

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Denial**

to Claimant [REDACTED 1]  
represented by Walter Friedrich

**in re Accounts of Heinrich Hitschmann and *Nachlass* Heinrich Hitschmann**

Claim Number: 501287/BW

This Certified Denial is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the published accounts of Heinrich Hitschmann (the “Account Owner”) at the Zurich branch of the [REDACTED] (“Bank I”); and to the published account of *Nachlass* Heinrich Hitschmann (Estate of Heinrich Hitschmann) at the [REDACTED] (“Bank II”) (together the “Banks”).

All denials are published, but where a claimant has 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.

### **The July 2004 Award**

On 13 July 2004, the Court approved an Award to [REDACTED 2] (“Claimant [REDACTED 2]”) and four parties that Claimant [REDACTED 2] represented for three accounts held by the Account Owner at Bank I (the “July 2004 Award”). In the July 2004 Award, the CRT determined that the Account Owner owned three accounts at Bank I, namely two demand deposit accounts and one custody account, however was unable to conclude that the Account Owner owned an account at Bank II. The CRT further determined that Claimant [REDACTED 2] plausibly identified the Account Owner as his great-uncle, that his great-uncle was a Victim of Nazi Persecution, and that it was plausible that the Account Owner did not receive the proceeds of his three accounts. The CRT noted, pursuant to a Nazi decree, in 1938 the Account Owner declared the value of the securities in his custody account to be 55,976.34 Swiss Francs (“SF”) on 14 July 1938. The CRT further noted that Bank I’s records did not indicate the value of the two demand deposit accounts, and therefore presumed that each had a value of SF 2,140.00. The resulting July 2004 Award amount was SF 753,204.25. Finally, the CRT determined that Claimant [REDACTED 2], and the parties he represented, were entitled to the entire award amount. The July 2004 Award did not address Claimant [REDACTED 1]’s entitlement to the Account Owner’s accounts. This decision addresses Claimant [REDACTED 1]’s entitlement to those accounts.

## **Information Provided by Claimant [REDACTED 1]**

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as Heinrich (Chajin) Hitschmann, who was born on 5 October 1873 in Vienna, Austria and was married to [REDACTED], née [REDACTED], on 24 November 1941 in Vienna. Claimant [REDACTED 1] identified himself as the only beneficiary under the will of [REDACTED], who was the niece of the Account Owner's wife; specifically, Claimant [REDACTED 1] stated that [REDACTED] had a sister, [REDACTED], née [REDACTED], whose daughter and sole heir was [REDACTED].

In support of his claim, Claimant [REDACTED 1] submitted copies of: (1) a death certificate indicating that Heinrich Hitschmann was born on 5 October 1873 in Vienna, and that he was married to [REDACTED] on 24 November 1941 in Vienna; (2) an Austrian court-certified document which describes the circumstances and details of Heinrich Hitschmann's death and estate, indicating that he left no last will or testament, and that he had no children; (3) a declaration made by [REDACTED] on 19 March 1946 in Vienna, indicating that her sister was [REDACTED], née [REDACTED]; (4) a Vienna district court (*Bezirksgericht Innere Stadt Wien*) decision, dated 28 April 1951, indicating that in relation to the estate of [REDACTED], her siblings [REDACTED] and [REDACTED] had renounced all rights as heirs to the estate; (5) a Vienna district court decision, dated 12 November 1951, declaring that [REDACTED] sold her inheritance rights to the estate of [REDACTED] to [REDACTED] and [REDACTED], in exchange for a payment to her of 2,000.00 Austrian Shillings (AS), which was approved by the Court; (6) a Vienna district court decision dated 14 May 1952, indicating that the estate of Heinrich Hitschmann was to be distributed as follows: one-half to his brother [REDACTED], and one-half to the widow of his brother [REDACTED], specifically to his sister-in-law [REDACTED], and indicating that this distribution was based in part on Austrian inheritance law, and in part on the sale by an unnamed party of her rights to the estate; (7) a probate court order and testament of [REDACTED], née [REDACTED], indicating that [REDACTED] was her only child and sole heir; and (8) an inheritance document indicating that [REDACTED] died on 8 August 1987, and that her sole beneficiary is [REDACTED 1], who was born on 12 November 1923.

Claimant [REDACTED 1] indicated that he was born on 12 November 1923 in Weyer, Austria.

## **The CRT's Analysis**

### Claimant [REDACTED 1]'s Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that he is the sole beneficiary under the will of [REDACTED], who was related to the Account Owner, by submitting specific information and copies of documents, demonstrating that the Account Owner was [REDACTED]'s uncle by marriage, and that Claimant [REDACTED 1] is her sole beneficiary. These documents include a declaration made by [REDACTED], indicating that her sister was [REDACTED], who was married to Heinrich Hitschmann; a probate court order and testament of

[REDACTED], indicating that [REDACTED] was her only child and sole heir; and an inheritance document, indicating that [REDACTED]'s sole beneficiary is [REDACTED 1].

#### Claimant [REDACTED 1]'s Entitlement to the July 2004 Award

According to Article 23(1)(d) of the Rules Governing the Claims Resolution Process, as amended (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. The CRT notes that Claimant [REDACTED 2], as the Account Owner's grand-nephew, is a descendant of the Account Owner's parents. However, Article 23(1) only applies in the "absence of a will or other inheritance documents." In this case, Claimant [REDACTED 2] did not submit any inheritance documents with his claim, and accordingly the CRT, in the July 2004 Award, in which it considered only Claimant [REDACTED 2]'s claim, applied Article 23(1)(d) to conclude that he and the parties that he represents were entitled to the July 2004 Award.

Claimant [REDACTED 1], however, has submitted a considerable number of inheritance documents, and accordingly Article 23(2), which applies "where there is a will or other inheritance documents", shall be used to ascertain the entitlement of Claimant [REDACTED 1] to the Account Owner's accounts. Article 23(2)(a) indicates that "if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim." In this case, Claimant [REDACTED 1] submitted a court-certified document indicating that Heinrich Hitschmann had left no last will upon his death. However, Claimant [REDACTED 1] submitted a number of other documents, which document the chain of succession relating to Heinrich Hitschmann's estate. The CRT, upon reviewing these documents in conjunction with Article 23(2), concludes that Claimant [REDACTED 2], as the grandson of [REDACTED], has a better entitlement to the Account Owner's accounts than Claimant [REDACTED 1].

Specifically, Claimant [REDACTED 2] and the four parties he represents are all descendants of [REDACTED], who, according to the inheritance documents outlined above and submitted by Claimant [REDACTED 1], was entitled to one-half of the estate of Heinrich Hitschmann. In contrast, Claimant [REDACTED 1] is a beneficiary of [REDACTED], who was the heir of [REDACTED], one of the sisters of [REDACTED]. As indicated above, the Vienna district court decision dated 28 April 1951 indicates that [REDACTED] renounced all of her rights as an heir to the estate of [REDACTED]. In addition, [REDACTED]'s other sister [REDACTED] also sold her entitlement to any rights emanating from the estate of [REDACTED], to [REDACTED] and [REDACTED], and the court approved this sale.

Consequently, the CRT concludes that the testamentary documents indicate that all of [REDACTED]'s siblings renounced or sold their claims to any rights emanating from the estates of Heinrich and [REDACTED], and that Claimant [REDACTED 1] is consequently not entitled to an award of the accounts of Heinrich Hitschmann. Accordingly, Claimant [REDACTED 1] is not entitled to share in the July 2004 Award.

### Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, Claimant [REDACTED 1] 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.

Claimant [REDACTED 1] 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 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