

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

in re Accounts of Walter Herz

Claim Number: 402246/CU

Award Amount: 378,500.00 Swiss Francs

This Certified Award is based upon the claim of the Estate of [REDACTED] (the Estate being referred to herein as the “Claimant”), represented by the executor of the Claimant, [REDACTED] (the “Claimant’s executor”), to the published accounts of Walter Herz (the “Account Owner”) at the Zurich branch of the [REDACTED] (“Bank I”) and at the Zurich branch of the [REDACTED] (“Bank II”) (together the “Banks”).

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’s executor submitted a Claim Form identifying Account Owner Walter Herz as Dr. Walter Herz (later Hearst), who was born on 7 January 1900 in Vienna, Austria, and was married to [REDACTED] on 23 December 1933 in Vienna. The Claimant’s executor indicated that Dr. Walter Herz, who was Jewish, was the son of [REDACTED] and [REDACTED], née [REDACTED]; that he resided at Kärtnerring 3, Vienna; that he was a chemist; and that he owned a business for finishing materials. The Claimant’s executor also explained that Dr. Walter and [REDACTED] had no children. The Claimant’s executor indicated that Dr. Walter and [REDACTED] fled Austria on an unknown date after 1938 and emigrated to San Francisco, the United States; Walter Hearst passed away on an unspecified date in the United States, and [REDACTED] passed away on 24 September 1999 in San Francisco.

¹ [REDACTED] filed a Claim Form as “Executor of the Estate of [REDACTED]”, who died on 24 September 1999; and he also forwarded a copy of [REDACTED]’s will, indicating that [REDACTED] was named executor of [REDACTED]’s estate. The CRT further notes that [REDACTED] is named as one of the beneficiaries of [REDACTED]’s estate.

The Claimant's executor stated that he was an employee in Dr. Walter Hearst's firm in the United States between 1944 and 1945, and that he was a friend of Dr. Walter and [REDACTED]. The Claimant's executor also stated that [REDACTED] appointed him the executor of her estate.

The Claimant's executor submitted copies of: (1) a marriage certificate, dated 21 December 1938 in Vienna, indicating that Dr. Walter Herz was born on 7 January 1900, that he was Jewish, that his parents were [REDACTED] and [REDACTED], that he resided at Kärntnerring 3, Vienna I, that he married [REDACTED] on 23 December 1933 in Vienna, and that [REDACTED] was born on 9 September 1905 in Vienna; and (2) the will of [REDACTED], filed with the San Francisco County Superior Court on 30 September 1999, indicating that she appointed [REDACTED] the executor of her estate.

The Claimant's executor also submitted records, which are further described below, filed by Walter Herz in 1938 pursuant to a Nazi decree requiring the registration of assets.

The Claimant's executor [REDACTED] indicated that he was born on 22 June 1928 in Berlin, Germany.

Information Available in the Banks' Records

Bank I

Bank I's records consist of an account opening card and printouts from Bank I's database. According to these records, the Account Owner was Dr. Walter Herz, who resided at Kärntnerring 3, Vienna I, Austria. Bank I's records indicate that the Account Owner held a demand deposit account and a custody account, both numbered 37197. Bank I's records further indicate that the accounts were opened on 15 December 1933, and that as of 16 March 1938 the bank was ordered to hold all correspondence regarding the accounts. Bank I's records indicate that both of these accounts were closed on 6 September 1938. The amount in the accounts on the date of their closure is unknown. There is no evidence in Bank I's records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

Bank II

Bank II's record consists of an account opening card. According to this record, the Account Owner was Dr. Walter Herz, who resided in Vienna, Austria. Bank II's record indicates that the Account Owner held a demand deposit account and a custody account. Bank II's record further indicates that the accounts were opened on 20 June 1931, and closed on 10 September 1938. The amount in the accounts on the date of their closure is unknown. There is no evidence in Bank II's record that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

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 Dr. Walter Herz, which are numbered 16073.

These records were signed by Dr. Walter Herz on 15 July 1938 in Vienna, and indicate that he was born on 7 January 1900, that he resided at Kärntnerring 3, Vienna I, Austria, and that he was married to [REDACTED], née [REDACTED]. These records further indicate that Walter Herz owned a business for the production and sale of processing materials, which was valued at 24,329.16 Reichsmark (“RM”); the records also indicate that he had surrendered (*zurückgelegt*) his business permit by 15 July 1938, and that his business had been liquidated on 17 June 1938.

The 1938 Census records further indicate that Dr. Walter Herz’s assets included accounts at the Banks, that the balance in the demand deposit account at Bank I was 138.90 Swiss Francs (“SF”), that the balance in the demand deposit account at Bank II was SF 334.50, and that the combined value of these accounts on 15 July 1938 was RM 270.31. The records indicate that Dr. Walter Herz’s assets also included accounts at *Credit Lyonnais* in Paris, France, and at *Oesterreichische Creditanstalt Wiener Bank Verein*, in Vienna. The records indicate that the combined value of all of Dr. Walter Herz’s bank accounts was RM 7,307.75 in July 1938. The records further indicate that Dr. Walter Herz’s assets included Swiss, American and French securities, and that the combined value of these securities was RM 7,633.45 in July 1938. Dr. Walter Herz reported the securities held in his bank accounts without specifying at which bank they were held.

The records contain a letter from the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (“*Vermögensverkehrsstelle*” or “*VVSt.*”) to Dr. Walter Herz, dated August 1938, ordering him to sell his securities to the *Reichsbank*, and a letter from Dr. Walter Herz 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. Walter Herz’s bank accounts.

The records of the Austrian State Archive also include the 1938 Census declaration of Dr. Max Herz, 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. Max Herz was the father of Dr. Walter Herz. The records indicate that Dr. Max Herz 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. Walter Herz.

The CRT's Analysis

Identification of the Account Owner

The Claimant's executor has plausibly identified the Account Owner. The late [REDACTED]'s husband's name matches the published name of the Account Owner. The Claimant's executor identified the Account Owner's exact address, city, country of residence, and professional title, all of which match unpublished information about the Account Owner contained in the Banks' records.

In support of the claim, the Claimant's executor submitted documents, including the marriage certificate of Dr. Walter and [REDACTED] and Dr. Walter Herz's 1938 Census record, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided at the same address recorded in the Banks' records as the name and address of the Account Owner.

The CRT notes that the name Walter Herz appears only once on the List of Account Owners Published in 2005 (the "2005 List"). The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different country of residence than the country of residence of 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 was Jewish, that he was required to register his assets in the 1938 Census, and that he fled Austria on an unknown date after the incorporation of Austria 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] was related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was [REDACTED]'s husband. These documents include the marriage certificate of Dr. Walter and [REDACTED] and Dr. Walter Herz's 1938 Census record.

The CRT notes that the Claimant's executor identified unpublished information about the Account Owner as contained in the Banks' records. 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 [REDACTED] as a family member, and all of this information supports the plausibility that [REDACTED] was related to the Account Owner, as the Claimant's executor has asserted in his Claim Form. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The Banks' records indicate that the accounts held by the Account Owner in Bank I and Bank II were closed on 6 September 1938 and on 10 September 1938, respectively.

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 accounts ultimately were confiscated by the Nazi regime; that the Account Owner reported the accounts in the 1938 Census, and indicated that at least some of his assets at the Banks had been transferred to the Reichsbank; that the Account Owner lived in Austria until his emigration to the United States, and therefore could not have repatriated the accounts without losing ultimate control over their proceeds; and given the application of Presumptions (a), (d), (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 the Claimant, namely the Estate of [REDACTED]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant's executor has plausibly demonstrated that the Account Owner was the late [REDACTED]'s husband, and that relationship justifies an Award to [REDACTED]'s estate. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held two demand deposit accounts and two custody accounts.

With respect to the Account Owner's 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 Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a custody account was SF 13,000.00.

With respect to the demand deposit accounts, the 1938 Census declaration submitted by the Account Owner indicates that the values of the Account Owner's demand deposit accounts at Bank I and Bank II as of 15 July 1938 were SF 138.90 and SF 334.50, respectively. The CRT determines 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 demand deposit account is less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. In this case, the CRT does not find that the value of the accounts 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 each of the Account Owner's demand deposit accounts shall be determined to be SF 2,140.00.

Thus, the combined 1945 average value for the four accounts at issue is SF 30,280.00. 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 378,500.00.

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 its claim to determine whether there are additional Swiss bank accounts to which the Estate 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
18 December 2008