

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Evelyn Akstein

and to Claimant Helenis Herchenhorn

in re Account of Walter Hess

Claim Number: 216788/DE; 216669/DE; 216918/DE¹

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of Evelyn Akstein, née Hess (“Claimant Akstein”) to the account of Paul Simon Israel Hess and Karl Hess² and the claim of Helenis Herchenhorn, née Hess (“Claimant Herchenhorn”) (together the “Claimants”) to the account of Walter Hess. This award is to the unpublished account of Walter Hess (the “Account Owner”) at the [REDACTED] (the “Bank”).³

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

Information Provided by the Claimants

Claimant Akstein submitted two Claim Forms identifying the Account Owner as her paternal uncle, Walter Hess, and Claimant Herchenhorn, who is Claimant Akstein’s cousin, submitted two Claim Forms identifying the Account Owner as her father, Walter Hess, who was born on 14 April 1910 in Wittmund, Germany and was married to Dora Hess, née Rabischoffsky, on 21 January 1944 in Rio de Janeiro, Brazil. Claimant Herchenhorn indicated that her father, who

¹ Claimant Helenis Herchenhorn (“Claimant Herchenhorn”) submitted two Claim Forms, which were registered under the Claim Numbers 216918 and 216919. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 216918.

² The CRT did not locate accounts belonging to Paul Simon Israel Hess or Karl Hess in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

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”), the name Walter Hess appears three times. Upon careful review, the CRT has determined that the three persons named Walter Hess are not the same person addressed in the current decision and, consequently, the Claimants did not identify these other account owners as their relative.

was Jewish, had two children and died in Rio de Janeiro, Brazil on 30 May 1951. Claimant Herchenhorn stated that her father worked in Cologne, Germany at the company *Franken, Wienthal and Hess* from 1 January 1932 to 10 April 1933, at which time his Jewish employer was forced by the Nazis to close the company. According to Claimant Herchenhorn, her father then moved to Karlsruhe, Germany, and began to work at the furniture store his brother Paul owned. Claimant Herchenhorn explained that in 1933 her father was sent to prison for one month and then deported to a forced labor camp for four months. Claimant Herchenhorn further indicated that her father was released and fled Germany, and that he arrived in Rio de Janeiro on 21 February 1936.

In support of her claim, Claimant Herchenhorn submitted copies of various documents, including: 1) her father's birth certificate, indicating that Walter Hess's parents were Simon Hess and Henlene Hess, née Norden, and that he was born on 14 April 1910; 2) a letter of recommendation from *Franken, Wienthal and Hess* in Cologne dated 30 April 1933, confirming that Walter Hess was employed there from 1 January 1932 until 30 April 1933; 3) Walter Hess's Brazilian residency permit, indicating that he arrived there on 21 February 1936 with a German passport numbered 3992 and issued on 25 September 1935 in Karlsruhe; 4) an application for restitution from the German government dated 1958, indicating that the late Walter Hess was married to Dora Hess, that they had two children, Helenis and Simoni Hess, that in 1933 he was interned in a prison in Karlsruhe for one month, and a forced labor camp in Kienslau bei Heidelberg for three months, and that Paul Hess could provide further information regarding the claim.

Claimant Akstein submitted copies of various documents, including her own birth certificate, indicating that her parents were Paul and Rosa Hess, and that her father's parents were Simon Samuel Hess and Helena Hess, née Norden; and a photograph of her father's furniture business in Karlsruhe.

Claimant Akstein indicated that she was born on 19 April 1955 in Rio de Janeiro. Claimant Herchenhorn indicated that she was born on 28 December 1946 in Rio de Janeiro.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Walter Hess, who resided in Wald in Rheinland, Germany (today part of Wiehl). The bank's record indicates that the Account Owner held a custody account, numbered L26805. The Bank's record indicates that this account was closed on 31 July 1933. The Bank's record does not indicate the value of this account. There is no evidence in the Bank's record that the Account Owner or his heirs closed the account 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

CRT's discretion. In this case, the CRT determines it appropriate to join the three claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant Akstein's uncle's name and Claimant Herchenhorn's father's name matches the unpublished name of the Account Owner. The CRT notes that Claimant Herchenhorn indicated that her father worked in Cologne, Germany while the bank records indicate that the Account Owner resided in Wald Rheinland (today part of Wiehl). However, the CRT further notes that Cologne and Wald Rheinland are only 51 kilometers apart, and determines that it is plausible that the Claimants' relative may have worked in Cologne and lived and/or had ties to Wald Rheinland of which the Claimant may be unaware.

In support of her claim, Claimant Herchenhorn submitted copies of various documents, including her father's birth certificate, and a letter of recommendation from *Franken, Wienthal and Hess* in Cologne dated 30 April 1933, providing independent verification that the person who is claimed to be the Account Owner had the same name and country of residence recorded in the Bank's record as the name and country of residence of the Account Owner.

The CRT notes that the other claims to this account were disconfirmed because those claimants provided either a different country of residence or a city of residence more than 100 kilometers away from the Account Owner. 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 Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, resided in Germany, was interned in a prison and a forced labor camp, and fled to Brazil. Claimant Herchenhorn submitted copies of various documents including: 1) a letter of recommendation from *Franken, Wienthal and Hess* in Cologne dated 30 April 1933 confirming that Walter Hess was employed there from 1 January 1932 until 30 April 1933; 2) Walter Hess's Brazilian residency permit indicating that he arrived in the country on 21 February 1936; and 3) an application for restitution from the German government dated 1958 indicating that the late Walter Hess was interned in a prison in Karlsruhe for one month and a forced labor camp in Kienslau bei Heidelberg for 3 months.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant Akstein's paternal uncle and Claimant Herchenhorn's father.

Claimant Herchenhorn submitted copies of various documents, including her father's birth certificate and an application for restitution from the German government.

Claimant Akstein submitted copies of various documents, including her own birth certificate, indicating that her father is named Paul Hess and that his parents are named Simon Samuel Hess and Helena Hess, née Norden.

The CRT notes that these documents are documents which most likely only a family member would possess. The CRT further notes that these documents provide independent verification that the Claimants bore the same family name 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 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.

The CRT notes that Claimant Herchenhorn indicated that she has other surviving relatives, but that because they are not represented in the Claimants' claims, the CRT will not treat their potential entitlement to the Account Owner's account in this decision.

The Issue of Who Received the Proceeds

Given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax- and other confiscatory measures, including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until 1935 and would not have been able to repatriate his account to Germany without losing ultimate control over its proceeds; that there is no record of the payment of the Account Owner's account to him; that the Account Owner and his heirs would not have been able to obtain information about his account 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; given the application of Presumptions (a), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendices A and C),⁴ 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 Herchenhorn. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant Herchenhorn has plausibly demonstrated that the Account Owner was her father, 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 account. Further, the CRT notes that Claimant Herchenhorn, as the Account Owner's daughter, has a better entitlement to the account than Claimant Akstein, the Account Owner's niece.

⁴ Appendix C appears on the CRT II website -- www.crt-ii.org.

Amount of the Award

In this case, the Account Owner held a custody account. 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 13,000.00 Swiss Francs (“SF”). 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 162,500.00.

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. Accordingly, Claimant Herchenhorn is entitled to the total award amount. As noted above, Claimant Akstein is not entitled to share in the award.

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
19 December 2007