

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1]

and [REDACTED 2]

in re Account of Edouard Fain

Claim Numbers: 001628/AX; 209361/AX

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) and upon the claim of [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the published account of Edouard Fain (the “Account Owner”) at the Geneva branch of the [REDACTED] (the “Bank”).

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 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her mother’s father-in-law, Edouard Fain, who was the father of the Claimant’s mother’s first husband. Claimant [REDACTED 1] indicated that Edouard Fain, who was Jewish, was a businessman who dealt in timber and owned a silk lingerie factory in Riga, Latvia with his son, [REDACTED]. The Claimant further indicated that Edouard and [REDACTED] Fain sold most of their assets prior to the Russian occupation of Latvia, and that they deposited the proceeds in a Swiss bank. Claimant [REDACTED 1] indicated that [REDACTED] was married to her mother in Riga in 1938. Claimant [REDACTED 1] further indicated that [REDACTED] was on a business trip when the Second World War broke out, but that he was murdered by a Nazi soldier near his house when he returned to save his wife, the Claimant’s mother, and their two children, [REDACTED] and [REDACTED]. Claimant [REDACTED 1] stated that Edouard Fain, together with his wife, daughter and granddaughter, perished in the ghetto in Riga. The Claimant further stated that [REDACTED] and [REDACTED] perished during the Second World War but that the Claimant’s mother survived and married the Claimant’s father, [REDACTED], after the

War. Claimant [REDACTED 1] stated that her mother was the only member of the Fain family who survived the Second World War.

In an attempt to locate accounts belonging to the Fain family, Claimant [REDACTED 1] together with her mother, met a Swiss representative in Toronto, Canada, in 1985. The representative told them that without an account number, they could not succeed in gaining access to any account belonging to Edouard and [REDACTED] Fain. In support of her claim, Claimant [REDACTED 1] submitted a document issued by the Latvian authorities, indicating that the Claimant's mother, [REDACTED], was previously married to [REDACTED]; [REDACTED]'s birth certificate, indicating that he was born to [REDACTED] and [REDACTED]; and the death certificate of her mother. Claimant [REDACTED 1] indicated that she was born on 21 June 1950 in Riga.

Claimant [REDACTED 1] previously submitted an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by [REDACTED].¹

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as her maternal great-uncle, Edouard Fain, who was born in Lutum, Latvia. Claimant [REDACTED 2] stated that Edouard Fain, who was Jewish, was in the leather business with his brother, Claimant [REDACTED 2]'s grandfather, [REDACTED]. Claimant [REDACTED 2] indicated that her family conducted business in Switzerland, and that her uncle, [REDACTED], the son of Edouard Fain, graduated from a medical school in Lucerne, Switzerland. Claimant [REDACTED 2] stated that her grandparents, who were Jewish, were murdered by the Nazis in 1942 in the Riga ghetto, and that Edouard Fain was arrested by the Nazis in 1941. Claimant [REDACTED 2] indicated that Edouard Fain perished between 1941 and 1943. Claimant [REDACTED 2] stated that she is the only living member of the Fain family. In support of her claim, Claimant [REDACTED 2] submitted her birth certificate, showing that she is the daughter of [REDACTED], née [REDACTED]. Claimant [REDACTED 2] stated that she was born on 6 January 1926 in Riga.

Claimant previously submitted an Initial Questionnaire ("IQ") with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her maternal grandfather, [REDACTED].²

¹ The CRT did not locate an account belonging to the Claimant [REDACTED 1] s relative, [REDACTED], 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). The Claimant should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

² The CRT did not locate an account belonging to the Claimant [REDACTED 2]'s relative, [REDACTED], in the Account History Database prepared pursuant to the ICEP Investigation, which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules. The Claimant should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

Information Available in the Bank's Records

The Bank's records consist of account statements, internal lists of accounts, and printouts from the Bank's database. According to these records, the Account Owner was Edouard Fain (Fain). The Bank's records do not contain information about the Account Owner's domicile. The Bank's records indicate that the Account Owner held one account, but they do not indicate its type nor do they indicate the date it was opened. These records indicate that the account was considered dormant by the Bank and was transferred to a suspense account for dormant assets on 20 December 1950. The balance of the account as of the date of its transfer was 32.50 Swiss Francs ("SF").

The Bank's records do not show when the account at issue was closed. 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 find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945.

There is no evidence in the Bank's records 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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant [REDACTED 1]'s mother's father-in-law's name and Claimant [REDACTED 2]'s great-uncle's name match the published name of the Account Owner. The CRT notes that the Bank's records do not contain any specific information about the Account Owner other than his name. The CRT further notes that the name Edouard Fain appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the "ICEP List").

The CRT notes that Claimant [REDACTED 1]'s relative and Claimant [REDACTED 2]'s relative are not the same person. However, given that the Claimants have identified all published information about the Account Owner that is available in the Bank's records; that the information provided by each claimant supports and in no way contradicts any information available in the Bank's records; that there is no additional information in the Bank's records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner;

and that there are no other claims to this account, the CRT finds that Claimant [REDACTED 1] and Claimant [REDACTED 2] each has plausibly identified the Account Owner.

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 her mother's father-in-law was Jewish, and that he perished in the Riga ghetto. Claimant [REDACTED 2] stated that her great-uncle was Jewish, that he was arrested by the Nazis, and subsequently perished between 1941 and 1943.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information, demonstrating that the Account Owner was Claimant [REDACTED 1]'s mother's father-in-law, and Claimant [REDACTED 2]'s great-uncle. The CRT notes that Claimant [REDACTED 1] submitted a copy of an official document from the Latvian authorities, indicating that her mother was previously married to [REDACTED], and the birth certificate of her half-brother, [REDACTED], and that Claimant [REDACTED 2] submitted an extract of her birth certificate, indicating that she is the daughter of [REDACTED], née [REDACTED]. These documents provide independent verification that the Claimants' relatives bore the same family name as the Account Owner.³ There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The Bank's records indicate that the account was transferred to a suspense account on 20 December 1950 and was subsequently closed on an unknown date. Given that Claimant [REDACTED 1] and Claimant [REDACTED 2]'s relatives perished during the Holocaust; that there is no record of the payment of the Account Owners' 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), (i), and (j), as provided in Article 28 of 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.

³ The CRT notes that the documents submitted by the Claimants indicate that Claimant [REDACTED 1]'s relatives name is spelled "[REDACTED]" and Claimant [REDACTED 2]'s relative name is spelled "[REDACTED]," while the Bank's records indicate that the Account Owners name was spelled "Fain" or "Fain." The CRT further notes that it is plausible that the inconsistencies in the spellings can be explained by the fact that in Eastern European countries a last name can typically have multiple spellings due to male and female versions, and that there may have been slight inconsistencies if the names were transliterated from Cyrillic characters.

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 mother's father-in-law, and Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was her great-uncle, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one account of unknown type. The Bank's records indicate that the value of the account as of 20 December 1950 was SF 32.50. In accordance with Article 31(1) of Rules, this amount is increased by an adjustment of SF 90.00, which reflects standardized bank fees charged to the account between 1945 and 1950. Consequently, the adjusted balance of the account at issue is SF 122.50. According to Article 29 of the Rules, if the amount in an account of an unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 49,375.00.

Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each Claimant has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1] is entitled to one-half of the total award amount, and Claimant [REDACTED 2] is 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).

Certification of the Award

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

Claims Resolution Tribunal
30 December 2004