

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Helmuth Frank

Claim Number: 215759/AV

Award Amount: 88,905.63 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Helmuth Frank (the “Account Owner”) at the Lugano and New York branches 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 father, [REDACTED], who was born on 7 January 1892 in Stuttgart, Germany. According to the Claimant, his father was a businessman and resided in Genoa, Italy, with the Claimant’s mother, [REDACTED]. The Claimant stated that from 5 July 1940 until 25 April 1945, his father, who was Jewish, was interned at camps in Salerno, Italy; Tortoreto, Italy; Cermignano, Italy; and Fontanigorda, Italy. The Claimant further stated that his father was liberated on 26 April 1945, and that he resided in Genoa until his death on 30 January 1964.

The Claimant submitted his father’s declaration of Jewish ancestry, dated 23 February 1939, identifying him as [REDACTED] and indicating that he resided in Genoa; a record from the magistrate in Fontanigorda, indicating that [REDACTED] was detained there as a prisoner from 16 September 1942 until 25 April 1945; his father’s death certificate, indicating that [REDACTED] resided in Genoa and that he died there on 30 January 1964; his father’s Last Will, dated 22 May 1937, identifying the Claimant as [REDACTED]’s son and sole heir; and the Claimant’s own birth certificate, identifying his father as [REDACTED].

The Claimant indicated that he was born on 5 August 1934 in Genoa.

Information Available in the Bank's Records

The Bank's records consist of a list of account owners and a printout from the Bank's database of the approximately 1,300 accounts at the Bank that were frozen by the U.S. Treasury on 14 June 1941 in accordance with the U.S. government's Trading With The Enemy Act (the "1941 Freeze"). According to these records, the Account Owner was Helmuth Frank, who resided in Genoa, Italy. The Bank's records indicate that the Account Owner held a demand deposit account at the Lugano branch of the Bank, which had a balance of 59.40 United States Dollars ("US \$") on 30 June 1942. The Bank's records do not show when the account at issue was closed or to whom it was paid. 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. There is no evidence in the Bank's records that the Account Owner or his heirs closed the account and received the proceeds themselves.

In addition, the Bank's records indicate that the Account Owner held a demand deposit account at the New York branch of the Bank, which was frozen pursuant to the 1941 Freeze. The Bank's records indicate that this account had a balance of US \$1,153.70 on 14 June 1941.

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of an account card, a card identifying a power of attorney holder, and lists of accounts at the Bank that were frozen in the 1941 Freeze. According to these records, the account held by the Account Owner at the New York branch of the Bank was numbered [REDACTED], and [REDACTED] held power of attorney. The Bank's records further indicate that there was activity on the account, the type of which is not indicated, on 18 June 1940, that the account was frozen on 14 June 1941, and that the account was closed on 29 February 1948.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant's mother's name matches the unpublished name of the individual who held power of attorney. In support of his claim, the Claimant submitted documents, including his father's declaration of Jewish ancestry and death certificate, identifying him as [REDACTED] and indicating that he resided in Genoa, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner. The CRT notes that there are no other claims to these accounts.

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 and that he was interned at camps in Salerno, Italy; Tortoreto, Italy; Cermignano, Italy; and Fontanigorda, Italy. The Claimant also submitted a record from the magistrate in Fontanigorda, indicating that [REDACTED] was detained there as a prisoner from 16 September 1942 until 25 April 1945.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's father. These documents include his father's Last Will and his own birth certificate, identifying the Claimant as [REDACTED]'s son. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With respect to the demand deposit account held at the Lugano branch of the Bank, given that the Account Owner was interned in several camps in Italy during the Second World War; 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 or his 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.

With respect to the demand deposit account held at the New York branch of the Bank, the Bank's records indicate that the account was closed on 29 February 1948, at which time, according to the Claimant, the Account Owner resided in Genoa. The CRT notes that after the Second World War, many, but not all, of the accounts frozen in the 1941 Freeze were unfrozen and returned to their rightful owners. Absent evidence in the Bank's records and, in this case, in U.S. official records, that the account was closed by the Account Owner and that he received the proceeds himself, and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs.

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 father, 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 accounts.

Amount of the Award

For purposes of this Award, the Account Owner held two demand deposit accounts. With respect to the demand deposit account held at the Lugano branch of the Bank, the Bank's records indicate that the value of the account as of 30 June 1942 was US \$59.40, or 255.42 Swiss Francs ("SF").¹ According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the award amount for this account is SF 26,750.00.

With respect to the demand deposit account held at the New York branch of the Bank, the Bank's records indicate that the value of the account as of 14 June 1941 was US \$1,153.70, which was equal to SF 4,972.45. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the award amount for this account is SF 62,155.63.

Accordingly, the total award amount is SF 88,905.63.

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
23 June 2006

¹ The CRT uses official exchange rates when converting the amounts in foreign currencies into Swiss Francs.