

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
represented by Crystal Awadalla

and to Claimant [REDACTED 2]
represented by *Hoerner Bank AG*

in re Account of Curt Bial

Claim Numbers 202286/RT; 202287/RT; 202289/RT;¹ 221201/RT

Award Amount: 10,375.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to the accounts of Curt Bial, Gertrud Bial, and Franz Bial, and the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Franz Bial.² This award is to the unpublished account of Curt Bial (the “Account Owner”), over which B. Bial (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”). The account awarded is from the Total Accounts Database (“TAD”) at the Bank.

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 Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted an Initial Questionnaire in 1999 and a Claim Form identifying the Account Owner as her paternal uncle, Curt (Kurt) Bial, who was born on 16 January 1882 in Breslau, Germany (now Wroclaw, Poland), and who was married to

¹ Claimant [REDACTED 1] submitted one additional claim, which is registered under the Claim Number 202288. In separate decisions, the CRT awarded the accounts of Richard and Gertrud Bial and Franz Bial to the Claimants. See *In re Accounts of Richard and Gertrud Bial* (approved on 20 May 2004; Amendment approved on 6 May 2006); *In re Account of Dr. Franz Bial* (approved on 25 October 2002); and *In re Accounts of Franz Bial* (approved on 12 May 2006).

² As noted in note 1, *supra*, the CRT awarded the accounts of Franz Bial to the Claimants in a separate decision.

[REDACTED], née [REDACTED]. Claimant [REDACTED 1] indicated that her uncle's parents were [REDACTED] and [REDACTED], née [REDACTED], and that her uncle had three brothers: [REDACTED], [REDACTED] (Claimant [REDACTED 1]' father), and [REDACTED]. Claimant [REDACTED 1] further indicated that before the Second World War, her uncle, who was Jewish, resided at Loquaipplatz 13 in Vienna, Austria, where he owned a department store called *Saphir*. According to Claimant [REDACTED 1], her uncle fled from Austria to Switzerland shortly after the incorporation of Austria into the Reich in March 1938 (the "Anschluss") because he was warned that he was being targeted by the Nazi authorities. Claimant [REDACTED 1] further indicated that her uncle was not allowed to stay in Switzerland, and so he fled to the United Kingdom via France, Belgium and the Netherlands. Claimant [REDACTED 1] indicated that shortly after her uncle fled Austria, her uncle's wife [REDACTED], who was not Jewish and remained in Vienna, committed suicide after receiving a mysterious note in the mail. Claimant [REDACTED 1] stated further that in 1939, her uncle sponsored her to come to London on a *Kindertransport* and that she lived with him in London. According to Claimant [REDACTED 1], during the War, her uncle, who was considered an enemy alien, was sent to Australia, where he was interned in a camp, and he later returned to England. Finally, Claimant [REDACTED 1] indicated that her uncle, who was childless, died on 14 January 1961 in Ruislip, the United Kingdom and that prior to his death he told her that she and her brother [REDACTED] (who died on 4 November 1983 without offspring) were to be his sole heirs.

In support of her claim, Claimant [REDACTED 1] submitted documents, including: (1) a copy of a United States Department of the Interior questionnaire completed by Claimant [REDACTED 1]' grandfather, dated 11 June 1898, indicating that [REDACTED] was married to [REDACTED], and that they had had four children: [REDACTED] (Claimant [REDACTED 1]' father), who was born on 2 February 1872, [REDACTED], who was born on 23 March 1873, [REDACTED], who was born on 31 August 1875, and Kurt, who was born on 16 January 1882; (2) a copy of her aunt's death certificate, indicating that [REDACTED], née [REDACTED], who was born on 21 March 1891 and who resided at Loquaipplatz 13 in Vienna, died on 8 May 1938 in Vienna; (3) a copy of a report by the temporary administrator of the firm *Saphir* to the Gestapo, dated 18 May 1938, informing the Gestapo that Curt Bial, the majority owner of *Saphir*, who resided at Loquaipplatz 13 in Vienna, had fled Austria. The administrator surmised that Curt Bial fled to Zurich, Switzerland, where he had traveled several times before. The administrator also indicated that Curt Bial had founded a dummy firm in Zurich called *Rata A.G.* and that he had transferred money illegally to a Mr. Dukas in Zurich. According to the administrator, Curt Bial held an account at the *Creditanstalt Wien*, which was frozen by an internal order of the *Creditanstalt Wien*. The administrator also mentioned Curt Bial's other property; that Curt Bial's wife [REDACTED] committed suicide on 8 May 1938; and that he had a brother named [REDACTED], and suggested the seizure of Curt Bial's property; (4) a copy of her uncle's Certificate of Identity, issued by the immigration branch of the Home Office of the United Kingdom in London on 29 March 1940, indicating that Kurt Bial was born on 16 January 1882 in Breslau, that his parents were [REDACTED] and [REDACTED], and that he previously resided in France; (5) a copy of her uncle's death certificate, indicating that Curt Bial died on 14 January 1961 in Ruislip; and (6) a copy of her German identification card, issued in Breslau on 20 June 1939, indicating that [REDACTED] was born on 5 August 1924 in Gleiwitz, Germany (now Gliwice, Poland).

Claimant [REDACTED 1] indicated that she was born on 5 August 1924 in Gleiwitz.

Claimant [REDACTED 1] previously submitted additional Initial Questionnaires to the Court in 1999, asserting her entitlement to a Swiss bank account owned by Lucie Bial, Wolfgang Bial, and Fritz Bial.³

Claimant [REDACTED 2]

Claimant [REDACTED 2], whose mother is Claimant [REDACTED 1]' cousin, submitted a Claim Form identifying [REDACTED] as his maternal grandfather, [REDACTED], who was born on 31 August 1875 in Pilsnitz, Germany (now part of Wroclaw, Poland) and who was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 2] indicated that his grandparents had two children: [REDACTED], who was born on 16 August 1911 in Berlin, and [REDACTED] (Claimant [REDACTED 2]'s mother), who was born on 20 November 1912 in Berlin and who was married to [REDACTED]. According to Claimant [REDACTED 2], his grandfather resided at Herdenstrasse 17 in Berlin-Zehlendorf, Germany until approximately 1928, and then resided in Vienna until his death on 27 December 1937. In a telephone conversation with the CRT on 12 December 2001, Claimant [REDACTED 2] stated that, according to his mother, one of her parents or grandparents was Jewish. Claimant [REDACTED 2] did not refer to a person named Curt Bial in his Claim Form.

In support of his Claim, Claimant [REDACTED 2] submitted documents, including a copy of a declaration issued by the Vienna District Court in January 1938, stating that [REDACTED] of Vienna died on 27 December 1937 and that his heirs were his wife, [REDACTED], who resided at Weimarerstrasse 92 in Vienna XIX, and his two children: [REDACTED], who resided at the same address, and [REDACTED], who resided in New York, the United States.

Claimant [REDACTED 2] indicated that he was born on 3 November 1942.

Information Available in the Bank's Records

The Bank's records consist of a customer card and a printout from the Bank's database. According to these records, the Account Owner was Curt Bial, who resided at Loquaiplatz 13 in Vienna, Austria. These records indicate that the Power of Attorney Holder was the Account Owner's wife, B. Bial. The Bank's records further indicate that the Account Owner, whose relationship with the Bank began in 1927, held a savings/passbook account, numbered 5030. These records also indicate that the account Owner instructed the Bank to send his mail to a contact in Zurich, Switzerland, and that no correspondence was to be sent to the Account Owner in Vienna. The Bank's records do not show when the savings/passbook account was closed, nor do these records indicate the value of this account.

³ The CRT will treat the claim to the accounts of Lucie Bial, Wolfgang Bial, and Fritz Bial in separate determinations.

This account was not part of the Account History Database at the CRT, but was identified as a result of matching and research carried out at the Bank and using, as noted above, the TAD at the Bank. The TAD at the Bank is one of the several databases that comprise a total of approximately 4.1 million accounts. These are part of the approximately 6.9 million accounts that were identified by the auditors who carried out the investigation to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) as open or opened in the 1933-1945 period in Swiss banks, less the estimated 2.8 million accounts for which no records remain. These 4.1 million accounts, in databases located at the 59 ICEP audited Swiss banks,⁴ are composed of 1.9 million savings accounts with a 1930-1940s value of 250 Swiss francs or less and accounts with Swiss addresses, and 2.2 million accounts that ICEP concluded should not be included within the Account History Database, that is within the 36,000 accounts that ICEP determined were “probably or possibly” owned by victims of Nazi persecution.

The account awarded is part of a group of accounts identified in the TAD.

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”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Curt Bial, numbered 19492. These documents consist of Curt Bial’s asset declaration and voluminous official correspondence. The asset declaration was filed on 29 July 1938 by Dr. Anton Wehofer, an attorney in Vienna who had been appointed by the court to act as a trustee over Curt Bial’s property on 5 May 1938, after Curt Bial had fled Austria on 2 May 1938. According to his asset declaration, Curt Bial, who was a businessman, formerly resided at Loquaipplatz 13 in Vienna, was approximately 55 years old at the time of the filing of the 1938 Census declaration, owned a 70 percent share of *Saphir Handelsgesellschaft* and *Firma Theodor Pichler*, and was married to [REDACTED], née [REDACTED], with whom he co-owned two houses in Vienna with a total value of RM 59,775.00. With the 1938 Census declaration, which was signed on 29 July 1938, the trustee submitted a letter dated July 1938, in which he noted that Curt Bial’s religion was Roman-Catholic, but that he was considered to be Jewish [under the Nuremberg laws] and that the value of his shares in *Saphir Handelsgesellschaft* and *Firma Theodor Pichler* could not be determined at the time, especially as it had been established that Curt Bial had committed tax fraud and underreported the firms’ earnings. Dr. Wehofer further indicated that Curt Bial fled Vienna on 2 May 1938 and was presumably residing in Amsterdam, the Netherlands. However, in a final letter to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish property (*Vermögensverkehrsstelle* or “VVSt”), which was undated but written in September 1938, the trustee stated that Curt Bial had informed him in the meantime that he was residing in Zurich and that he had given general power of attorney to Dr. Ernst Bange of Berlin on 27 June 1938. Accordingly, Dr. Wehofer’s trusteeship had been terminated on 28 September 1938. In this letter Dr. Wehofer further

⁴ These 59 audited banks represent 254 banks that existed in the 1933-1945 period.

indicated that Curt Bial's tax debts, relating to the years 1928 to 1937 amounted to 586,127.48 Reichsmark ("RM") without taking account of potential penalties, and set the value of Curt Bial's share of *Saphir Handelsgesellschaft* at RM 690,000.00 and his share of *Firma Theodor Pichler* at RM 110,000.00, and these shares were offered to the VVSt in connection with its aryanization of the firms. The 1938 Census records further contain correspondence relating to the aryanization of *Saphir* and *Theodor Pichler*. This correspondence indicates that the final sales price for Curt Bial's share of *Saphir*, adjusted downward after an appeal by the aryanizer, was RM 761,143.00 and the aryanization charge (*Entjudungsauflage*) was RM 68,838.00; Curt Bial's share in the sale price of *Firma Theodor Pichler* was RM 149,097.40 plus an *Entjudungsauflage* of RM 17,943.00. The file further contains correspondence in which the VVSt sought evidence of underreporting of assets in Curt Bial's 1938 Census declaration and noted in an internal memorandum, dated 12 October 1938, that Bial had left Austria with large tax debts and that his wife committed suicide in May 1938 because of these heavy liabilities. The VVSt at a later date also noted that Curt Bial had not been assessed atonement tax (*Judenvermögensabgabe*), and had fled without paying flight tax (*Reichsfluchtsteuer*). The latter had been assessed at RM 348,902.00 on total estimated assets of RM 1,539,609.00 and Curt Bial's blocked emigrant's account at the *Creditanstalt Bankverein* had been attached to cover this liability.

Finally, the asset declaration, in the section on securities, includes an entry for "*Zürich: Schweizer Bankver.*" and notes two values: "USA \$ 9,000.-" and "[ditto] 3,000.-," but indicates that these securities were held at the *Oesterreichische Creditanstalt - Wiener Bankverein*. These records 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 four claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant [REDACTED 1]

Claimant [REDACTED 1] has plausibly identified the Account Owner. Claimant [REDACTED 1]'s uncle's name, city and country of residence, and street address match the name, city and country of residence and street address of the Account Owner contained in the Bank's records and 1938 Census records. Claimant [REDACTED 1] identified the Account Owner's spouse's name, which also matches information about the Account Owner contained in the Bank's records and 1938 Census records.

In support of her claim, Claimant [REDACTED 1] submitted documents, including a copy of a report of the temporary administrator of the firm *Saphir* to the Gestapo; a copy of her uncle's British Certificate of Identity; and a copy of her uncle's death certificate, 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 Bank's records as the name and address of the Account Owner.

Claimant [REDACTED 2]

The CRT notes that Claimant [REDACTED 2] did not identify the Account Owner. However, on 25 October 2002, the Court approved an Award to the Claimants for five accounts owned by Dr. Franz Bial, who was Claimant [REDACTED 2]'s maternal grandfather and Claimant [REDACTED 1]' paternal uncle (the "October 2002 Award"). On 20 May 2004, the Court also approved an Award to Claimant [REDACTED 1] for three accounts owned by her paternal uncle Richard Bial and his wife Gertrud Bial (the "May 2004 Award"). In recognition of the fact that Richard Bial was also Claimant [REDACTED 2]'s great-uncle, the CRT issued an amendment to the May 2004 Award in order to award Claimant [REDACTED 2] a share of the accounts; the Amendment was approved by the Court on 6 May 2006 (the "May 2006 Amendment"). With respect to the account at issue, the CRT has determined that Claimant [REDACTED 1] plausibly identified the Account Owner as her uncle Curt Bial and notes that she identified his brother as [REDACTED], (Claimant [REDACTED 2]'s maternal grandfather). Accordingly, the CRT determines that the Account Owner has been plausibly identified as Claimant [REDACTED 2]'s maternal great-uncle.

The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish and that he fled Austria soon after the *Anschluss*. Claimant [REDACTED 1] also submitted a copy of a report of the temporary administrator of the firm *Saphir* to the Gestapo in which the administrator indicated that Curt Bial was Jewish and that his assets should be seized. Finally, the CRT notes that the 1938 Census records indicate that Curt Bial was Jewish and that the firms in which he held a 70 percent interest were aryanized.

Claimant [REDACTED 1]' Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting specific information, demonstrating that the Account Owner was Claimant [REDACTED 1]' uncle. The CRT notes that Claimant [REDACTED 1] identified information about the Account Owner as contained in the Bank's records and 1938 Census records. The CRT further notes that Claimant [REDACTED 1] submitted copies of her uncle's Certificate of Identity and death certificate; her aunt's death certificate; a department of the Interior statement referring to her uncle; and an administrator's report relating to the her uncle and his assets. The CRT notes that it is plausible that these documents are documents which most likely only a

family member would possess. The CRT also notes that Claimant [REDACTED 1] also submitted a copy of her own German identification card, which provides independent verification that Claimant [REDACTED 1]' maiden name matches the family name of 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 Claimant [REDACTED 1] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 1] is related to the Account Owner as she asserted in her Claim Form and Initial Questionnaire.

Claimant [REDACTED 2]'s Relationship to the Account Owner

In the October 2002 Award and in the May 2006 Award, the CRT determined that Claimant [REDACTED 2] had plausibly identified [REDACTED] as his maternal grandfather [REDACTED]. Also in the May 2006 Award and in the current Award, the CRT determined that Claimant [REDACTED 1] plausibly demonstrated that her father [REDACTED], [REDACTED] and Kurt (Curt) Bial were brothers and that therefore [REDACTED] and Curt Bial were her uncles. In the May 2006 Amendment, the CRT determined that Claimant [REDACTED 2]'s grandfather was Claimant [REDACTED 1]' maternal uncle. As described above, Claimant [REDACTED 1] submitted a copy of a United States Department of the Interior questionnaire, indicating that [REDACTED] and Curt Bial were brothers. Therefore, the CRT determines that it is plausible that the Account Owner was Claimant [REDACTED 2]'s mother's uncle and, consequently, Claimant [REDACTED 2]'s great-uncle.

The Issue of Who Received the Proceeds

Given that the Account Owner fled Austria soon after the *Anschluss*; that he was targeted by the Nazi authorities and that a request to seize his assets was made; that the firms in which he had a majority interest were aryanized; that the Power of Attorney Holder, who was the Account Owner's wife, committed suicide in Vienna in May 1938; that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; 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; 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 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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was her uncle and Claimant [REDACTED 2]'s great-uncle, and those relationships justify an Award. Third,

the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one savings/passbook 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 ICEP Investigation, in 1945 the average value of a savings/passbook account was 830.00 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 10,375.00.

The CRT notes that Curt Bial’s 1938 Census declaration indicates that he held shares of a Swiss bank, but these securities were deposited in Vienna, not in Switzerland. The value of these shares therefore cannot be awarded, nor can their value be used to determine the Award amount of the savings/passbook account.

Division of the Award

According to Article 23(1)(d) of 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. In this case, the Claimants are both descendants of the Account Owner’s parents. Accordingly, the Claimants are each entitled to one half of the total award amount.

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) at banks other than the Bank.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
27 February 2007