

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to the Estate of Claimant [REDACTED 1]¹
represented by [REDACTED],
all represented by Stephen M. Harnik

in re Accounts of Herbert Herz

Claim Number: 402246/MC

This Certified Denial is based upon the claim of the Estate of [REDACTED 1] (the “Claimant”), represented by its executor, [REDACTED] (the “Executor”), to the accounts of Walter Herz.² This Denial is to the published accounts of Herbert Herz (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).³

All denials 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’s Executor submitted a Claim Form identifying the Account Owner as the brother-in-law of [REDACTED 1], Herbert Herz, who was Jewish, and who resided in Vienna, Austria. The Claimant’s Executor stated that Herbert Herz was the brother of [REDACTED 1]’s husband, [REDACTED] (later [REDACTED]), and that Herbert and [REDACTED] were the sons of Dr. [REDACTED] and [REDACTED], née [REDACTED].

¹ [REDACTED] filed a Claim Form as the Executor of the Estate of [REDACTED 1], who died on 24 September 1999. In support of the claim, he forwarded a copy of [REDACTED 1]’s will, indicating that [REDACTED] was nominated as executor of her estate, and in which he is also named as one of her beneficiaries. [REDACTED] stated that he was an employee in the firm of ([REDACTED 1]’s late husband and brother of Herbert Herz) in the United States between 1944 and 1945, and that he was a friend of [REDACTED] and [REDACTED 1].

² In a separate decision, the Claimant was awarded the accounts of [REDACTED]. See *In re Accounts of [REDACTED]* (approved on 18 December 2008, the “December 2008 Award”). In the December 2008 Award, the Claimant was awarded two demand deposit accounts and two custody accounts belonging to [REDACTED], for a total award amount of 378,500.00 Swiss Francs (“SF”).

³ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP list”), Herbert Herz [Vienna, Austria] is indicated as having four accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only two accounts.

According to the Claimant's Executor, [REDACTED] resided at Kärntnerring 3, Vienna. The Claimant's Executor explained that [REDACTED] and [REDACTED 1] fled Austria on an unknown date after 1938 and settled in San Francisco, California, the United States, and that both [REDACTED] and [REDACTED 1] have since passed away.

The Claimant's Executor submitted copies of documents, including: (1) [REDACTED 1]'s marriage certificate, dated 21 December 1938 in Vienna, indicating that [REDACTED] was born on 7 January 1900, that his parents were Dr. [REDACTED] and [REDACTED], that he resided at Kärntnerring 3, Vienna I, that he married [REDACTED 1] on 23 December 1933 in Vienna, and that [REDACTED 1] was born on 9 September 1905 in Vienna; (2) the last will of [REDACTED 1], filed with the San Francisco County Superior Court on 30 September 1999, indicating that [REDACTED] was nominated as the executor of the Estate; and (3) records filed by [REDACTED] in 1938 pursuant to a Nazi decree requiring the registration of assets owned by Jewish residents and/or nationals of the Reich, including Austria.

The Claimant's Executor stated that [REDACTED 1], née [REDACTED], was born on 9 September 1905 in Vienna and passed away on 24 September 1999 in San Francisco.

Information Available in the Bank's Records

The Bank's record consists of a customer card. According to this record, the Account Owner was Herbert Herz, who resided initially at Kärntnerring 3, Vienna I, Austria; as of 16 March 1938, at Arbeitergasse 6, Vienna V; and as of 14 February 1940, at 8714 21st Avenue, Brooklyn, New York, the United States.

The Bank's records indicate that the Account Owner held a demand deposit account and a custody account, both numbered 37198. The Bank's records further indicate that the accounts were open by 1933 and were closed on 18 April 1940. The amount in the accounts on the date of their closure is unknown.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents indicate that Herbert Herz transferred a number of securities into his custody account at the Bank on 23 December 1933. These records also include a form acknowledging the Account Owner's receipt of the Bank's new regulations regarding custody accounts, which was signed by the Account Owner on 30 March 1940 in New York, New York.

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"). The records of the Austrian State Archive contain documents concerning the assets of Herbert Herz, numbered 31932.

Those records, signed on 15 July 1938 in Vienna, indicate that Herbert Herz was born on 15 July 1903, that he resided at Arbeiterstrasse 6, Vienna V, that he was a commercial representative, and that he was married to Dr. [REDACTED], née [REDACTED].

These records further indicate that Herbert Herz's assets included a demand deposit account at the Bank, which had a balance as of 27 April 1938 of 540.08 Reichsmark ("RM"), which was equivalent to 947.84 Swiss Francs ("SF") in 1938.⁴ The records also indicate that Herbert Herz held a number of securities. While the records do not indicate at which banks these securities were held, the list of securities includes the same securities that the Bank's records indicate were deposited into the Account Owner's account at the Bank in December 1933. According to the asset declaration, the total market value of the securities listed in the 1938 Census records that are also listed in the Bank's records as being held in the Account Owner's custody account at the Bank was approximately RM 6,111.00, which was equivalent to SF 10,724.81 in 1938.

The records also contain a letter from the Ministry for Economics and Labor charged with registering and administering Jewish-owned property ("*Vermögensverkehrsstelle*" or "VVSt.") to Herbert Herz, dated 9 August 1938, ordering the sale of his foreign-denominated securities foreign currency to the *Reichsbank*, and an internal VVSt. memorandum dated 31 August 1938, which notes that although Herbert Herz had been instructed to sell his foreign-denominated securities on 9 August 1938, he (Herbert Herz) was "travelling abroad" for an indefinite period ("*Auf Grund des Schriftwechsels wurde festgestellt, dass Obengenannter auf unbestimmte Zeit ins Ausland verreist ist*").

The CRT's Analysis

Identification of the Account Owner

The late [REDACTED 1]'s brother-in-law's name matches the published name of the Account Owner. The Claimant's executor also identified one of the Account Owner's street addresses, which matches unpublished information about the Account Owner contained in the Bank records.

The CRT notes that the name Herbert Herz appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of victims of Nazi persecution ("ICEP" or the "ICEP List"). The CRT notes that there are no other claims to these accounts.

Taking all of these factors into account, the CRT concludes that the Claimant's executor has plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant's executor has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant's executor stated that the Account Owner and his family were

⁴ The CRT uses official exchange rates when converting currencies.

Jewish, that they were required to register their assets during the 1938 Census, and that they fled Austria after its incorporation into the Reich in March 1938 (the “*Anschluss*”).

The Claimant’s Relationship to the Account Owner

The Claimant’s Executor has plausibly demonstrated that the late [REDACTED 1] was related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimant’s brother-in-law. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT notes that the Claimant’s Executor identified unpublished information about the Account Owner as contained in the Bank’s records. The CRT further notes that the Claimant’s Executor submitted a copy of the Claimant’s marriage certificate, which provides independent verification that the Claimant’s relatives bore the same family name and that they resided at one of the same addresses 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 Claimant as a family member, and all of this information supports the plausibility that the late [REDACTED 1] was related to the Account Owner, as the Claimant’s executor has asserted in the Claim Form.

The Issue of Who Received the Proceeds

The Bank’s records indicate that the accounts were closed on 18 April 1940. The CRT also notes that the accounts were reported by the Account Owner in his 1938 asset declaration. According to Article 28(d) of the Rules, in the absence of evidence to the contrary, the CRT presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed account if the account was declared in a Nazi census of Jewish assets or other Nazi documentation.

The CRT determines in this case that there is sufficient evidence to the contrary to overrule the presumption in Article 28(d) of the Rules. First, the Bank’s customer card contains the Account Owner’s updated addresses, including his address in New York, which indicates that the Account Owner remained in contact with the Bank after fleeing Austria. Second, the Account Owner signed an acknowledgment form acknowledging receipt of the Bank’s new regulations regarding custody accounts, which was signed by the Account Owner on 30 March 1940 in New York, New York and returned to the Bank. The CRT finds it implausible that the Account Owner would sign and return such an acknowledgment form if he no longer held a custody account containing securities at the Bank. Thus, this completed form demonstrates that the securities in this account were not turned over to the Nazis but remained in the account. The CRT also notes that the Account Owner’s 1938 Census file includes an internal memorandum dated 31 August 1938, which notes that although Herbert Herz had been instructed to sell his foreign-denominated securities on 9 August 1938, he (Herbert Herz) was travelling abroad for an indefinite period, which strongly suggests that Herbert Herz did not heed the instructions to sell his securities. Finally, the CRT notes that, in contrast to the 1938 Census records for Herbert Herz’s brother, [REDACTED], and his father, Dr. [REDACTED], both of which are detailed in the December 2008 Certified Award to the Claimant for the accounts of [REDACTED], there is

no indication in Herbert Herz's 1938 Census file that he sold his foreign-denominated securities or that he paid flight tax.⁵

The CRT notes that the accounts were closed on 18 April 1940, at which time the Account Owner resided outside of Nazi territory. Based upon information provided by the Claimant, and information contained in the 1938 Census files for Herbert, [REDACTED], and [REDACTED], by this point in time, all of Herbert Herz's family members had fled the Reich. Thus, there is no evidence to suggest that Herbert Herz had relatives remaining in the Reich and that he therefore yielded to Nazi pressure to turn over his accounts to ensure their safety.

Finally, the CRT notes that the accounts were closed shortly after the Account Owner signed the acknowledgment form regarding custody account regulations and returned these regulations to the Bank, which, as noted above, indicates that the custody account still existed and that the Account Owner maintained dominion over his accounts. Given the above considerations, the CRT concludes that the Account Owner was able to access his accounts on the date of their closure, and received the proceeds of the accounts.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, the Claimant may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimant should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimant should identify the account, including, where available, the

⁵ Specifically, the December 2008 Award reads: "The records [pertaining to [REDACTED]] contain a letter from the Ministry for Economics and Labor charged with registering and administering Jewish-owned property ("*Vermögensverkehrsstelle*" or "VVSt.") to Dr. [REDACTED], dated August 1938, ordering him to sell his securities to the *Reichsbank*, and a letter from Dr. [REDACTED] to the VVSt., dated 14 December 1938, stating that the securities and the foreign currency held in his accounts had been sold. That letter specifically states that by 14 December 1938, the SF 138.90 that he had held at Bank I and the SF 334.50 that he had held at Bank II had been transferred to the Reichsbank together with Swiss securities with a total face value of SF 1,000.00. The records do not contain information about the ultimate disposition of Dr. [REDACTED]'s bank accounts.

The records of the Austrian State Archive also include the 1938 Census declaration of Dr. [REDACTED], numbered 31867 and signed 15 July 1938 in Vienna, indicating that he was a physician, and that he resided at Kärntnerring 3, Vienna. The records further indicate that Dr. [REDACTED] was the father of Dr. [REDACTED]. The records indicate that Dr. [REDACTED] gave up his medical practice on 17 June 1938, and that he paid flight tax (*Reichsfluchtsteuer*) in the amount of RM 19,425.00 on behalf of himself and Dr. [REDACTED]."

Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal
30 August 2010