

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1],
also acting on behalf of [REDACTED 2],
[REDACTED 3], and [REDACTED 4]

to Claimant Lise Haas,
represented by [REDACTED]

and to Claimant [REDACTED 5]
also acting on behalf of [REDACTED 6]

in re Accounts of Annie Unger and Lise Haas

Claim Numbers: 217571/MBC; 217579/MBC; 221320/MBC

Award Amount: 401,125.00 Swiss Francs

This Certified Award is based on the claim of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”), to the accounts of Anna Unger, Friedrich Unger, and Dezsö Roth, the claim of Lise Haas, née [REDACTED] (“Claimant Haas”) to the account of Felix Haas, and the claim of [REDACTED 5] (“Claimant [REDACTED 5]”) (together the “Claimants”) to the account of Otto Anninger and Felix Haas.¹ This Award is to the unpublished accounts of Annie Unger (“Account Owner Unger”) and Lise Haas (“Account Owner Haas”) (together “the Account Owners”) at the Zurich branch of [REDACTED] (the “Bank”).²

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 Account Owner Unger, and the bank have been redacted.

¹ In a separate decision, the CRT treated Claimant [REDACTED 1]’s claim to the accounts of Anna Unger, Friedrich Unger, and Dezsö Roth. See *In re Account of Anna Unger, Friedrich Unger, and Dezsö Roth* (approved on 23 January 2006). The CRT will treat Claimant [REDACTED 5]’s claim to the account of Otto Anninger in a separate determination.

² 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 Anna Unger appears twice. Upon careful review, the CRT has determined that these two persons named Anna Unger are not the same person addressed in this decision and, consequently, Claimant [REDACTED 1] did not identify these other account owners as her relatives.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying Account Owner Unger as her mother, Dr. Anna (Annie) Unger, née Arens, who was born on 7 June 1897 in Vienna, Austria, and was married to [REDACTED] on 29 December 1919 in Vienna. In a family tree, Claimant [REDACTED 1] indicated that her mother had a sister named Lise Haas, who was married to [REDACTED]. Claimant [REDACTED 1] stated that her mother, who was Jewish, resided at Esslinggasse 17 in Vienna, and that her father and maternal grandfather ran the family business, the cotton business *Wm. Abeles*, located at Schottenbastei 4 in Vienna. Claimant [REDACTED 1] further stated that after the incorporation of Austria into the Reich in March 1938 (“the *Anschluss*”), the business was auctioned off as part of the aryanization process and in June 1938 her parents fled from Vienna to Zurich, Switzerland, and then to Chantilly, France, where they remained until April 1939. Claimant [REDACTED 1] indicated that in May 1939, her parents emigrated to the United States. Claimant [REDACTED 1] stated that her mother died on 7 March 1994 in Berkeley, California.

Claimant [REDACTED 1] submitted documents in support of her claim, including: (1) her mother’s Austrian passport, which indicates that Dr. Anna Unger, who was born on 7 June 1897 in Vienna, resided at Esslinggasse 17 in Vienna; (2) her mother’s death certificate, indicating that [REDACTED 1] is the daughter of Ann Unger, who died 3 July 1994 in Berkeley; and (3) her mother’s will, indicating that Ann Unger’s daughter, [REDACTED 1], and grandson, [REDACTED 2], were named co-executors of her estate.

In addition, Claimant [REDACTED 1] submitted a document evidencing account ownership at the Bank. Specifically, Claimant [REDACTED 1] submitted an account statement from the Bank, which is described in detail below. Claimant [REDACTED 1] indicated that she was born on 24 July 1927 in Vienna. Claimant [REDACTED 1] is representing her late sister’s children: [REDACTED 2], [REDACTED 3], and [REDACTED 4].

Claimant Haas

Claimant Haas, who is Claimant [REDACTED 1]’s maternal aunt, submitted a Claim Form identifying herself as Account Owner Haas. Claimant Haas indicated that she was born on 1 July 1903 in Vienna, and that she married [REDACTED] on 20 June 1927 in Vienna. According to Claimant Haas, she and her husband, who were Jewish, resided in Vienna, where her husband was a partner in the family business, *Wm. Abeles & Co.*, located at Schottenbastei 4. Claimant Haas indicated that she and her husband visited Zurich, Switzerland in 1938, when they stayed at the *Hotel St. Gotthard*, and that they subsequently fled Austria with their two children, [REDACTED] and [REDACTED], after the *Anschluss*. According to Claimant Haas, her family fled to Yugoslavia, where they remained until 1941, when she and her children fled the country, but her husband was not permitted to leave and he was arrested and presumed to have been deported to Auschwitz, where he perished in 1942.

Claimant Haas submitted documents in support of her claim, including: (1) her husband's will, written on his own letterhead on 7 August 1941, indicating that [REDACTED] named his wife as his sole beneficiary, and mentioning a [REDACTED] in Zurich; (2) her husband's death certificate, indicating that [REDACTED] was Jewish, that he was married to Liese Haas, and that he was presumed to have died on 31 August 1942; and (3) a certificate issued to her by the city of Neuchatel, Switzerland, indicating that Lise Haas, née [REDACTED], was married to [REDACTED].

Claimant Haas indicated that she was born on 1 July 1903 in Vienna.

Claimant [REDACTED 5]

Claimant [REDACTED 5], who is not related to Claimant [REDACTED 1] or Claimant Haas, submitted a claim form identifying one of the power of attorney holders as [REDACTED], who was the business partner of Claimant [REDACTED 5]'s grandfather, [REDACTED]. Claimant [REDACTED 5] indicated that his grandfather and [REDACTED] were partners in *Wm. Abeles*, a cotton brokerage and trading firm in Vienna. According to Claimant [REDACTED 5], his grandfather, who was Jewish, was married to [REDACTED], née [REDACTED], with whom he had three children: [REDACTED], [REDACTED] and [REDACTED]. Claimant [REDACTED 5] indicated that his grandparents fled Vienna immediately prior to the *Anschluss* on 11 March 1938, fleeing first to Paris, France, where his grandmother died later that year. Claimant [REDACTED 5] indicated that his grandfather subsequently fled to the United States, that he eventually returned to Europe, and that he died in 1954. Claimant [REDACTED 5] indicated that he believed that [REDACTED] died in Yugoslavia in 1942.

Claimant [REDACTED 5] indicated that he was born on 25 May 1942 in New York, New York, the United States. Claimant [REDACTED 5] is representing his cousin, [REDACTED 6], who was born on 15 September 1943, also in New York.

Information Available in the Bank's Records

The CRT notes that the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not report an account belonging to Anna Unger during their investigation of the Bank. The bank record upon which this Award is based was forwarded to the CRT by Claimant [REDACTED 1].

The Bank's record, as submitted by Claimant [REDACTED 1], consists of an account statement from the Bank, indicating that *Madame* (Mrs.) Dr. Annie Unger, with temporary residence at the *Hotel du Grand-Condé*, in Chantilly, Oise, France, owned a demand deposit account at the Zurich branch of the Bank. According to this document, the account was active from at least 22 December 1938 until 30 June 1939, during which time various payments were made from the account. The record indicates that the account balance as of 30 June 1939 was 1,276.00 Swiss Francs ("SF"). The record provides no further information regarding the subsequent disposition of the account.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about this account (“Voluntary Assistance”). The Bank provided the CRT with additional documents. These documents consist of a spousal consent form, power of attorney forms, customer cards, and deposit receipts. These documents do not provide further information regarding the balance or disposition of Account Owner Unger’s demand deposit account, but they indicate that Account Owner Unger was married to [REDACTED], who resided at Esslinggasse 17 in Vienna, Austria.

These records further indicate that Account Owner Haas was *Frau* Lise Haas, who held a joint custody account with Account Owner Unger, numbered 41780, over which *Herr* (Mr.) [REDACTED] and *Herr* [REDACTED] held power of attorney. These records indicate that [REDACTED] provided Schottenbastei 4 in Vienna as his correspondence address. According to these records, custody account 41780 was closed on 27 June 1938, and its proceeds were transferred to custody account 42071, which was solely held by Account Owner Unger.³ These records indicate that [REDACTED] and [REDACTED] held power of attorney over the account. According to these records, Account Owner Unger and [REDACTED] provided a temporary address at the *Pension René* in Zurich, Switzerland as of 29 June 1938, and that [REDACTED] provided the *Hotel St. Gotthard* in Zurich as his address. Account Owner Unger later indicated 19 Place de l’Hotel de Ville in Aurillac, France as her address. These records indicate that custody account 42071 was already in existence by 29 June 1938, but do not indicate when the account was actually opened. These records indicate that custody account 42071 was closed on 20 November 1938.

The Bank’s records also reference an additional account belonging to Account Owner Unger, the type of which is not indicated, but which was opened by 27 June 1938. The Bank’s records do not indicate the ultimate disposition of this account. The Bank’s records do not indicate the value of the two custody accounts or the account of unknown type, nor do they indicate a date of closure for the demand deposit account or the account of unknown type. There is no evidence in the Bank’s records that the Account Owners, the power of attorney holders, or their heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archive

Anna Unger

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”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Anna Unger, numbered 39021. The records indicate that Dr. Anna Unger was born on 7 June 1897 and was married to [REDACTED], and that her address was Esslinggasse 17 in Vienna,

³ In the absence of plausible evidence to the contrary, the CRT determines that it is plausible that the two custody accounts existed contemporaneously, and the accounts will therefore be treated as such for the purposes of this award.

Austria, but that she resided abroad by the time she filed her asset registration. The records further indicate that she was living in Zurich from 11 June 1938 to 29 August 1938. The records also indicate that she owned real estate, various securities and bonds, and a share in the business *Wm. Abeles & Co.*, located at Schottenbastei 4. The records further indicate that subsidiaries of the business *Wm. Abeles & Co.*, were auctioned off and the proceeds used to pay flight tax (*Reichsfluchtsteuer*). These records make no mention of assets held in a Swiss bank account.

[REDACTED]

The records of the Austrian State Archive also contain documents concerning the assets of [REDACTED], numbered 63553. These records indicate that [REDACTED] was born on 14 January 1893, that he was married to Lise Haas, née Arens, that they formerly resided at Himmelstrasse 26 in Vienna, but were living abroad by 10 July 1938. These records indicate that [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were partners and owners of *Wm. Abeles & Co.*, located at Schottenbastei 4 in Vienna. These records list various securities and business interests owned by [REDACTED], but make no mention of assets held in a Swiss bank account.

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 Owners

Claimant [REDACTED 1] and Claimant Haas have plausibly identified the Account Owners. Claimant [REDACTED 1]'s mother's name, title, and city and country of residence match the unpublished information about Account Owner Unger contained in the Bank's record that she submitted, which also matches information provided by Claimant Haas about her sister. Claimant Haas's name matches the unpublished name of Account Owner Haas. Furthermore, Claimant [REDACTED 1] and Claimant Haas identified two unpublished mailing addresses used by Account Owner Unger and power of attorney holder [REDACTED], as contained in the documents obtained through Voluntary Assistance from the Bank, and Claimant Haas identified the unpublished names of power of attorney holder [REDACTED] and contact person [REDACTED], as well as the name of the hotel where she and power of attorney holder [REDACTED] stayed in Switzerland. In support of their claims, Claimant [REDACTED 1] and Claimant Haas submitted documents, including Claimant [REDACTED 1]'s mother's Austrian passport, Claimant Haas's husband's death certificate, and a certificate issued to Claimant Haas by the city of Neuchatel, Switzerland, providing independent verification that the persons who are claimed to be the Account Owners had the same names recorded in the Bank's records as the names of the Account Owners.

The CRT notes that Claimant [REDACTED 5] did not identify the names of the Account Owners. Claimant [REDACTED 5] identified the unpublished name of power of attorney holder [REDACTED]. The CRT notes that the information provided by Claimant [REDACTED 5] is consistent with information from the Austrian State Archives and with the information provided by Claimant [REDACTED 1] and Claimant Haas regarding the business in which [REDACTED] was a partner.

The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different country of residence and title than the country of residence and title of Account Owner Unger.

Status of the Account Owners as Victims of Nazi Persecution

Claimant [REDACTED 1] and Claimant Haas have made a plausible showing that the Account Owners were Victims of Nazi Persecution. Claimant [REDACTED 1] stated that Account Owner Unger was Jewish, that her family business was aryanized, and that she was forced to flee Nazi-controlled Austria after the *Anschluss*. Furthermore, the CRT notes that Account Owner Unger was required to register her assets pursuant to the 1938 Census. Claimant Haas stated that she is Jewish, that she and her husband were forced to flee Nazi-controlled Austria after the *Anschluss*, that she subsequently fled Yugoslavia, but that her husband had to remain and subsequently perished in Auschwitz.

The Claimants' Relationship to the Account Owners

Claimant [REDACTED 1] and Claimant Haas have plausibly demonstrated that they are related to the Account Owners by submitting specific information and documents, demonstrating that Account Owner Haas is Claimant Haas (Claimant [REDACTED 1]'s aunt), and that Account Owner Unger was Claimant Haas's sister (Claimant [REDACTED 1]'s mother). These documents include a certificate issued to Claimant Haas by the city of Neuchâtel, Switzerland, and a copy of Claimant [REDACTED 1]'s mother's death certificate and last will, indicating that [REDACTED 1] is the daughter of Ann Unger. There is no information to indicate that the Account Owners have surviving heirs other than the parties whom Claimant [REDACTED 1] is representing.⁴

Claimant [REDACTED 5], who only identified power of attorney holder [REDACTED], did not indicate that he is related to the Account Owners.

The Issue of Who Received the Proceeds

With respect to the account of unknown type, given that Account Owner Unger resided in Nazi-controlled Austria and subsequently fled; that there is no record of the payment of Account Owner Unger's account to her nor any record of a date of closure of the account; that Account

⁴ The CRT notes that Claimant [REDACTED 1] submitted a copy of Account Owner Unger's last will, which indicated that Account Owner Unger's sole heir was the Ann A. Unger Trust, created on 5 May 1987; however, the trustees of this trust have not submitted claims to the CRT on behalf of the trust.

Owner Unger and her heirs would not have been able to obtain information about her 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; and given the application of Presumptions (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 Account Owner Unger, the power of attorney holders, or their heirs.

The CRT notes that the Bank's records indicates that the demand deposit account belonging to Account Owner Unger was active until at least 30 June 1939, and that the Account Owners' custody accounts were closed on 27 June 1938 and 20 November 1938, during which time, according to information provided by Claimant [REDACTED 1], Account Owner Unger was outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the accounts were closed, that the Bank's records do not indicate when the demand deposit account was closed, that Account Owner Unger fled her country of origin due to Nazi persecution, that Account Owner Unger may have had relatives remaining in her country of origin and that she may therefore have yielded to Nazi pressure to turn over her accounts to ensure their safety, that Account Owner Unger and her heirs would not have been able to obtain information about her accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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, and given the application of Presumption (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 Owners, the power of attorney holders, or their 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 [REDACTED 1] and the parties whom she represents. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that Account Owner Unger was her mother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, nor the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts.

Further, the CRT notes that Claimant [REDACTED 1] and represented parties [REDACTED 2], [REDACTED 3], and [REDACTED 4], as the child and grandchildren of Account Owner Unger, have a better entitlement to the accounts than Claimant Haas, the sister of Account Owner

Unger,⁵ or Claimant [REDACTED 5] and represented party [REDACTED 6], who are not related to the Account Owners.

Amount of the Award

In this case, the Account Owners held one joint custody account that was transferred to Account Owner Unger, and Account Owner Unger held one demand deposit account, an additional custody account, and an account of unknown type.

With respect to the two custody accounts and the account of unknown type, 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 ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00, and the average value of an account of unknown type was SF 3,950.00. Thus, the combined 1945 average value for two custody accounts and one account of unknown type was SF 29,950.00. 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 an award amount of SF 374,375.00.

The Bank's record indicates that the value of the demand deposit account on 30 June 1939 was SF 1,276.00. According to Article 29 of the Rules, if the amount in a demand deposit account was 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. The current value of this amount is calculated by the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 26,750.00.

Consequently, the total award amount is SF 401,125.00.

Division of the Award

According to Article 23(1)(c) of the Rules, if an 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. In this case, Claimant [REDACTED 1] is representing the children of her deceased sister, [REDACTED], née [REDACTED]: [REDACTED 2], [REDACTED 3], and [REDACTED 4]. Accordingly, Claimant [REDACTED 1] is entitled to one-half of the total award amount and represented parties [REDACTED 2], [REDACTED 3], and [REDACTED 4] are each entitled to one-sixth of the total award amount. As noted above, Claimant Haas, Claimant [REDACTED 5], and represented party [REDACTED 6] are not entitled to share in the award.

⁵ The CRT notes that Account Owner Haas's ownership interest in the joint custody account terminated when the account was transferred to the sole ownership of Account Owner Unger, and that Claimant Haas is therefore not entitled to share in the proceeds from that account.

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 her claim to determine whether there are additional Swiss bank accounts to which she 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
24 October 2008