

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by [REDACTED]

in re Accounts of Ernst Feldheim, Lea Feldheim and Fritz Feldheim

Claim Number: 221206/MBC

Award Amount: 312,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Fritz Feldheim, Ernst Feldheim and Lea Feldheim (the “Account Owners”) at the [REDACTED] (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 Claimant

The Claimant submitted a Claim Form identifying the Account Owners Fritz Otto Feldheim and Ernst (Ernest) Feldheim as his father’s first cousins, and Account Owner Lea Feldheim as Ernst Feldman’s wife. The Claimant stated that Fritz, who was born between 1880 and 1885 in either Bielefeld or Hamburg, Germany, and Ernst, who was born in 1884 in Bielefeld, were the sons of [REDACTED] and [REDACTED]. The Claimant further stated that Ernst was married to Lea [REDACTED] in 1914, and Fritz was married to [REDACTED]. According to the Claimant, neither couple had children. The Claimant stated that his relatives were Jewish and lived in Brussels, Belgium, before the Second World War.

The Claimant stated that Ernst and Lea Feldheim fled from Belgium to Brazil, where Ernst died in 1943, and that Lea died in Cannes, France, in 1965. The Claimant stated that Fritz Feldheim was deported, and that the Claimant is unaware of his fate. According to the Claimant, [REDACTED] died in approximately 1980. The Claimant stated in his Claim Form that he did not know the identity of Clémentine Feldheim, a published Power of Attorney Holder for the account belonging to Fritz Feldheim.

The Claimant stated that he was born on 10 September 1928.

Information Available in the Bank Records

The bank records consist of account opening contracts and power of attorney authorizations and indicate the existence of two custody accounts.¹ One account was a joint custody account belonging to Ernst (also spelled Ernest) Feldheim and Lea Feldheim-[REDACTED] of 75 Avenue Cortenberg, Brussels, that was opened in Bern, Switzerland on 1 May 1936. The records indicate that a second custody account belonged to Fritz Feldheim, also of Brussels. On 26 August 1938, writing from the Belgian consulate in Innsbruck, Austria (then annexed into the German Reich), Fritz Feldheim revoked all previous powers of attorney and appointed his brother Ernst in Brussels as a holder of Power of Attorney over a custody account at the Bank. On 1 September 1938, Fritz Feldheim signed a standard form in Bern granting power of attorney over his custody account to his brother. On 27 December 1939, Fritz Feldheim authorized his wife, Clémentine Feldheim, as an additional Power of Attorney Holder over his custody account. This additional form, which was signed in Bern, also indicated that Fritz Feldheim had the middle initial “O.” The bank documents contain signature samples for Ernst, Lea, Fritz, and Clémentine Feldheim.

The bank records do not show if or when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts. The auditors who carried out the investigation of the Bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (the “ICEP Investigation”) did not find these accounts in the Bank’s system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945.²

The CRT’s Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners as his father’s cousins (the grandchildren of his father’s paternal grandparents) and the wife of one of those cousins. The Claimant has described the precise relationship between Fritz and Ernst Feldheim, as well as between Lea and Ernst Feldheim, as indicated in the unpublished bank documents. He has further provided Lea Feldheim’s maiden name precisely as it appears in the unpublished bank documents. Finally, he has provided Fritz Feldheim’s middle name, Otto, which is consistent with the middle initial of Fritz O. Feldheim that appears in the unpublished bank documents.

Although the Claimant identifies Fritz Feldheim’s wife as [REDACTED], which is inconsistent with bank documents indicating that Fritz Feldheim was married to Clémentine, the CRT finds

¹ The CRT has found indications of the existence of other accounts at the Bank held in the name of the Account Owners, and it is presently doing further research into these accounts.

² The bank records pertaining to the account of Fritz Feldheim contain a stamp by a bank employee indicating that the file was “*abgelegt*” in 1946. From the lack of context surrounding this stamp, it is unclear if the account was still open in 1946 and transferred by the Bank to a different filing system at that time for record-keeping reasons, or if it had previously been closed and its records were being archived. The ICEP auditors were unable to reach a conclusion regarding the meaning of this stamp.

that the Claimant has provided sufficient evidence regarding the identity of the Account Owners to support the plausibility of the match.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has plausibly shown that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and lived in Brussels, Belgium after the start of the Second World War. A bank document, dated 27 December 1939, confirms that Fritz and Clémentine were indeed still residents of Brussels at that time. According to the Claimant, Ernst and Lea Feldheim were forced to flee to Brazil, while Fritz was deported and his fate is unknown.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting numerous official documents and a family tree, which together indicate that he is the great-grandson of the grandparents of Fritz and Ernst Feldheim and that Ernst was married to Lea. The Claimant stated that the Account Owners died without issue and there is no information to indicate that the Account Owners have other surviving heirs. Furthermore, the only other claims to these accounts came from someone who appears not to be related. Although the Claimant is related to Lea Feldheim only by marriage and not by blood, the CRT notes that no one claiming to be her blood relative has claimed her share of the account.

The Issue of Who Received the Proceeds

This case raises the question of whether the Account Owners could have accessed their accounts after leaving Belgium. With regard to the account held by Account Owners Ernst and Lea Feldheim, the CRT notes that after the German invasion of Belgium, Switzerland froze all accounts belonging to Belgian residents in July 1940, and thus the Account Owners would not have had access to the account from the date of the freeze to the end of the Second World War. Although the Claimant does not provide information regarding the date on which Ernst and Lea Feldheim fled Belgium, given the persecution of Jews in Belgium and the confiscation of Jewish assets during the War, and the application of Presumptions (h) and (j), contained in Appendix A³, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their 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.

With regard to the custody account held by Account Owner Fritz Feldheim, the CRT notes that it was still open on 27 December 1939. Germany invaded Belgium in May 1940, and Fritz Feldheim was subsequently deported and presumed to have perished in the Holocaust. Given these circumstances and the application of Presumptions (h) and (j) contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Fritz Feldheim or his heirs.

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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 Governing the Claims Resolution Process (the "Rules"). Second, the Claimant has plausibly demonstrated that Account Owners were his father's cousins, and such relationships justify an Award. Finally, the CRT has determined that it is plausible that neither Ernst Feldheim, Lea Feldheim, Fritz Feldheim, nor their heirs received the proceeds of the claimed accounts.

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 custody account was 13,000.00 Swiss Francs. The total for the two custody accounts in this case is thus 26,000.00 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 a total award amount of 312,000.00 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 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 202,800.00 Swiss Francs.

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 his claim to determine whether there are additional Swiss bank accounts to which he 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

December 31, 2002

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial 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 or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial 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 or Beneficial 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 or Beneficial 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 or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial 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, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners, Beneficial 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, Beneficial 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).