

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Walter Fraenkel and Lili Fraenkel

Claim Numbers: 204678/MBC; 600737/MBC¹

Award Amount: 174,600.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Lili Fraenkel. This Award is to the accounts of Walter Fraenkel and Lili Fraenkel (the “Account Owners”) at the Zürich 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 and a claim to the Holocaust Claims Processing Office (“HCPO”) identifying the Account Owners as her parents, Dr. Heinrich Walter Fraenkel and Lili Fraenkel, née [REDACTED]. The Claimant indicated that Dr. Heinrich Walter Fraenkel was born on 21 December 1879 in Hirschberg, Germany, Lili [REDACTED] was born on 21 September 1884 in Frankfurt am Main, Germany, and they were married on 10 August 1921 in Frankfurt. The Claimant indicated that she is her parents’ only child. According to the Claimant, her parents, who were Jewish, lived in Frankfurt at Hochstrasse 6 until approximately 1939. The Claimant stated that she believes her mother, Lili Fraenkel, traveled to Switzerland in the mid- or late-1930s in order to open a bank account. Additionally, the Claimant stated that her father was taken to a concentration camp in or around 1938. He subsequently was able to flee or was released from the camp, after which he fled to England in 1939 and then the United States in 1940. The Claimant indicated that her mother fled to England in 1940 and to the United States in 1941. The Claimant further indicated that her father, who went by the name Dr. Walter Fraenkel, died in Perth Amboy, New Jersey, the United States on 14 July 1945, and that Lili Fraenkel died in Westfield, New Jersey on 1 March 1979. The Claimant submitted

¹ The Claimant submitted a claim, numbered B - 01810, to the Holocaust Claims Processing Office (“HCPO”) of the State of New York Banking Department on 17 May 1999. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600737.

documents pertaining to her name change from [REDACTED] to [REDACTED] in 1979. The Claimant stated that she was born on 3 August 1922 in Frankfurt, Germany.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999 asserting her entitlement to a Swiss bank account owned by Lili Fraenkel of Frankfurt, Germany.

Information Available in the Bank Records

The bank records consist of a bank customer card, documentation of securities held by the Account Owners, account balance sheets, and printouts from the Bank's database. According to these records, the Account Owners were Dr. Walter Fraenkel and Lili Fraenkel of Hochstrasse 6, Frankfurt, Germany. The bank records indicate that the Account Owners held a custody account, which was opened in 1930, and an account of unknown type, for which the opening date is unknown. According to the records, the securities in the custody account were transferred on 4 December 1936 to a Nazi-controlled bank in Germany. The value of the securities in the custody account on the date of their transfer was 10,600.00 Swiss Francs. The bank records do not indicate whether the Account Owners were notified of this transaction.

The bank records do not show when the account of unknown type was closed, or to whom it was paid, nor do these records indicate the value of this account. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. Her parents' names match the published names of the Account Owners. The Claimant identified her parents' street address and her father's professional title, both of which match unpublished information about the Account Owner contained in the bank records. In support of her claim, the Claimant submitted documents, including a copy of her birth certificate and the judgment for her name change.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999 and an HCPO claim in May 1999 asserting her entitlement to a Swiss bank account owned by Lili Fraenkel, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her present claim not simply on the fact that an individual identified on the ICEP 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 ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were a Victim of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and that her father was deported to a concentration camp and her mother fled Germany during the Second World War.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting evidence demonstrating that she is the daughter of Dr. Heinrich Walter Fraenkel and Lili Fraenkel. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

With regard to the custody account, the bank records indicate that the securities in the account were transferred to a Nazi-controlled bank in 1936.

With regard to the account of unknown type, given the application of Presumptions (f), (h), and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were her parents, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

The bank records indicate that the value of the custody account as of 4 December 1936 was 10,600.00 Swiss Francs. According to Article 35 of the Rules, if the amount in a custody account was less than 13,000.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 13,000.00 Swiss Francs. In this case, the bank record shows the value of the account when it was transferred to the Nazis was 10,600.00 Swiss Francs. Consequently, the present value of this account is determined by multiplying the balance by a factor of 12, in accordance with Article 37(1) of the Rules, resulting in a present value of 127,200.00 Swiss Francs.

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case with the account of unknown type, 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 an account of unknown type was 3,950.00 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, resulting in a present value of 47,400.00 Swiss Francs. Thus, the total award value for both accounts is 174,600.00 Swiss Francs. In this case, the Claimant is age 75 or older, and is therefore entitled to receive payment of 100% of the award amount.

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.

Claims Resolution Tribunal

November 26, 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).