

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Yoram Hartogazon and Michael Stern
also acting on behalf of Aliza Avniel and Roni Frank¹

in re Account of Dr. Walter Strauss

Claim Numbers: 003516/AY; 003524/AY

Award Amount: 105,632.25 Swiss Francs

This Certified Award is based upon the claims of Yoram Hartogazon (“Claimant Hartogazon”) and Michael Stern (“Claimant Stern”) (together the “Claimants”) to the account of Walter Israel Strauss (the “Account Owner”) at the New York branch of the [REDACTED] (the “Bank”).

All awards are published. Where claimants have not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimants

The Claimants submitted Claim Forms and Initial Questionnaires identifying the Account Owner as their cousin, Walter Israel Strauss, who was born to Nathan Strauss and Elsa Strauss, née Stern, on 28 May 1911 in Chemnitz, Germany. The Claimants stated that Walter Israel Strauss married Elisabeth Strauss, née Popp, on 22 July 1939 in Bucharest, Romania, and that the couple did not have children. The Claimants indicated that Walter Strauss, who was Jewish, was a businessman who held the title Dr., and that as of 1940 he resided at 4 Alea Tonola in Bucharest. The Claimants stated that in 1942 Walter Strauss and his wife attempted to escaped Europe due to Nazi persecution and boarded a vessel for refugees, named *Struma*, intending to travel to Palestine. The Claimant added that the vessel sank on 24 February 1942 and Walter and Elisabeth Strauss died.

The Claimants explained that their cousin opened account number 80189 in the Bank. The Claimants provided documents from the Bank in support of their claim including an account-opening contract, dated 17 February 1940, which outlines their cousin’s agreement with the New York branch of the Bank with regard to account number 80189, and a signature card indicating

¹ The Claimants provided their names and some of their relatives’ names only in Hebrew characters in the Claim Form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the Claim Form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

their cousin's address. The Claimants also provided a series of letters between Claimant Stern's father and both the Bank and the law offices of *Guzik and Boukstein, and Reiner & Ornes* in New York, New York.

According to the account-opening contract, Dr. Walter Strauss of Bucharest held a custody account, which was opened on 17 February 1940. The account-opening contract also indicates that interest was to be paid on the account and that all of the Bank's rules pertaining to custody accounts were to apply to the account and that the assets in the account were to be held in Dr. Walter Strauss' name but all stocks and Certificates of Deposits held in the account were to be registered in the name of the Bank's nominee. Finally, the account-opening contract indicates that all the instructions given on the account opening date would remain in force until expressly revoked or amended in writing by the Account Owner, and that all correspondence pertaining to the account would be held by the Bank.

The documents also show that from 1961 onward at least, Claimant Stern's father, Herbert Stern, attempted to obtain access to the funds held in the account even after acquiring the knowledge that Walter Stauss' Estate was submitted to the Public Administrator. In response to a letter from Herbert Stern, the Bank indicated on 26 April 1962, that the Estate assets amounted to approximately 2,565.00 United States Dollars.

Furthermore, on 14 March 1962, Herbert Stern was informed by *Guzik and Boukstein Law Offices* in New York that the Public Administrator requested six additional documents, in addition to those previously submitted by him, including further documentary proof that the decedent was present on the vessel at the time of its sinking.

In a letter, dated 14 February 1969, *Guzik and Boukstein Law Offices* responded to letters sent by Herbert Stern on 15 July 1968 and 11 February 1969, and explained that the documents, which he had sent to them, were not properly authorized by the United States Consul's offices in the countries from which the documents originated, and therefore could not be presented to the Public Administrator. *Guzik and Boukstein Law Offices* stated that they would try to discuss the matter with the Public Administrator.

In response to a letter dated 27 December 1972, from Herbert Stern to *Reiner & Ornes Attorney at Law*, the latter indicated that no proceedings had been initiated regarding the Estate of Dr. Walter Strauss as of 26 January 1973. A letter dated 27 March 1973 sent to Herbert Stern by *Reiner & Ornes*, informed him that the balance in the bank account had been transferred to the state of New York's "Abandoned Property" fund. A letter dated 20 November 1973 indicates that the amount of 2,567.18 United States Dollars was transferred, without interest, by the Bank to the Controller of the state of New York. *Reiner & Ornes* indicated that in order to request the funds, more documents would be required and as they were aware of the high legal fees arising from such a claim and the relatively low amount of money of the Estate, they sent the matter back to Herbert Stern.

The Claimants indicated that Herbert Stern passed away on 2 December 1974 and that the account funds were never received by their families.

In support of their claims the Claimants submitted numerous additional documents including a document from the Zionist Central Archives, indicating that Walter and Elisabeth Strauss' names were on the list of the *Struma* disaster victims; the birth certificate of Elsa Stern, issued in 1953 in Gelnhausen, Germany, indicating she was Jewish and the daughter of Ferdinand Stern; the birth certificate of Walter Strauss, issued in 1954 in Karl-Marks, Germany, indicating he was the son of Elsa Strauss, née Stern; Walter Strauss' marriage certificate issued in 1940 in Romania, indicating he was the son of Elsa Strauss, née Stern; and an Order of a Joint Succession of the estate of Elsa Strauss, issued by Luelbeck Magistrate's Court on 19 June 1968, naming Claimant Hartogazon's grandfather, Max Stern, and Claimant Stern's father, Herbert Stern, as heirs.

The Claimants previously submitted Initial Questionnaires with the Court in 1999 asserting their entitlement to a Swiss bank account owned by Dr. Walter Strauss.

Additionally, Claimant Hartogazon submitted his mother's, Hanna Hartogazon, née Stern's, birth certificate, indicating she was the daughter of Max Stern; the birth certificate of Max Stern, issued in 1953 in Gelnhausen, indicating he was the son of Ferdinand Stern; and a Court Order dated 16 March 1954, issued in Tel Aviv, Israel, stating that Hanna Hartogazon is the heir of Max Stern. Claimant Hartogazon further submitted his identity card, indicating he is the son of Hanna Hartogazon, and stated that he was born on 1 January 1938 in Petach Tikva, Israel. Claimant Hartogazon is representing his sister, Aliza Avniel, née Hartogazon, who was born on 30 July 1940 in Petach Tikva.

Claimant Stern submitted his father's marriage and birth certificates, indicating he is the son of Louis Stern; and a Court Order, issued in Tel Aviv, dated 2 November 1975, indicating that he and his brother are his father's, Herbert Stern's, only heirs. Claimant Stern indicated that he was born on 26 July 1943 in Tel Aviv, Israel. Claimant Stern is representing his brother, Roni Frank (Stern), who was born on 2 May 1951 in Tel Aviv.

Information Available in the Bank's Records

The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not report any account belonging to Dr. Walter Strauss of Bucharest.

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. Their cousin's name matches the unpublished name of the Account Owner. The Claimants identified their cousin's street address and his Doctor title, which matches unpublished information about the Account Owner contained in the Bank's records provided by the Claimant. The Claimants also provided correspondence with the Bank, in which the Bank acknowledges the Claimant's cousin's ownership of the account at issue. Further, in support of their claims the Claimants submitted numerous documents, including a document from the Zionist Central Archives indicating that Walter Strauss' name was on the list of the Struma disaster victims; the birth certificate of Elsa Stern, issued in 1953 in Gelnhausen, Germany, indicating she was Jewish and the daughter of Ferdinand Stern; the birth certificate of Walter Strauss, issued in 1954 in Karl-Marks, Germany, indicating he was the son of Elsa Strauss, née Stern; Walter Strauss' marriage certificate issued in 1940 in Romania, indicating he was the son of Elsa Strauss, née Stern; and an Order of a Joint Succession of the estate of Elsa Strauss, issued Luelbeck Magistrate's Court on 19 June 1968, naming Claimant's Hartogazon's grandfather, Max Stern, and Claimant Stern's father, Herbert Stern, as heirs. Claimant Hartogazon submitted his mother's, Hanna Hartogazon, née Stern's, birth certificate, indicating she was the daughter of Max Stern; and the birth certificate of Max Stern, issued in 1953 in Gelnhausen, indicating he was the son of Ferdinand Stern. The Claimants also provided documents from the Bank, indicating the name of Walter Strauss as the Account Owner.

The CRT notes that the Claimants previously submitted Initial Questionnaires with the Court in 1999 asserting their entitlement to a Swiss bank account owned by Dr. Walter Strauss. The CRT further notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimants have 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 died when the vessel he boarded to escape from Nazi persecution sank.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that the Account Owner was their cousin. Claimant Hartogazon submitted his identity card, his mother's, Hanna Hartogazon, née Stern's, birth certificate, indicating she was the daughter of Max Stern; the birth certificate of Max Stern, issued in 1953 in Gelnhausen, indicating he was the son of Ferdinand Stern; and a Court Order dated 16 March 1954, issued in Tel Aviv, Israel, stating that Hanna Hartogazon is the heir of Max Stern. Claimant Stern submitted his father's marriage and birth certificates, indicating he is the son of Louis Stern; and a Court Order, issued in Tel Aviv, dated 2 November 1975, indicating that he and his brother are his father's, Herbert Stern's, only heirs.

The Issue of Who Received the Proceeds

The Bank's records, as submitted by the Claimants, indicate that the account was transferred to the Public Administrator and was held in the State of New York's "Abandoned Property" fund, where it still remains. The Bank has not reimbursed the Account Owner or his heirs for the loss of an account that was placed by the Bank in New York for safekeeping. In this case, the Account Owner, who died trying to escape to Palestine from the Nazi regime in Romania, is a victim of Nazi persecution. This status is the central factor in the eligibility of the Claimants to receive an award of the account of their deceased Nazi victim cousin. It is because of the Account Owner's flight from persecution that he did not live to exercise dominion over his Swiss account himself. Thus, it was because he was a victim of Nazi persecution that he was placed in a situation in which his account at the branch of a Swiss Bank was escheated to the State of New York because of the absence of his ability to control his account. To carry out the intention of the Settlement to restore to account owners or their heirs the funds that Class Members lost because they were victims of Nazi persecution, it is entirely appropriate to make an award in this case regardless of whether the immediate cause of the loss was governmental action by a state of the United States.

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 their cousin, and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody account. The Bank's records indicate that the value of the custody account as of 26 April 1962 was 2,565.00 United States Dollars, equivalent to 7,100.58 Swiss Francs. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of 1,350.00 Swiss Francs, which reflects standardized bank fees and hold mail fees charged to the custody account between 1945 and 26 April 1962. There was no interest paid to the account at issue. Consequently, the adjusted balance of the account at issue is 8,450.58 Swiss Francs. The current value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of 105,632.25 Swiss Francs.

Division of the Award

Claimant Hartogazon is representing his sister, Aliza Avniel, née Hartogazon; and Claimant Stern is representing his brother, Roni Frank (Stern). According to the principles of distribution set forth in Article 23(1)(e) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner's parents have submitted a claim, the award shall be in favor of any descendant of the Account Owner's grandparents in equal shares by representation.

Accordingly Claimant Hartogazon, Claimant Stern, Aliza Avniel and Roni Frank 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
31 December 2003