

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Gabriele Mayr
acting on behalf of herself and her mother Ilse Feix, her half-brother Robert-Alexander Feix, her
half-sister Maria Feix, and her brothers Ulrich Feix and Hans Marius Feix

in re Account of Robert Feix

Claim Number: 223311/MD

Award Amount: 40,560.00 Swiss Francs

This Certified Award is based upon the claim of Gabriele Mayr (the “Claimant”) to the account of Robert Feix (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her father, Robert Feix, who was Jewish and was born on 26 May 1893 in Vienna, Austria, and was married to Maria Feix in 1916 in Bolzano, Italy. The couple had two children, Robert and Maria. According to the Claimant, Robert Feix married again in 1934, to Ilse Hartmann. The family tree submitted by the Claimant indicates that Ilse and Robert Feix had three children: Gabriele (the Claimant), Ulrich, and Hans Marius.

The Claimant stated that her father, who was an Austrian national, lived in Frankfurt, Germany, and owned a factory named “*Opekta*” located in Cologne, Germany. The Claimant stated further that her father was arrested in Vienna on 26 March 1938 by the Nazis, and was detained until 19 May 1938. According to the Claimant, her father was arrested again in Frankfurt, where he was detained from July 1938 to March 1940, and then from July 1942 to April 1945 he was detained in Berlin and in Dachau. The Claimant stated that after the Second World War, her father lived in Innsbruck-Igls, Austria, until his death in 1973. In support of her claim, the Claimant submitted her marriage certificate indicating that she is the daughter of Robert Feix. The Claimant stated that she was born on 16 February 1941 in Frankfurt am Main, Germany.

Information Available in the Bank Records

The bank records consist of bank statements, a safe deposit rental contract, and internal bank correspondence. According to these records, the sole Account Owner was Robert Feix, who was an Austrian national living in Germany. The Power of Attorney Holder was Mr. E. Elias-Frank from Basel, the managing director of the Account Owner's business in Switzerland. According to the bank records, the Account Owner held a safe deposit box that was opened in July 1931, and a demand deposit account.

According to the bank records, the Bank attempted to contact the Account Owner in 1939 to inform him about the fees due for the rent of the safe deposit box. In response, the Power of Attorney Holder contacted the Bank in June 1939, and informed them that the Account Owner, who was Jewish, had been in Nazi detention for approximately one year. The Power of Attorney Holder informed the Bank that the key to the safe deposit box was left in Germany and that the safe deposit box contained business correspondence that did not have any value. The Power of Attorney Holder advised the Bank that he would not pay the safe deposit box fees. In March 1946, the Bank opened the safe deposit box, and transferred the contents to a free deposit. The bank records do not indicate what happened to the safe contents after the transfer to the open deposit, but 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 the safe deposit box 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.

The bank records do not show if or when the demand deposit account was closed, or to whom it was paid. The last known balance of the demand deposit account was 459.00 Swiss Francs as of 20 January 1937. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant stated that her father was an Austrian national and that he lived in Germany. This information matches the unpublished information about the Account Owner contained in the bank documents. The Claimant also submitted her father's signature sample which matches the signature sample of the Account Owner contained in the bank documents.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has plausibly shown that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and that he was kept in detention by the Nazis.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents, including her marriage certificate, demonstrating that she is the Account Owner's daughter. The Claimant asserted that her mother and her siblings, whom she represents, are also the Account Owner's heirs.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, the Power of Attorney Holder, or his heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her father, and that relationship justifies 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

Pursuant to Article 35 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 present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a safe deposit box account was 1,240.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an amount of 14,880.00 Swiss Francs.

The Bank records indicate that the value of the demand deposit account was 459.00 Swiss Francs as of 20 January 1937. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an amount of 25,680.00 Swiss Francs.

Consequently, the total value for both accounts is 40,560.00 Swiss Francs.

Article 37(3)(a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account values, and 65% of the total award amount is 26,364.00 Swiss Francs.

Division of the Award

The Claimant is representing her mother, Ilse Feix, her half-brother Robert-Alexander Feix, her half-sister, Maria Feix, as well as her brothers, Ulrich Feix and Hans Marius Feix in these proceedings. According to Article 29 of the Rules, if the Account Owner's spouse and the Account Owner's children have submitted claims to the account, the spouse of the Account Owner will be awarded half of the value of the account, and the remainder will be divided in equal shares between the children of the Account Owner. Accordingly, the CRT determines that the Claimant's mother shall receive one-half of any payment made to the Claimant, and that the Claimant siblings whom she represents shall receive one-tenth of any payment made to the Claimant.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 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.

Claim Resolution Tribunal
October 24, 2002

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:¹

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner was a child at the time of the Second World War;
- h) the Account Owners and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners or their heirs received the proceeds of the Account.³

¹ See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); see also Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia

and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

² See Bergier Final Report at 443-44, 446-49; *see also* ICEP Report at 81-83.

³ As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, *see Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, *see* Bergier Final Report at 450 -51, and possibly Romania as well, *see* Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. *See* Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." *Id.* at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. *See In re Holocaust Victim Asset Litig.*, 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).