

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Frank Edward John Barratt
also acting on behalf of Patricia Dickson, Aubrey Barratt, Caroline Furness
and Jayne Loosli

in re Account of Otto Fried

Claim Number: 219612/BW

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of Frank Barratt (the “Claimant”) to the account of Otto Arnost Flusser.¹ This Award is to the published account of O. Fried (the “Account Owner”), over which Otto Flusser (“Power of Attorney Holder O. Flusser”) and Else Flusser (“Power of Attorney Holder E. Flusser”) (together the “Power of Attorney Holders”) held power of attorney at the Zurich branch of the [REDACTED] (the “Bank”).²

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Power of Attorney Holders as his late wife’s parents, Otto Arnost Flusser and Alžběta (Elsa) Marie Flusser, née Fried. The Claimant indicated that Otto Flusser was born in Vienna, Austria, and lived in Prague, Czechoslovakia (now the Czech Republic) where he was an official of the New German Theater of Prague. According to the Claimant, Otto and Elsa Flusser, who were Jewish, were married in Prague and had two children, the Claimant’s late wife, Susanne Barratt, née Flusser, and her twin sister, Liesl Flusser, who was born on 2 February 1928 in Prague. The Claimant indicated that his late wife’s parents had their daughters baptized into the Roman Catholic Church in 1939, as Otto Flusser had been advised this would increase the chance of his daughters being evacuated from Czechoslovakia.

¹ The CRT did not locate an account belonging to Otto Arnost Flusser 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”).

² The CRT notes that the name of Account Owner Otto Fried was published on the List of Account Owners published in 2005 (the “2005 List”) as O. Fried.

The Claimant further indicated that after the Nazi occupation of Prague, his late wife's parents were able to obtain identity documents for their daughters from the British Committee for Children in Prague, enabling them to leave the country in May 1939 on a children's transport for England. The Claimant stated that Otto and Elsa Flusser planned to join their daughters in England, however they stayed in Prague to make arrangements for Otto Flusser's mother and for Elsa Flusser's father. The Claimant further stated that the family was unable to escape Prague and were sent first to Terezin (Theresienstadt), where Elsa Flusser's father and Otto Flusser's mother perished, and then to Auschwitz, where Otto and Elsa Flusser ultimately perished. The Claimant's wife and her twin sister remained in England for the remainder of their lives. The Claimant's wife died on 13 March 1995 in Edinburgh, Scotland, leaving as her heirs the Claimant and their three children, Patricia Dickson, Aubrey Barratt and Caroline Furness. The Claimant's sister-in-law, Liesl Flusser died on 23 February 1996 in London, England leaving her daughter, Jayne Loosli, née Flusser, as her heir.

The Claimant submitted a copies of the following documents: (1) his late wife's baptismal certificate, indicating that Susanne Flusser, who was born on 2 February 1928, was the daughter of Otto (Arnost) Flusser and Alžběta Marie Flusser, née Fried, and was baptized as Roman Catholic on 22 March 1939 in Prague; (2) his late wife's certificate of naturalization issued by the government of Great Britain on 4 June 1947, indicating that Susanne Flusser was born on 2 February 1928 to Otto and Else Flusser in Prague; (3) his marriage certificate, indicating that Susanne Barratt, née Flusser, and the Claimant were married on 24 March 1959; and (4) the will of Suzanne Barratt, née Flusser, which specifies that the Claimant is the residual beneficiary of her estate.

The Claimant indicated that he was born on 23 June 1935 in Bourne, Lincolnshire, England. The Claimant is representing his daughter, Patricia Dickson, née Barratt, who was born on 19 October 1959 in Haverfordwest Dyfed, England; his son Aubrey Barratt, who was born on 10 August 1961 in Shedfield, Hampshire, England; his daughter, Caroline Furness, née Barratt, born on 22 August 1963 in Picket Piece, Hampshire, England; and his niece, Jayne Loosli, née Flusser, who was born on 12 May 1960 in London. The Claimant previously submitted two Initial Questionnaires with the Court in 1999, asserting his entitlement to Swiss bank accounts owned by Susanne Flusser and Liesl Flusser.³

Information Available in the Bank's Record

The CRT notes that 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 report an account belonging to Otto Fried during their investigation of the Bank. The existence of an account at the Bank is evidenced by documents from the Swiss Federal Archive in Bern, Switzerland.

³ The CRT did not locate an account belonging to Susanne Flusser or Liesl Flusser in the Account History Database prepared pursuant to ICEP Investigation.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962 (the “Federal Decree”), the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution (“the 1962 Survey”).

In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the registration of assets belonging to Otto Fried, numbered 76. According to these records, the Account Owner was Otto Fried, a German citizen, and the Power of Attorney Holders were Otto and *Frau* (Mrs.) Else Flusser.

According to these records, the Account Owner held a demand deposit account with a balance of 269.50 Swiss Francs (“SF”) at the time the account was reported on 1 September 1963. There is no evidence in the records that the Account Owner, the Power of Attorney Holders or their heirs closed the account and received the proceeds themselves.

The CRT’s Analysis

Identification of the Account Owner

The CRT notes that the Claimant identified the Power of Attorney Holders, not the Account Owner. The Claimant’s late wife’s parent’s names match the unpublished names of the Power of Attorney Holders and the Claimant identified the relationship between the Power of Attorney Holders as a married couple, which also matches unpublished information contained in the Swiss Federal Archive’s records. The CRT further notes that, under Swiss law, a power of attorney holder is not considered to be the owner of an account. After a power of attorney holder dies, his or her powers in an account no longer exist, and they do not pass to his or her heirs. Therefore, if a claimant identifies a power of attorney holder to an account as his/her relative, the claimant is only entitled to the account if there is evidence in the account records that the Power of Attorney Holder and the Account Owner were related. In this case, Claimant’s late wife’s mother’s maiden name matches the published family name of the Account Owner, and the records from the Swiss Federal Archives clearly indicate that the Power of Attorney Holders were related to the Account Owner. The CRT therefore concludes that the Claimant has identified the Account Owner as his relative.

In support of his claim, the Claimant submitted documents, including his late wife’s certificate of naturalization and baptismal certificate, which provide independent verification that the persons who are claimed to be the Power of Attorney Holders had the same names recorded in the Swiss Federal Archive’s records as the names of the Power of Attorney Holders, and that the Claimant’s late wife’s mother had the same maiden name as the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes the names Otto Fried, Otto Flusser and Elsa Flusser. This database indicates that Elsa

Flusser's maiden name was Fried, which matches the information about the Account Owner and Power of Attorney Holders provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the Claimant filed two Initial Questionnaires with the Court in 1999 asserting his entitlement to a Swiss bank account owned by Susanne Flusser and Liesl Flusser, respectively, prior to the publication in 2005 of the List of Account Owners determined to be probably or possibly those of Victims of Nazi Persecution (the "2005 List"). This indicates that the Claimant has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the 2005 List. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the 2005 List. This supports the credibility of the information provided by the Claimant.

The CRT notes that the Claimant did not identify the full name and nationality of the Account Owner listed in the Swiss Federal Archive's records. However, the CRT notes that the Claimant did identify the Account Owner's last name, which matches the maiden name of Power of Attorney Holder E. Flusser. Furthermore, the CRT notes that the Claimant is claiming the account of his late wife's relatives, and that it is plausible that he would not know the full name or nationality of her relatives.

The CRT notes that the other claims to this account were disconfirmed because those claimants did not identify the Power of Attorney Holders, and indicated a different nationality than the nationality of the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner and the Power of Attorney Holders.

Status of the Account Owner as a Victim of Nazi Persecution

The CRT notes that while the Claimant did not indicate whether or not the Account Owner was a Victim of Nazi Persecution, the Account Owner's relatives, the Power of Attorney Holders, were Victims of Nazi Persecution. The Claimant stated that the Power of Attorney Holders were Jewish, that they resided in Nazi-occupied Czechoslovakia and perished in Auschwitz. As noted above, persons named Otto Fried, Otto Flusser and Elsa Flusser were included in the CRT's database of victims.

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 late wife's relative, and that the Power of Attorney Holders were the Claimant's late wife's parents. These documents include his late wife's baptismal certificate, his late wife's certificate of naturalization, and his marriage certificate, indicating that Else Flusser's maiden name was Fried, that Susanne Flusser was the child of Otto and Else Flusser, and that the Claimant and Susanne Flusser were married.

The CRT further notes that the Claimant filed an Initial Questionnaire with the Court in 1999, identifying the relationship between the Power of Attorney Holders and the Claimant, prior to the publication of the 2005 List; and that the Claimant also identified information which matches information contained in the Yad Vashem records. Finally, the CRT notes that the Claimant submitted a copy of his late wife's baptismal certificate, which indicates that Susanne Flusser's mother's maiden name was Fried, which provides independent verification that the Claimant's relative bore the same family name as the Account Owner, and all of this information supports the plausibility that the Claimant, represented party Patricia Dickson, represented party Aubrey Barratt, represented party Caroline Furness and represented party Jayne Loosli are related to the Account Owner and the Power of Attorney Holders, as he has asserted in his Claim Form. There is no information to indicate that the Account Owner has other surviving heirs other than the parties that the Claimant is representing.

The Issue of Who Received the Proceeds

Given 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 Power of Attorney Holders perished in Auschwitz, that the Account Owner, his heirs, or the Power of Attorney Holders' heirs would not have been able to obtain information about the 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 Presumption (h), 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 Holders, 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 Power of Attorney Holders were his late wife's parents and the grandparents of represented parties Patricia Dickson, Aubrey Barratt, Caroline Furness and Jayne Loosli, and that the Claimant's late wife's mother and the grandmother of the represented parties was related to the Account Owner, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner the Power of Attorney Holders nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The Swiss Federal Archive's records indicate that the value of the demand deposit account as of 1 September 1963 was SF 269.50. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 285.00, which reflects standardized bank fees charged to the account between 1945 and 1963. Consequently, the adjusted balance of the account at issue is SF 554.50. 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, to produce a total award amount of SF 26,750.00.

Division of the Award

The CRT notes that the exact relationship between the Power of Attorney Holders and the Account Owner is unknown, however it is plausible to assume that the Account Owner and Power of Attorney Holder E. Flusser were related. According to Article 23(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23(1)(a) - (f) has submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity.

In this case, the Power of Attorney Holders had two daughters, Susanne Barratt, née Flusser, the wife of the Claimant, and Liesl Flusser, the mother of represented party Jayne Loosli. Consistent with the principles of distribution by equal shares by representation, as set out in Article 23(1)(a) - (f) of the Rules, the CRT has determined it fair and equitable that represented party Jayne Loosli, as the only descendant of Liesl Flusser, is entitled to one-half of the total award amount. Regarding the descendants of Susanne Barratt, née Flusser, the Claimant is entitled to one-fourth of the total award amount, and his children, represented party Patricia Dickson, represented party Aubrey Barratt, and represented party Caroline Furness, are each entitled to one-twelfth of the total award amount.

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
27 February 2007