

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]
represented by Jeppe Skadhauge,
and the Estate of [REDACTED 3]¹

in re Account of the Estate of Max Friedländer

Claim Numbers: 209035/UM; 210903/UM; 218367/UM

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published account of the Estate of Max Friedländer (the “Estate of the Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).² In this Award, Max Friedländer shall be referred to as the “Account Owner.”

All awards are published, but where a claimant has requested confidentiality, as Claimant [REDACTED 3] has in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

The Claimants submitted three substantially similar Claim Forms identifying the Account Owner as Max Friedländer, Claimant [REDACTED 1] and Claimant [REDACTED 2]’s paternal grandfather, and Claimant [REDACTED 3]’s maternal grandfather, who was born in Insterburg, Germany (now Chernyakhovsk, Russia), and was married to Gertrud Friedländer, née Pitke. The Claimants stated that their grandparents had two children, both born in Stettin, Germany (now Szczecin, Poland): Johannes (Hans) Frantz (Franz) Wolfgang Friedländer, Claimant [REDACTED 1] and Claimant [REDACTED 2]’s father, born on 12 February 1902; and [REDACTED], née [REDACTED], Claimant [REDACTED 3]’s mother, born on 6 October 1905. The Claimants stated that their grandparents, who were Jewish, resided in Stettin until about 1930, and that their grandfather was the owner and director of a department store there. The Claimants also stated that their grandfather was involved with the manufacture of airplanes.

¹ The CRT notes that Claimant [REDACTED 3] passed away on 20 April 2003.

² The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP list”), the Estate of Max Friedländer is indicated as having two accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only one account.

The Claimants further indicated that their grandparents subsequently moved to Berlin, Germany, where their grandfather was a director of another department store. According to Claimant [REDACTED 3], the Nazis forced the Claimants' grandfather to sell his department store in Stettin at a loss in an aryanization proceeding. The Claimants stated that their grandparents fled from Germany to Zurich, Switzerland in 1935 or 1936, in order to avoid further Nazi persecution. Moreover, the Claimants stated that their grandfather died in Lucerne, Switzerland on 11 March 1938, and that their grandmother died in Lengnau, Switzerland on 4 October 1964. In addition, the Claimants indicated that their grandparents' daughter died in Munich, Germany on 26 April 1966. Finally, in a letter to the CRT dated 4 March 2003, Claimant [REDACTED 1] indicated that her father fled from Germany to Denmark in 1936, that he temporarily fled to Sweden in 1938, and that he later lived in Austria and then Merano, Italy, where he died in 1988.

Claimant [REDACTED 1] and Claimant [REDACTED 2] submitted their own birth certificates, identifying their father as Johannes Franz Wolfgang Friedländer; their grandfather's will, identifying his son as Hans Wolfgang Friedländer, and his son's place of residence as Copenhagen, Denmark; a document, dated 19 May 1931, confirming Max Friedländer's intention to register a mortgage in the name of Dr. [REDACTED], on property located at Schulzenstr. 20/21 in Stettin, upon Dr. [REDACTED]'s marriage to Max Friedländer's daughter; another document, dated 18 March 1935, confirming Max Friedländer's right of disposition over certain of his daughter's income, and asserting his intention to register a mortgage on the property located at Schulzenstr. 20/21, Stettin, for his daughters benefit, in particular the mortgage interest was to assure a steady income for his daughter, while the capital would come to her upon his death; and documents relating to restitution and compensation claims lodged in Germany, including a decision awarding their father compensation for loss of income and one relating to their grandmother's restitution claim certifying the amount of property losses the Account Owner had sustained at the hands of the Nazis, including that associated with the aryanization of Max Friedländer's department store in Stettin. This latter document also shows that the Claimants' grandparents left Germany in 1935; that their grandfather died on March 19, 1938 in Lucerne and that Max Friedländer had willed his estate to his wife in the first instance and to his daughter and son, in equal parts, after her death. Claimant [REDACTED 3] submitted his own birth certificate, which identifies his mother as [REDACTED], née [REDACTED] and his father as [REDACTED] and certifies that on March 8, 1939 he was adopted by *Dr. Ing.* (Engineer) [REDACTED], his mother's second husband, who resided in Lugano, Switzerland; and his mother's birth certificate, identifying her parents as Max Friedländer and Gertrud Friedländer, née Pitke, and specifying that her father was a merchant.

Claimant [REDACTED 1] indicated that she was born on 28 September 1943 in Hellerup, Denmark. Claimant [REDACTED 2] indicated that she was born on 25 May 1942, also in Hellerup. Claimant [REDACTED 3] indicated that he was born on 8 August 1928 in Hamburg, Germany.

Information Available in the Bank's Records

The Bank's records consist of printouts from the auditors, which are based on information provided by the Swiss Federal Archives about accounts identified pursuant to the 1962 Swiss

Federal Survey (the “1962 Survey”),³ and correspondence between the Bank and the Swiss Federal Department of Justice. According to these records, the Account Owner was the Estate of Max Friedländer, and the Power of Attorney Holders were Gertrud Friedländer, née Pitke, who resided in Merano, Italy; Hans Wolfgang Friedländer, who resided in Copenhagen, Denmark; and *Dr. Ing.* (Engineer) [REDACTED], who resided in Lugano-Suvigliana, Switzerland. The Bank’s records further indicate that the Power of Attorney Holders were also the executors of the Estate of Max Friedländer. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) determined that Max Friedländer used addresses in Berlin, Germany and Frankfurt am Main, Germany.

The Bank’s records indicate that the Account Owner held one custody account, which was deemed a “blocked custody account - estate administration” (*Sperrdepot-Nachlassverwaltung*). The Bank’s records further indicate that this account was opened on 11 June 1941. According to the Bank’s records, the Bank administered a certificate of mortgage debt secured on real estate in Stettin, Germany for the Account Owner, and the certificate, referred to as the *Grundschedbrief a/ Stettin Band IV, Blatt 336, Abt. III Nr. 41*, was located in Frankfurt am Main. Moreover, the Bank’s records indicate that the nominal value of the debt secured by the certificate was 114,000.00 Reichsmarkv (RM). The records indicate that the value of the certificate in Swiss Francs was not ascertainable.

According to the Bank’s records, the account was registered in the 1962 Survey. The Bank’s records further indicate that the Swiss Federal Department of Justice informed the Bank that the account was not within the scope of the 1962 Survey, because the underlying asset was located outside Switzerland. The Bank’s records do not indicate when the account 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 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’s heirs, the Power of Attorney Holders, or the Power of Attorney Holders’ 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 three claims of the Claimants in one proceeding.

³ The 1962 Survey was conducted pursuant to a Swiss Federal Decree of that year concerning assets held in Switzerland by missing foreigners or stateless persons who either were persecuted, or were presumed to have been persecuted, on racial, political or religious grounds.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants' grandfather's name and city and country of residence match the published name and city and country of residence of the Account Owner. Moreover, the names of the Claimants' grandmother, and of Claimant [REDACTED 1] and Claimant [REDACTED 2]'s father, match the published names of Power of Attorney Holders Gertrud Friedländer and Hans Wolfgang Friedländer, respectively. In addition, Claimant [REDACTED 1] and Claimant [REDACTED 2] indicated that their father lived in Denmark, which matches unpublished information contained in the Bank's records about Power of Attorney Holder Hans Wolfgang Friedländer. Furthermore, Claimant [REDACTED 3] identified [REDACTED] as his father by adoption, establishing a strong connection to the unpublished name of the Power of Attorney Holder *Dr. Ing.* (Engineer) [REDACTED]. Finally, the Claimants stated that their grandfather at one point resided in Stettin, Germany, and that he owned property there, establishing a strong connection to unpublished information about the content of the account at issue.

In support of their claims, the Claimants submitted documents, including their grandfather's will, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank's records as the name of the Account Owner. Moreover, the Claimants' grandfather's will identifies his son as Hans Wolfgang Friedländer, and his son's place of residence as Copenhagen, Denmark, providing independent verification that the person who is claimed to be one of the Power of Attorney Holders had the same name and city and country of residence recorded in the Bank's records as Power of Attorney Holder Hans Wolfgang Friedländer's name and city and country of residence. Furthermore, the Claimants submitted Claimant [REDACTED 3]'s mother's birth certificate, identifying her mother as Gertrud Friedländer, née Pitke, providing independent verification that the person who is claimed to be another Power of Attorney Holder had the same maiden and married names recorded in the Bank's records as the maiden and married names of Power of Attorney Holder Gertrud Friedländer. In addition, the Claimants submitted Claimant [REDACTED 3]'s birth certificate, identifying *Dr. Ing.* (Engineer) [REDACTED] as his adoptive father, and stating that he resided in Lugano, Switzerland, providing independent verification that the Claimants had a relative who had the same name, used the same title, and resided in the same city and country recorded in the Bank's records as Power of Attorney Holder [REDACTED]'s name, title, and city and country of residence. Finally, the Claimants submitted two writings by their grandfather, which indicate that he owned property in Stettin, providing independent verification that the person who is claimed to be the Account Owner held property in the same location as that recorded in the Bank's records as the location of the property on which the certificate of debt in the account was secured.

The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different first name than the first name of the Account Owner, failed to provide any connection to the Power of Attorney Holders, or provided different first, last or maiden names than the first, last and maiden names of the Power of Attorney Holders.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, that he was forced by the Nazis to sell his department store at a loss, and that he fled from Germany to Switzerland in order to avoid further persecution. Moreover, the Claimants stated that the Account Owner and his family fled Germany to avoid further persecution.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimants' grandfather. These documents include Claimant [REDACTED 1] and Claimant [REDACTED 2]'s own birth certificates, identifying their father as Johannes Franz Wolfgang Friedländer, and their grandfather's will, identifying his son as Hans Wolfgang Friedländer; as well as Claimant [REDACTED 3]'s birth certificate, identifying his mother as [REDACTED], née [REDACTED], and his mother's birth certificate, identifying her father as Max Friedländer. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Bank registered the account in the 1962 Survey; that there is no record of the payment of the Account Owner's account to his heirs, the Power of Attorney Holders or their heirs, nor any record of a date of closure of the account; that the Account Owner's 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, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner's heirs, 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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their grandfather, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that the Account Owner's heirs did not receive the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody account. The Bank's records indicate that the Bank administered a certificate of debt secured on real estate in Stettin, Germany on behalf of

the Account Owner. The Bank's records further indicate that the nominal value of the debt secured by the certificate was RM 114,000.00. The CRT notes that documentation provided by the Claimants shows that this certificate was administered to the benefit of the Account Owner's daughter and that it was secured by a piece of real estate, located in Stettin, a city which was incorporated into Poland in 1945 and was subsequently under Communist rule, and that therefore no market value could be established for the underlying value of the security. 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 present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00. 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 an award amount of SF 162,500.00.

Division of the Award

According to Article 23(2)(c), if a claimant bases a claim of entitlement on a chain of inheritance but has not submitted an unbroken chain of wills or other inheritance documents, the CRT may use the general principles of distribution established in Article 23(1) to make allowance for any missing links in the chain, consistent with principles of fairness and equity. Moreover, according to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. In this case, the Account Owner's spouse is deceased, and the two children of his son and the child of his daughter have submitted claims. Accordingly, the Estate of Claimant [REDACTED 3] is entitled to receive one-half of the total amount of the award, and Claimant [REDACTED 1] and Claimant [REDACTED 2] are each entitled to receive one-quarter of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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