

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 Therese Fleischer

Claim Numbers: 005041/HS; 005149/HS¹

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the published account of Therese Fleischer (the “Account Owner”) at 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.

¹ The Claimants submitted 34 additional Claim Forms. With regard to the Claimants’ claims to the accounts of: [REDACTED] (Claim Numbers 005042 and 005136), [REDACTED] (Claim Numbers 005045 and 005159), [REDACTED] (Claim Numbers 005132 and 005154), [REDACTED] (Claim Numbers 005133 and 005156), [REDACTED] (Claim Numbers 005140 and 005137), [REDACTED] (Claim Numbers 005141 and 005138), [REDACTED] (Claim Numbers 005142 and 005139), [REDACTED] (Claim Numbers 005163 and 005153), [REDACTED] (Claim Numbers 005164 and 005155), the CRT will treat the claims to these accounts in a separate decision.

With regard to the Claimants’ claims to the accounts of: [REDACTED] (Claim Numbers 005134 and 005043), [REDACTED] (Claim Numbers 005044 and 005150), [REDACTED] (Claim Numbers 005046 and 005135), [REDACTED] (Claim Numbers 005124 and 005161), [REDACTED] (Claim Numbers 005125 and 005160), [REDACTED] (Claim Numbers 005126 and 005148), [REDACTED] (Claim Numbers 005131 and 005151), [REDACTED] (Claim Numbers 005162 and 005152), the CRT did not locate accounts belonging to these relatives of the Claimants 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 Claimants should be aware that the CRT will carry out further research on their claims to determine whether any awards may be made based upon the information provided by the Claimants or upon information from other sources.

Information Provided by the Claimants

The Claimants, who are father and son, submitted Claim Forms identifying the Account Owner as Claimant [REDACTED 1]'s paternal aunt and Claimant [REDACTED 2]'s great-aunt, Therese Fleischer, who was born in Poland and emigrated to Germany before the Second World War. The Claimants stated that Therese Fleischer was born to [REDACTED] and [REDACTED], that she was Jewish, and that she perished in the Holocaust. Claimant [REDACTED 1] explained that he does not have more information about his aunt because he was a child during the Second World War and he is the only member of his family to survive the Holocaust.

The Claimants submitted a family tree, indicating that Therese Fleischer was the sister of Claimant [REDACTED 1]'s father, and their own Israeli identity cards, indicating that their surname is Fleischer. Claimant [REDACTED 1] indicated that he was born on 7 December 1931 in Poland, and Claimant Freddy Fleischer indicated that he was born on 1 August 1964 in Israel.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was *Frau* (Mrs.) Therese Fleischer, who resided in Nuremberg, Germany. The Bank's record indicates that the Account Owner held a custody account, numbered L8830, which was opened on 14 April 1931 and was closed on 4 June 1934. This record does not indicate the value of the account. There is no evidence in the Bank's record that the Account Owner or her 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

The Claimants have plausibly identified the Account Owner. Their relative's name and country of residence match the published name and country of residence of the Account Owner. 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. The Claimants stated that the Account Owner, who was Jewish, perished in the Holocaust.

The Claimants Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and a family tree demonstrating that the Account Owner was Claimant [REDACTED 1]'s aunt and Claimant [REDACTED 2]'s great-aunt. In support of their claims, the Claimants submitted their identity cards, showing that their paternal relatives had the same surname as the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that after coming to power in 1933, 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 evidence that the Account Owner fled Germany prior to the closure of the account in 1934, and that she would not have been able to repatriate her account to Germany without losing ultimate control over its proceeds; that there is no record of the payment of the Account Owner's account to her; that the Account Owner perished in the Holocaust and her heirs would not have been able to obtain information about her 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 (a), (h), and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (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 her 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 1]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was the paternal aunt of Claimant [REDACTED 1], and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account. Further, the CRT notes that Claimant [REDACTED 1], as the Account Owner's nephew, has a better entitlement to the account than his son, Claimant [REDACTED 2], who is the Account Owner's grand-nephew.

² Appendix C appears on the CRT II website -- www.crt-ii.org.

Amount of the Award

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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a custody account was 13,000.00 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 162,500.00.

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. As discussed earlier, the Account Owner’s nephew, Claimant [REDACTED 1], has a better entitlement to the account than the latter’s son, Claimant [REDACTED 2].

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
15 July 2005