

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Peter Froehlich
acting on behalf of himself, Gerald Froehlich, and Alice Froehlich

in re Account of Lina Froehlich¹

Claim Number: 220438/MC

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Peter Froehlich (the “Claimant”) to the account of Lina Froehlich, née Rothschild (“Account Owner”) at the [REDACTED] (“the Bank”).

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 Account Owner as his paternal grandmother, Lina Froehlich, née Rothschild. The Claimant indicated that Manfred and Lina Froehlich had two children: Hermann Jacob Froehlich, who was born on 2 January 1912 in Mainz and died on 11 March 1966 in Yorktown, New York, the United States; and Margot Mayer, née Froehlich, who was born in 1920 in Mainz and died in December 1991 in New York. The Claimant stated that his grandfather lived in Mainz, Germany, worked as a merchant, and owned a store. According to the Claimant, after the Nazis came to power, his grandfather was persecuted because he was Jewish. The Claimant stated that he is the son of Hermann Froehlich, and that he was born on 18 November 1942 in Brooklyn, New York. The Claimant also indicated that his brother, Gerald Froehlich, was born on 8 January 1946 in Brooklyn.

Information Available in the Bank Records

The bank records consist of a letter from Hermann Froehlich to the Bank requesting information about assets assumed to be held with the Bank, the Bank’s letter in response, and notes on Hermann Froehlich’s letter written by personnel from the Bank referring to the account at issue.

¹ The Claimant has submitted also submitted a claim to the account of Manfred Froehlich. The CRT will treat the claim to this account in a separate decision.

In his letter, dated 14 May 1948, Hermann Froehlich inquired about the existence of accounts or safe deposit boxes in the names of Lina Froehlich, née Rothschild, Manfred Froehlich, or Margot Froehlich. Hermann Froehlich explained that he was the son of Manfred and Lina Froehlich, who resided in Mainz, and the brother of Margot Mayer, née Froehlich, who was then living in New York. Hermann Froehlich further explained that his father died on 17 February 1942 in Mainz, and that his mother was deported to the Piasky concentration camp near Lublin, Poland in March 1942. Hermann Froehlich stated that his mother never returned from the camp and was presumed to have perished there. With his letter, Hermann Froehlich enclosed a copy of his father's death certificate and explained that his mother's death certificate was to be issued officially the following day, 15 May 1948. Hermann Froehlich also stated that his parents' will, in which he and his sister were named heirs to their estates, was on file at a district court in Mainz and would be made public following the issuance of his mother's official death certificate.

The Bank responded to Hermann Froehlich's letter on 26 May 1948. In its letter, the Bank stated that it generally only provided information to heirs after they have officially proven themselves to be the legitimate heirs of account owners. The Bank then proceeded to deliberately misinform the Account Owner's son with respect to the existence of his parents' account at the Bank. The letter stated that in order to accommodate his request and to make his inquiry easier, the Bank would, as an exception, inform him that the persons he named had no connection to the Bank and possessed no assets at the Bank.

The bank records indicate the existence of account of an unknown type in the name of Lina Froehlich, which was closed on 31 December 1933. The amount in the account on the date of its closure is unknown. Based upon the letter dated 26 May 1948 from the Claimant inquiring into the status of his parents' accounts and the Bank's response, the auditors presumed that the account had been closed and the amount paid to the Nazi authorities. There is no evidence in the bank records that the Account Owner or her heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His grandparents' names and city of residence match the published names and city of residence of the Account Owners. Moreover, a letter from the Claimant's father regarding the Account Owners is contained in the bank records.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they lived in Nazi-controlled Germany. The letter written by Hermann Froehlich, the Account Owners' son, indicates that Manfred Froehlich died in 1942 and that Lina Froehlich was deported to a concentration camp near Lublin, where she perished.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Lina Froehlich, née Rothschild, and indicates that she was deported to

Poland in 1942, where she disappeared, which matches the information contained in the letter written by the Claimant's father. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents, including his birth certificate and the birth certificate of his father, which show that he is the paternal grandson of Manfred and Lina Froehlich.

The Issue of Who Received the Proceeds

Given the existence of Nazi confiscatory legislation in Germany at this time, the fact that the Account Owner was killed by the Nazis, evidence in the bank records that the account was paid to the Nazis, and the application of Presumptions (e) and (f), 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 Governing the Claims Resolution Process (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 account.

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 Owner was his paternal grandmother, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

Pursuant to Article 35 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 an account unknown type of 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, to produce an award amount of 47,400.00 for this account.

Article 37(3)(a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value, and 65% of the total award amount is 30,810.00 Swiss Francs.

Division of the Award

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

The Claimant is representing his mother and his brother in these proceedings. According to Article 29(c) of the Rules, an award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Thus, the Claimant's mother, who is related to the Account Owner by marriage, is not entitled to receive any portion of the award amount. The Claimant's brother, who is a direct descendant of the Account Owner, is entitled to receive half 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 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

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).