

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1]

and [REDACTED 2]

in re Accounts of Hermann Stern

Claim Numbers: 216188/SJ, 219274/SJ¹

Award Amount: 409,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) published accounts of Hermann Stern. This Award is to the unpublished accounts of Hermann Stern (the “Account Owner”) at the Lugano branch of the [REDACTED] (the “Bank”).²

All awards are published, but where the claimants have 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

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her father-in-law, Hermann Stern, who was born in approximately 1880 in Attendorn, Germany, and was married to [REDACTED] in the early 1900s in Attendorn. Claimant [REDACTED 1] stated that Hermann and [REDACTED] had four children: [REDACTED], [REDACTED], [REDACTED] (Claimant [REDACTED 1]’s late husband), and [REDACTED]. Claimant [REDACTED 1] added that Hermann Stern lived in Attendorn until the early 1940s, when he was deported to Auschwitz, where he was killed sometime around 1944. In support of her claim, Claimant [REDACTED 1] submitted a copy of her family tree; copies from a book that references the Stern family history; official identification forms; [REDACTED]’s Australian naturalization papers, indicating that he was born in Attendorn on 20 April 1909; [REDACTED]’s marriage certificate, indicating that his father was Hermann Stern; and [REDACTED]’s will, indicating

¹ Claimant Stern submitted an additional claim to the account of Walter Stern, which is registered under the Claim Number 216189. The CRT will treat the claim to this account in a separate decision.

² The CRT will treat the Claimants’ claims to the published account of Hermann Stern in a separate decision.

that [REDACTED 1] was his wife. Claimant [REDACTED 1] indicated that she was born on 14 January 1915 in Warsaw, Poland.

Claimant [REDACTED 1] previously submitted an Initial Questionnaire (“IQ”) with the Court in 1999 asserting her entitlement to a Swiss bank account owned by Hermann Stern of Attendorn, Germany. The IQ also indicates that [REDACTED] (Hermann Stern’s son) lived in Switzerland and in Milan, Italy, between approximately 1937 and 1940, before he left Europe and settled in Australia.

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as his mother’s cousin, Hermann Stern, who was born on 20 April 1874, and was married to [REDACTED]. Claimant [REDACTED 2] explained that his maternal grandmother, [REDACTED], née [REDACTED], was the sister of [REDACTED], Hermann Stern’s father. Claimant [REDACTED 2] also stated that Hermann Stern was a department store owner, and that he and his wife had several children before she died in 1928. Claimant [REDACTED 2] added that Hermann Stern lived in Attendorn, Germany, until he was deported to Auschwitz in 1943, where he was murdered. In support of his claim, Claimant [REDACTED 2] submitted a copy of Hermann Stern’s family tree. Finally, Claimant [REDACTED 2] indicated that he was born on 27 February 1914 in Brussels, Belgium.

Information Available in the Bank’s Record

The Bank’s record consists of a customer card. According to this record, the Account Owner was Hermann Stern, who resided in Milan, Italy. The Bank’s record indicates that the Account Owner held two safe deposit boxes, two demand deposit accounts, and two custody accounts. According to the Bank’s record, one of the safe deposit boxes, numbered 455, was opened in 1939 and was closed on 10 April 1940, the other safe deposit box, numbered 304, was closed on 31 July 1946, and the demand deposit accounts were opened on 20 September 1938 and were closed on 10 April 1949 and 13 January 1950. The Bank’s record indicates that one of the custody accounts, numbered L5433, was opened on 20 May 1942 and was closed on 10 March 1944, and that the other custody account was closed on 6 June 1953.³

The amounts in the accounts on the dates 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

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

³ The dates of closure of the accounts at issue are partially illegible. The dates of closure indicated in the Award, with the exception of safe deposit box 455, were provided by the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the ICEP.

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

Both Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly identified the Account Owner. Claimant [REDACTED 1]'s father-in-law's name and Claimant [REDACTED 2]'s mother's cousin's name match the unpublished name of the Account Owner. Furthermore, given the similar information about their relatives that the Claimants submitted, the CRT finds it plausible that the Claimants refer to the same person in their claim forms. Claimant [REDACTED 1] identified unpublished information contained in the Bank's record about an address used by the Account Owner in stating that the Account Owner's son resided in Milan, Italy for several years.

The CRT notes that a database containing the names of victims of Nazi persecution includes a person named Hermann Stern of Attendorn, Germany, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Additionally, the CRT notes that Claimant [REDACTED 1] filed an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by [REDACTED], 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 Claimant [REDACTED 1] 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 relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that Claimant [REDACTED 1] 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 Claimant [REDACTED 1]. Finally, the CRT notes that the other claims to these accounts were disconfirmed because those claimants provided different country of residence information than the country of residence of the Account Owner, and, in one instance, the information provided by the Claimant indicated that the claimed account owner had died before the Account Owner opened his accounts. Taking all 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 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 he perished in Auschwitz. As noted above, a person named Hermann Stern was included in the CRT's database of victims.

The Claimants' Relationship 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 Claimant [REDACTED 1]'s father-in-law and Claimant [REDACTED 2]'s mother's cousin. The CRT further notes that Claimant [REDACTED 1] identified unpublished information about the

Account Owner as contained in the Bank's records; that Claimant [REDACTED 1] filed an IQ with the Court in 1999, identifying the relationship the Account Owner and Claimant [REDACTED 1], prior to the publication in February 2001 of the ICEP List; and that the Claimants also identified information which matches information contained in the Yad Vashem records. Furthermore, 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. Finally, there is no information to indicate that the Account Owner has any other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner was deported to Auschwitz, where he perished in 1943; that there is no record of 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 (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 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-in-law, 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. Furthermore, the CRT notes that Claimant [REDACTED 1], as the Account Owner's daughter-in-law, has a better entitlement to the accounts than Claimant [REDACTED 2], who is the Account Owner's cousin.

Amount of the Award

In this case, the Account Owner held two safe deposit boxes, two demand deposit accounts and two custody accounts. 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 the ICEP (the "ICEP Investigation"), in 1945 the average value of the contents of a safe deposit box was 1,240.00 Swiss Francs ("SF"); the average value of a demand deposit account was SF 2,140.00; and the average value of a custody account was SF 13,000.00. As a result, the total 1945 average value of the accounts at issue is SF 32,760.00. 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 409,500.00.

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. Furthermore, according to Article 23(1)(f) of the Rules, if a child of the Account Owner is deceased, that child's spouse but none of that child's descendants have submitted a claim, that child's spouse shall be considered a child of the Account Owner for the purposes of this Article. Consequently, Claimant [REDACTED 1] is entitled to 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
28 September 2004