

CLAIMS RESOLUTION TRIBUNAL

Case No. CV96-4849

Certified Award

to Claimants [REDACTED 1],

and [REDACTED 2],
represented by Hoerner Bank AG

in re Accounts of Franz Bial

Claim Numbers: 202289/KG; 221201/KG¹

Award Amount: 107,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 2] (“Claimant [REDACTED 2]”) and [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”), (together, the “Claimants”) to the published and unpublished accounts of Franz Bial (the “Account Owner”) at [REDACTED] (“Bank I”), at the Zurich branch of [REDACTED] (“Bank II”), and at the Zurich branch of the [REDACTED] (“Bank III”) (together, the “Banks”).

On 25 October 2002 the Court approved an Award to the Claimants for five accounts held by the Account Owner at Bank I (the “October 2002 Award”). In that decision, the CRT also determined that the Account Owner’s account at Bank III had a negative balance. Additionally, in the October 2002 Award, the CRT reserved decision with regard to four accounts held by the Account Owner at Bank II. The accounts at Bank II are the subject of the present Award.

All awards 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.

Information Provided by the Claimants

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as his

¹ Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) submitted additional claims to the account of Curt Bial, and to the published accounts of Richard Bial and Gertrud Bial, née Quetscher, which were registered under the Claim Numbers 202286, 202287, and 202288, respectively. The CRT determined that claims 202287 and 202288 are duplicate claims and is treating them under the consolidated Claim Number 202287.

In a separate decision and two subsequent amendments, the Court awarded the accounts of Richard Bial and Gertrud Bial, née Quetscher, to Claimant [REDACTED 1] and Claimant [REDACTED 2] (“Claimant [REDACTED 2]”): see *In re accounts of Richard Bial and Gertrud Bial* (approved on 20 May 2004) and subsequent amendments. The CRT will treat Claimant [REDACTED 1]’ claim to the account of Curt Bial in a separate determination.

maternal grandfather, Dr. Franz Bial, who was born on 31 August 1875 in Pilsnitz, Silesia, Germany (near Breslau, present-day Wroclaw, Poland), and was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 2] indicated that his grandparents had two children: [REDACTED] and [REDACTED], née [REDACTED] (Claimant [REDACTED 2]'s mother), who were born on 16 August 1911 and 20 November 1912, respectively, both in Berlin, Germany. In a telephone conversation with the CRT on 12 December 2001, Claimant [REDACTED 2] indicated that his grandfather, who was a doctor of chemistry, resided in Berlin from 1911 until at least 1928, and possibly later. Claimant [REDACTED 2] stated that, according to his mother, [REDACTED], one of her parents or grandparents was Jewish. Further, Claimant [REDACTED 2] stated that he had heard from his mother that his grandfather owned a house in Switzerland and spent time there, but that he was unaware of the dates of his grandfather's residence there. Claimant [REDACTED 2] further indicated that his grandparents moved to Vienna, Austria, although he was unaware of the date of the move. According to Claimant [REDACTED 2], his grandparents resided at Weimarerstrasse 92 in Vienna XIX.

Claimant [REDACTED 2] stated that, following the Nazi rise to power in Germany, his grandfather refused to return there and his property was confiscated by the Nazis. Claimant [REDACTED 2] indicated that his grandfather died on 27 December 1937 in Vienna. Claimant [REDACTED 2] stated that his grandmother, [REDACTED], lived between approximately 1937 and 1945 at Herderstrasse 17 in Berlin-Zehlendorf, and that she died sometime before 1948, possibly in North Carolina, the United States, where she settled after the Second World War. Claimant [REDACTED 2] further stated that, after the Second World War, his mother submitted compensation claims for Franz Bial's confiscated property in Germany, which were unsuccessful. Claimant [REDACTED 2] indicated that his uncle, [REDACTED], who did not have any children, died in October 1985 in Takoma Park, Maryland, the United States, and that his mother, [REDACTED], died on 11 July 1989 in Seattle, Washington, the United States.

In support of his claim, Claimant [REDACTED 2] submitted a photograph of his grandparents; a declaration issued by the Vienna District Court in January 1938, stating that Dr. Franz Bial of Vienna died on 27 December 1937 and that his heirs were his wife, [REDACTED], of 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] also submitted a confirmation certificate, dated in December 1938 in Berlin-Zehlendorf, documenting that in April 1928 [REDACTED] had been confirmed as a member of a Christian church; Claimant [REDACTED 2]'s own birth certificate, dated in 1942 in North Carolina, and his mother's death certificate, dated in 1989 in Seattle, both stating that his mother was born in Germany and that her maiden name was [REDACTED]. Finally, Claimant [REDACTED 2] submitted a form related to a German compensation claim pertaining to Dr. Franz Bial, dated in 1965 in Berlin, showing that his wife was [REDACTED], his daughter was [REDACTED], and that the family formerly resided in Berlin.

Claimant [REDACTED 2] stated that he was born on 31 November 1942 in Durham, North Carolina.

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her paternal uncle, Dr. Franz Bial, who was born on 31 August 1875 in Breslau, Silesia (now Wroclaw, Poland), was married to [REDACTED], and had two children, [REDACTED] and [REDACTED].

Claimant [REDACTED 1] stated that her uncle, who was Jewish, was a doctor of chemistry, and that he lived in Berlin-Zehlendorf. In a telephone conversation with the CRT on 5 December 2001, Claimant [REDACTED 1] indicated that her uncle may have moved to Vienna before 1936, and that he died there sometime before of the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”). Claimant [REDACTED 1] also stated that after the *Anschluss*, her aunt, [REDACTED], tried to escape but was captured by the Nazis and sent to a prison in Berlin. Claimant [REDACTED 1] stated that she is unaware of the fate of her aunt or her aunt’s children.

In support of her claim, Claimant [REDACTED 1] submitted a document from the United States Department of the Interior, Bureau of Pensions, dated in 1898, showing that [REDACTED] had four sons: [REDACTED] (whom Claimant [REDACTED 1] identified as her father), [REDACTED], Francis (whom Claimant [REDACTED 1] identified as her uncle, Dr. Franz Bial), and [REDACTED] Claimant [REDACTED 1] also submitted the marriage certificate of [REDACTED] and [REDACTED] (whom Claimant [REDACTED 1] identified as her parents), dated in 1920 in Breslau, stating that Dr. Franz Bial, a chemist, residing at Herderstrasse 17 in Berlin-Zehlendorf, was a witness at the wedding. Claimant [REDACTED 1] also submitted her own passport, issued by the German Reich in 1939 in Breslau, and bearing the “J” stamp, affixed to all passports of persons considered Jewish under the Nuremberg laws. The passport confirms that her maiden name is [REDACTED].

Claimant [REDACTED 1] stated that she was born on 5 August 1924 in Gleiwitz, Silesia, Prussia (present-day Gliwice, Poland).

Information Available in the Banks’ Records

Bank I

According to Bank I’s record, which consists of a customer card, the Account Owner was Dr. Franz Bial, who resided at Weimarerstrasse 92 in Vienna XIX. This record indicates that *Frau* [REDACTED], née [REDACTED], and [REDACTED] held power of attorney over the Account Owner’s accounts at Bank I. Bank I’s record also indicates that [REDACTED] resided in Zurich. Additionally, 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”) reported that [REDACTED] resided at the same Vienna address as the Account Owner, and that the Account Owner and [REDACTED] also resided at Herderstrasse 17 in Berlin-Zehlendorf. A notation on the customer card indicates that Bank I was instructed not to write to the Account Owner in Berlin. According to another notation Bank I was instructed on 19 March 1935 to send all correspondence to [REDACTED] in Zurich.

Bank I's record and the report of the auditors who conducted the ICEP Investigation indicate that the Account Owner held a custody account that was closed on 10 April 1939, as well as three savings accounts and two demand deposit accounts which were closed on unknown dates. As noted above, the Account Owner's accounts at Bank I were addressed in the October 2002 Award.

Bank II

Bank II's records consist of an account card with account numbers and account closure dates, and several printouts from Bank II's database. According to these records, the Account Owner was Dr. Franz Bial of Berlin. These records indicate that Dr. Franz Bial held eleven accounts at Bank II, all but four of which were closed before January 1933.

Of the four accounts that were closed after January 1933, Bank II's records indicate that the Account Owner held two numbered demand deposit accounts, at least one of which was opened sometime before 16 April 1931, and both of which were closed on 12 June 1933. These records indicate that in 1932 one of these two accounts had a balance of 107,087.50 Swiss Francs ("SF"). The value of the other account is not indicated. Further, according to Bank II's records, the Account Owner held two additional numbered demand deposit accounts, both of which were opened some time before 26 October 1931 and closed on 8 September 1936. One of these accounts had a balance of SF 942.00 as of 1933. The other had a balance of SF 550.00 as of 1935. There is no evidence in Bank II's records that the Account Owner closed these four accounts and received the proceeds himself.

Bank III

According to Bank III's record, which consists of a list of debit accounts from 1935, the Account Owner was Dr. Franz Bial who resided in Vienna. Bank III's record indicates that the account had a negative balance of SF 12,000.00. As mentioned earlier, the Account Owner's account at Bank III was addressed in the October 2002 Award.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/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 two different persons named Dr. Franz Bial in one file, numbered 35703. Three documents in this file refer to a Dr. Franz Bial who resided at Weimarerstrasse 92, Vienna XIX, which matches the address of the Account Owner contained in Bank I's record. These three documents do not include any information about assets owned by Dr. Franz Bial, including any assets at a Swiss bank. The records also include files, numbered 50407 and 37659, containing documents regarding the assets held by [REDACTED], Dr. Franz Bial's widow, and [REDACTED], son of Dr. Franz and [REDACTED], respectively. These documents confirm

that Dr. Franz Bial's heirs are his wife, [REDACTED], and their children, [REDACTED] and [REDACTED]. The documents further contain correspondence regarding [REDACTED]'s inability to file an asset declaration on time because she was held in detention for a 1934 infringement of the flight tax law. At the time she signed her empty asset declaration, on 11 October 1938, she noted that probate of her husband's estate was still pending, in part because it included heavily mortgaged real estate in Switzerland. The asset declaration of [REDACTED] shows his total assets to consist of 1,300.00 Reichsmark ("RM") in cash and his rights to a share of his father's estate, the value of that share being unknown at the time of filing, 14 July 1938, as well as on 31 October 1938, when he was due to appear at the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle*) to explain his declaration. Neither file mentions any financial assets held in Switzerland.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the discretion of the CRT. In this case, the CRT determines it appropriate to join the claims of Claimant [REDACTED 2] and Claimant [REDACTED 1] in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants' relative's name matches the published name of the Account Owner. The Claimants also stated that their relative resided in Berlin, and that he was married to [REDACTED], née [REDACTED], which matches the Account Owner's published city of residence and the published name of one of the power of attorney holders for the accounts at Bank I. Furthermore, the Claimants identified unpublished information about the Account Owner, including: his street address in Berlin, his street address in Vienna, and his professional title.

In support of his claim, Claimant [REDACTED 2] submitted a declaration issued by the Vienna District Court and a German compensation claim pertaining to Dr. Franz Bial, and Claimant [REDACTED 1] submitted a document from the United States Department of the Interior and the marriage certificate of [REDACTED] and [REDACTED], providing independent verification that the people who are claimed to be the Account Owner and one of the power of attorney holders had the same names and resided at the same addresses recorded in the Banks' records as the names and addresses of the Account Owner and one of the power of attorney holders. The CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have plausibly shown that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish. Although the exact date

of the Account Owner's departure from Germany is not clear from the information provided by the Claimants or the Banks' records, it would appear from the flight tax case against his widow, that the family fled Germany for Austria in 1934. Furthermore, according to Claimant [REDACTED 2]'s statement and documents related to a German compensation claim from 1965, the Nazi regime confiscated the Account Owner's assets.

The Claimants' Relationship to the Account Owner

Claimant [REDACTED 2] has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents demonstrating that the Account Owner is his grandfather. These documents include a declaration issued by the Vienna District Court and a German compensation claim pertaining to Dr. Franz Bial, showing that the Account Owner's daughter is [REDACTED]; and Claimant [REDACTED 2]'s own birth certificate, stating that [REDACTED] is his mother.

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents demonstrating that the Account Owner is her uncle. These documents include a document from the United States Department of the Interior, naming one of the Account Owner's brothers as [REDACTED], whom Claimant [REDACTED 1] identified as her father; her parents' marriage certificate, showing that the Account Owner was a witness at the wedding; and Claimant [REDACTED 1] passport, stating that her maiden name is [REDACTED].

There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

According to Articles 14 and 46(20) of the Rules, the CRT has jurisdiction to resolve claims to accounts of Victims or Targets of Nazi Persecution open or opened in Swiss banks during the Relevant Period, which is defined as the period from 1 January 1933 to 31 December 1945. Accordingly, with respect to the Account Owner's accounts at Bank II that were closed before the Nazi rise to power in January 1933, the CRT lacks jurisdiction over these accounts under Articles 14 and 46(20) of the Rules and makes no decision about their disposition in this Award.

As for the two demand deposit accounts at Bank II that were closed on 12 June 1933, the CRT notes that the Account Owner may have been living outside Nazi-dominated territory by the time these were closed. With respect to the two demand deposit accounts at Bank II that were closed on 8 September 1936, the records at Bank I and Bank III indicate that the Account Owner was living outside Nazi-dominated territory by that date. The CRT additionally notes that Bank I and Bank III's records indicate that the Account Owner had contact with those two banks after his Bank II accounts were closed.

However, in Bank II's records Berlin is listed as the Account Owner's only residence and Claimant [REDACTED 2] indicated that the Account Owner's property was confiscated by the Nazis. Given that the four accounts at Bank II were closed after the Nazi rise to power, following which 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 there is no record of the payment of these four accounts to the Account Owner; that the Account Owner's heirs would not have been able to obtain information about his accounts 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 (a), (h) and (j), as provided in Article 28 of the Rules (see Appendix A) and Appendix C,² 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 [REDACTED 2]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was his grandfather, and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the four accounts at issue. Further, the CRT notes that Claimant [REDACTED 2], as a descendant of the Account Owner, has a better entitlement to the Award than does Claimant [REDACTED 1], who is a descendant of the Account Owner's parents.

Amount of the Award

In this case, the Account Owner held one demand deposit account with an unknown value and three demand deposit accounts with the following values: SF 107,087.50, SF 942.00, and SF 550.00, recorded in 1932, 1933 and 1935 respectively. The first two accounts were closed on 12 June 1933, and the latter two accounts were closed on 8 September 1936.

With regard to the demand deposit accounts closed on 8 September 1936, Bank II's records indicate that the value of the accounts as of 1933 and 1935 were SF 942.00 and SF 550.00, respectively. 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.

With regard to the account with a value of SF 107,087.50, the CRT has determined that it cannot use this historic value because it was recorded prior to the beginning of the Relevant Period. The CRT notes that the balance of this account could have changed materially by the time the account was closed. Therefore, the CRT determines that the value of this account at the time of its closure was unknown. With regard to this account and the account of unknown value, 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

² See Rules, Appendix C, p. 2, available on the CRT II website -- www.crt-ii.org.

of a demand deposit account was SF 2,140.00.

The total value of the four accounts is therefore SF 8,560.00. The current value of this amount is determined by multiplying the adjusted balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 107,000.00.

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, as noted previously, Claimant [REDACTED 2], who is a descendant of the Account Owner, has a better entitlement to the Award than does Claimant [REDACTED 1], who is a descendant of the Account Owner's parents. Therefore, Claimant [REDACTED 2] is entitled to 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).

Certification of the Award

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

Claims Resolution Tribunal
12 May 2006