vienna; and his sister, [REDACTED 6], née [REDACTED], who was born on 23 September 1954 in Mödling, Austria. The Claimant is also representing his cousins (the daughters and the grandson of Hugo Pater's nephew, [REDACTED]): [REDACTED 3], who was born on 31 January 1931 in the Hague, the Netherlands; [REDACTED 2], who was born on 25 June 1937 in the Hague; and [REDACTED 4] [REDACTED 5], who was born on 10 August 1961 in the Hague, respectively. Furthermore, the Claimant is representing his cousins (the daughters of Hugo Pater's niece, [REDACTED], née [REDACTED]): [REDACTED 8], who was born on 12 May 1942 in Chicago, Illinois, and [REDACTED 9], who was born on 28 June 1947 in Chicago.

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 Hugo Pater during their investigation of the Bank. The information regarding Hugo Pater's account at the Bank was obtained from the Austrian State Archive by the CRT and was also submitted by the Claimant in support of his claim.

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

Hugo Pater, numbered 26216. These records consist of Hugo Pater's asset declaration, notices of and revisions to flight tax (*Reichsfluchtsteuer*) and atonement tax (*Judenvermögensabgabe*) assessments, and correspondence between the Nazi authorities and the *Credit-Anstalt Wiener Bankverein*.

According to these records, Hugo Pater was born on 21 January 1882, was Jewish, lived at Meidlinger Hauptstrasse 16 in Vienna, and was married to [REDACTED], née [REDACTED]. In his asset declaration, signed on 15 July 1938 in Vienna, Hugo Pater indicated owning a one-third share, worth RM 32,000.00, of a residence at Meidlinger Hauptstrasse 16/18 in Vienna, a one-third share of [REDACTED], valued at RM 12,102.24, and several securities and an account at a bank in Austria. In addition, these records indicate that as of 12 November 1938 the business *Firma [REDACTED]* had been placed under the control of a Nazi provisional administrator (*Kommissarische Verwaltung*). In his declaration, Hugo Pater also listed owning 4% *Schweizerische Bundesbahn-Obligationen vom Jahre 1931* bonds with a nominal value of 5,000.00 Swiss Francs ("SF"), which traded at 104 percent for a market value of RM 2,974.00. He did not specify where these bonds were held.

The file also contains a document, written by Hugo Pater in Vienna and dated 14 December 1938, which lists changes to his original asset declaration. In that document, Hugo Pater noted that the 4% *Schweizerische Bundesbahn-Obligationen vom Jahre 1931* bonds had been sold, and that his assets totaled RM 47,146.00 as of 12 November 1938.

The file also contains correspondence between the director of the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or "VVSt.") and the Meidling branch of the *Credit-Anstalt Wiener Bankverein* ("*Credit-Anstalt*"), dated 13 October 1938 and 9 December 1938. In its letter of 13 October 1938, the VVSt. advised the *Credit-Anstalt* that Hugo Pater owned SF 5,000.00 worth of 4% *Schweizerische Bundesbahn-Obligationen vom Jahre 1931* bonds that were deposited in the Bank, the deposit slip for which was contained in a blocked safe, numbered 40 in the name of [REDACTED] (the firm of which Hugo Pater was a one-third owner) at the *Credit-Anstalt*, the safe being blocked until such time as the obligatory sale of the Swiss bonds to the *Reichsbank* had taken place. The VVSt requested that the deposit slip, numbered 48,920, be made available so that the securities could be sold and the proceeds transferred to the *Deutsche Golddiskontbank, Berlin C111* and that any coupons that had come due on the bonds be properly redeemed.

In its letter of 9 December 1938 to the VVSt., the *Credit-Anstalt* advised that the 4% *Schweizerische Bundesbahn-Obligationen vom Jahre 1931* bonds belonging to Hugo Pater were sold on 7 November 1938 and that the corresponding value of RM 3,514.30 had been credited to the category "E.K.G. Nr. 858" ("*die von Hr. Hugo Pater am 28.10.38 erlegten Sfrs. 5000.—4% Obl. Schweiz. Bundesbahnen v- J. 1931 m. Kp. 1.4.39. loco Zürich am 7.11.38 verkauft wurden und den Gegenwert der Anl. de RM. 3514.30 dem Rubr.a/ E.K.G.Nr. 858 gutgebracht haben*").¹

¹ In his asset declaration, Hugo Pater listed the value of the bonds as of 27 April 1938 at 104 percent, for a market value of RM 2,974.00. By the time of the sale, the implicit market value of the bonds had risen to well over 105 percent. On the last trading day of 1938 the bonds were quoted in Zurich at 105.75 percent (*Zürcher Kursblatt* 1938) for a market value of RM 3,014.16. The difference between the December 1938 market value and the RM

The same day, 9 December 1938, the director of the VVSt. wrote to the *Credit-Anstalt* requesting that the safe in the name of [REDACTED] be unblocked and that Hugo Pater be given the right to access the remaining contents of his safe within legal bounds.

According to records contained in the files, Hugo Pater was assessed atonement tax (*Judenvermögensabgabe*) of 13,350.00 Reichsmark (“RM”) and flight tax (*Reichsfluchtsteuer*) of RM 14,500.00 on total assets of RM 71,075.00 on 5 December 1939; a following assessment, dated 9 August 1941 demanded flight tax of RM 9,100.00, based on total assets of RM 36,340.00.

In the records of the Austrian State Archive (Archive of the Republic, Finance), there are also documents concerning the assets of [REDACTED], numbered 26217. These records consist of [REDACTED]’s asset declaration, signed in Vienna on 15 July 1938, and indicate that she was born on 17 October 1888, was Jewish, and was married to Hugo Pater. According to this asset declaration, [REDACTED] declared cash assets totaling RM 5,164.00 and jewelry, precious metal, art, and other such objects with a total value of RM 3,185.00. These records make no mention of assets held in a Swiss bank account.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant’s great-uncle’s name and city and country of residence match the unpublished name and city and country of residence of the Account Owner. Moreover, the Claimant identified the his great-uncle’s street address, spouse’s name and occupation, which matches information about the Account Owner contained in the 1938 Census records, which were submitted to the CRT by the Claimant.

In support of his claim, the Claimant submitted documents, including his great-uncle’s birth certificate providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the 1938 Census records as the name and city of residence of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Hugo Pater, and indicates that his date of birth was 21 January 1882, that he was married to [REDACTED] and that he resided at Meidlinger Hauptstrasse 16 in Vienna, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

3,514.30 credited for the sale cannot reasonably be explained by a possibly somewhat higher market value on 7 November 1938 and the collection of accrued interest.

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-controlled Austria, that he was deported, and that he perished in Auschwitz in 1944. The CRT notes that the Account Owner was required to register his assets pursuant to the 1938 Census. As noted above, a person named Hugo Pater was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's great-uncle. These documents include his grandmother's birth certificate, indicating that that [REDACTED] and [REDACTED] were [REDACTED]'s parents, his great-uncle's birth certificate, indicating that that [REDACTED] and [REDACTED] were his parents, his father's birth certificate, indicating that [REDACTED], née [REDACTED], was his mother, his own birth certificate, indicating that on 26 March 1954 he was adopted by [REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs other than the parties whom the Claimant is representing.

The Issue of Who Received the Proceeds

The 1938 Census records indicate that the proceeds of the sale of the bonds in the custody account were transferred on 7 November 1938 to the *Golddiskontbank* in Berlin.

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 account in the 1938 Census; that the Account Owner lived in Austria until he was deported to Auschwitz, where he perished in 1944, and therefore could not have repatriated the account without losing ultimate control over its proceeds; and given the application of Presumptions (d) and (h) 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 and the parties he represents: his sister, [REDACTED 6]; and his cousins, [REDACTED 3], [REDACTED 2], [REDACTED 4] [REDACTED 5], [REDACTED 8], and [REDACTED 9]. 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 great-uncle and the great-uncle of represented parties, [REDACTED 6], [REDACTED 3], [REDACTED 2], [REDACTED 8], and [REDACTED 9]; and that he was the great-great-uncle of represented party

[REDACTED 4] [REDACTED 5], and those relationships justify 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 the Claimant, as the Account Owner's grandnephew, and represented parties, [REDACTED 6], [REDACTED 3], [REDACTED 2], [REDACTED 8], and [REDACTED 9], as the Account Owner's grandnieces, and represented party [REDACTED 4] [REDACTED 5], as the Account Owner's great-grandnephew, have a better entitlement to the account than represented party, [REDACTED 7], who is the Account Owner's sister's daughter-in-law.

Amount of the Award

In this case, the Account Owner held one custody account that contained 4% *Schweizerische Bundesbahn-Obligationen vom Jahre 1931* bonds with a nominal value of SF 5,000.00. According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the nominal value of bonds not in default shall be awarded if the market value was below the nominal value on the date the account owner is deemed to have lost control over the account. The CRT presumes that the account owner, if able to decide freely, could have opted to hold the respective bond to maturity to avoid a capital loss. The market value of bonds shall be awarded if that value was above the nominal value on the date the account owner is deemed to have lost control over the account.

In this case, Hugo Pater's 1938 asset declaration and accompanying files indicate that the securities in this account consisted of 4% *Schweizerische Bundesbahn-Obligationen vom Jahre 1931* bonds with a nominal value of SF 5,000.00 valued at 104 percent for a market value of SF 5,200.00 as of 27 April 1938. These bonds were of good quality and are therefore valued at market value. According to the *Zürcher Kursblatt* for the end of 1938, the quotation for these bonds had risen to 105.75 by that time, the sale on 7 November 1938 accordingly being valued at SF 5,287.50.²

The CRT determines, however, 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 a custody account is less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF13,000.00. 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 custody account shall be determined to be SF 13,000.00. The current value of the amount of the award is determined by multiplying the

² As noted above, the *Credit-Anstalt's* letter of 9 December 1938 indicates that the proceeds of the sale of these bonds yielded a value of RM 3,514.30. However, with the year-end 1938 quote for these bonds in Zurich being 105.75 percent, the discrepancy in proceeds is too great to be reasonably explained. The CRT therefore has taken this latter value as the correct value of the bonds transferred to the *Golddiskontbank*.

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 162,500.00.

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 Claimant is the Account Owner's grandnephew; represented parties [REDACTED 6], [REDACTED 3], [REDACTED 2], [REDACTED 8] and [REDACTED 9], are the Account Owner's grandnieces; and represented party [REDACTED 4] [REDACTED 5] is the Account Owner's great-grandnephew.

Accordingly, the Claimant and represented party, [REDACTED 6], as children of the Account Owner's nephew [REDACTED], are each entitled to one-sixth of the total award amount, or SF 27,083.33 each. Represented parties [REDACTED 8] and [REDACTED 9], as the children of the Account Owner's niece, [REDACTED], are each entitled to one-sixth of the total award amount, or SF 27,083.33 each. Further, represented parties [REDACTED 3], [REDACTED 2], and [REDACTED 4] [REDACTED 5], as the daughters and grandson, respectively, of the Account Owner's nephew, [REDACTED], are entitled to one-ninth of the of the total award amount, or SF 18,055.56 each.

As noted above, represented party [REDACTED 7] is not entitled to share in the award.

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
17 March 2008