

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Natan Fraenkel

Claim Numbers: 704978/HB; 704979/HB¹

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Berta Stein and David Joseph Stein, also known as Joseph (Giuseppe) Stein.² This Award is to the published account of Natan Fraenkel (the “Account Owner”) 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 two Initial Questionnaires (“IQs”) to the Court in 1999 identifying the Account Owner as her mother’s maternal uncle, Nathan Fraenkel, who was married to [REDACTED]. The Claimant indicated that her mother’s uncle, who was Jewish, resided at Via Paleo Capa 4 in Milan, Italy. The Claimant indicated that her mother, [REDACTED], née [REDACTED], resided with her uncle in Milan until 1938 or 1939, at which time she shared an apartment in Milan with her brother. The Claimant further indicated that her mother managed a pharmacy in Milan until approximately 1942 or 1943, when she was warned by the Italian resistance that she was targeted by the Nazis. According to the Claimant, her mother then unsuccessfully tried to flee to Switzerland, and subsequently went into hiding with a family in Seveso, Italy. The Claimant indicated that she was born on 22 July 1949.

¹ [REDACTED] did not submit a Claim Form to the CRT. However, in 1999 she submitted two Initial Questionnaires (“IQs”), numbered ENG 0580 95 and ENG 0580 194, to the Court in the United States. Although these IQ were not a Claim Forms, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 704978 and 704979.

² The CRT will treat the claims to these accounts in separate determinations.

Information Available in the Bank's Records

The Bank's records consist of a numbered account customer card, a list of custody accounts, and printouts from the Bank's database. According to these records, the Account Owner was Natan Fraenkel, who resided at Via Paleocapa 4 in Milan, Italy, and who also used an address in Lugano, Switzerland. The Bank's records indicate that the Account Owner had a numbered account relationship with the Bank, *contremarque* 1200, and that the account was a custody account, which itself was numbered 19542. The Bank's records do not indicate when the account was opened, 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") identified that the account was in existence as of 7 April 1936. The Bank's records indicate that the custody account was closed some time before 31 December 1937, but the precise date of closure is not recorded. The Bank's records do not indicate the value of the account. 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 Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's mother's uncle's name matches the published name of the Account Owner.³ The Claimant identified the Account Owner's street address, city and country of residence, which matches unpublished information about the Account Owner contained in the Bank's records.

The CRT notes that the Claimant filed IQs with the Court in 1999 identifying the Account Owner as her mother's uncle, prior to the publication of the List of Account Owners Published in 2005 (the "2005 List"). This indicates that the Claimant has based her present claim not simply on the fact that an individual identified on the 2005 List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the 2005 List. This supports the credibility of the information provided by the Claimant. The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different country of residence than the country of residence of the Account Owner or because they were unable to identify the country of residence of the Account Owner.

³ The CRT notes that the Claimant indicated that her relative's first name was "Nathan," while the Account Owner's name was spelled "Natan." The CRT further notes that the spellings are substantially similar.

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 indicated that the Account Owner was Jewish, and that he resided in Nazi-allied Italy during Second World War. The Claimant further stated that the Account Owner's niece had to flee Milan and was forced to live in hiding because of 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 specific biographical information demonstrating that the Account Owner was her mother's uncle. The CRT notes that the Claimant has identified unpublished information about the Account Owner as contained in the Bank's records and that the Claimant filed IQs with the Court in 1999 identifying the relationship between the Account Owner and the Claimant, prior to the publication of the 2005 List. 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 she has asserted in her Claim Form. The CRT has no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

In this case, the Account Owner held a custody account, which was closed some time between 7 April 1936 and 31 December 1937. The CRT notes that Italy formed an alliance with Germany on 25 October 1936, and therefore it is considered that from this date there existed the possibility of oppression. Accordingly, an asset closed after 25 October 1936 will only be considered closed properly if there is evidence that the asset was paid to the account owner or an authorized party. In this case, the original Bank documents do not record the precise closure date of the account and give no information as to the circumstances surrounding the closure of the asset. Given that the Account Owner resided in Italy before and during the Second World War, 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 there is a sufficient probability that the account proceeds were not paid to the Account Owner 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 claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her mother's uncle, and that

relationship justifies an Award. Third, 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 a custody account. 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 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.

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 her claims 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.

Claims Resolution Tribunal
12 May 2006