

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Jeffrey F. Levine

in re Account of Berthold Fleischmann

Claim Number: 501762/BE

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Berthold Fleischmann (the “Account Owner”), over which Therese Fleischmann (the “Power of Attorney Holder”) held power of attorney, at the Zurich 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 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 Owner as his maternal grandfather, Berthold Fleischmann, who was born on 18 July 1875 in Vienna, Austria, and was married to [REDACTED], née [REDACTED], on 8 November 1903 in Vienna. The Claimant indicated that his grandfather, who was Jewish, was a machinist and owned a tool and die company together with his son, [REDACTED]. The Claimant also indicated that his family resided at Hubergasse 2 in Vienna, in a neighborhood where his family had lived for centuries. The Claimant further indicated that, following the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”), his grandfather was forced to sell his business and possessions at a significant loss, and fled via Columbia, Peru, and the Dominican Republic to the United States.

The Claimant indicated that he was born on 21 July 1952 in New York, New York, the United States.

Information Available in the Bank’s Records

The Bank’s records consist of a power of attorney form and printouts from the Bank’s database. According to these records, the Account Owner was Berthold Fleischmann, and the Power of

Attorney Holder was *Frau* (Mrs.) Therese Fleischmann, the Account Owner's wife, who resided at Nattergasse 20/22 in Vienna, Austria. The Bank records further indicate that the Account Owner was a *Schlossermeister* (a master metal worker), and had a business address at Payergasse 8 in Vienna.

The Bank's records indicate that the Account Owner held an account, the type of which is not indicated. The Bank's records do not indicate the value of this account.

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, the Power of Attorney Holder or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant's grandfather's name, city, and country of residence match the published name, city, and country of residence of the Account Owner and the Power of Attorney Holder. The Claimant identified the Account Owner's profession, as well as the relationship between the Account Owner and Power of Attorney Holder, which matches unpublished information about the Account Owner contained in the Bank's records.

The CRT notes that the street addresses provided by the Claimant differ from the residential and business addresses of the Account Owner contained in the Bank's records. However, the CRT further notes that these addresses are less than 1 kilometer away from one another, that the Claimant's extended family resided in the same neighborhood for several generations, and that the Claimant was born several years after the end of the Second World War. Therefore, the CRT finds it plausible that the Account Owner could have used different addresses when opening an account with the Bank.

The CRT notes that the name Berthold Fleischmann appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of victims of Nazi persecution ("ICEP" or the "ICEP List"). The CRT notes that the other claim to this account was disconfirmed because that claimant provided a different country of residence than the country of residence and of the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, that he was forced by Nazi authorities to sell his business and possessions at a loss, and that he fled to the United States in 1939.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimant's grandfather. The CRT notes that the Claimant indicated that the Account Owner may have other surviving heirs, but because they are not represented in the Claimant's claim, the CRT will not treat their potential entitlement to the Account Owner's account in this decision.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records, including the relationship between the Account Owner and Power of Attorney Holder. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his Claim Form.

The Issue of Who Received the Proceeds

Given that the Account Owner fled Austria to the United States after the *Anschluss* in 1939; that there is no record of the payment of the Account Owner's 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) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), 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, 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his grandfather and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held an account of unknown type. 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 of an account of unknown type was 3,950.00 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 49,375.00.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 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
30 May 2007