

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

**in re Account of Gabriele Mario Fubini, Gina Giorgina Fubini,
and Giuseppe Massimo Fubini**

Claim Numbers: 734222/AC; 734223/AC¹

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Mario Fubini. This Award is to the published account of Gabriele Mario Fubini (“Account Owner Gabriele Fubini”), Gina Giorgina Fubini (“Account Owner Gina Fubini”), and Giuseppe Massimo Fubini (“Account Owner Giuseppe Fubini”) (together the “Account Owners”) at the Geneva branch of the [REDACTED] (the “Bank”).²

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 two Initial Questionnaires (“IQs”) to the Court in 1999, identifying Account Owner Gabriele Fubini as his paternal uncle, Mario Fubini, who was born on 26 April 1915, and was the brother of the Claimant’s father, [REDACTED]. The Claimant indicated that his uncle and father were the children of [REDACTED], and that the entire family, including his uncle, lived in Turin, Italy before the Second World War. The Claimant indicated that his uncle and father attempted to flee to Switzerland during the Second World War, but were turned away

¹ The Claimant did not submit a Claim Form to the CRT. However, in 1999 he submitted two Initial Questionnaires (“IQs”), numbered ITA-0005137 and ITA-0005138, to the Court in the United States. Although these IQs were not Claim Forms, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQs were forwarded to the CRT and have been assigned claim numbers 734222 and 734223, respectively.

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”), Gabriele Mario Fubini, Gina Giorgina Fubini, and Giuseppe Massimo Fubini are indicated as having one account each. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only one account.

at the border. According to the Claimant, his uncle, who was Jewish, was captured and detained in various camps before being deported on 30 January 1944 to Auschwitz, where he perished on approximately 18 January 1945. In a telephone conversation with the CRT on 27 June 2005, the Claimant indicated that he is elderly, and that he can no longer remember the names of many of his relatives, but that most of his family perished in Auschwitz. The Claimant indicated that he was born on 1 September 1924.

The Claimant previously submitted an IQ to the Court in 1999 asserting his entitlement to a Swiss bank account owned by his grandfather's second wife, [REDACTED].³

Information Available in the Bank's Records

The Bank's records consist of a registry card and a printout from the Bank's database. According to these records, Account Owner Gabriele Fubini, Account Owner Gina Fubini, and Account Owner Giuseppe Fubini were Gabriele Mario Fubini, Gina Giorgina Fubini, and Giuseppe Massimo Fubini, who all resided at 7, rue Cavour in Turin, Italy. The Bank's records further indicate that the Account Owners jointly held a numbered account, the type of which is not indicated, identified by the number 55488, and that they instructed the Bank to hold all correspondence. The Bank's records further indicate that the account was opened on 15 March 1939. The Bank's records do not show when the account at issue was closed, nor do these records indicate the value of this account.

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. 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 Owners or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of 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 two claims of the Claimant in one proceeding.

Identification of Account Owner Gabriele Fubini

The Claimant's uncle's name matches the published name of Account Owner Gabriele Fubini.⁴ The Claimant's uncle's city and country of residence match the published city and country of residence of Account Owner Gabriele Fubini.

³ The CRT will treat the claim to this account in a separate determination.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a submission from the Claimant, dated in 1999, regarding his uncle, Mario Fubini, which indicates that he was born on 26 April 1915, that his father was [REDACTED], that he was from Turin and that he perished in the Holocaust. This database also includes a submission from the Claimant, dated in 1977, regarding his father, [REDACTED], which indicates that [REDACTED] was from Turin, that his father was [REDACTED], and that he perished in the Holocaust. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the Claimant filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his uncle, Mario Fubini, 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 his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP 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 ICEP List. This supports the credibility of the information provided by the Claimant.

The CRT notes that of the Account Owners, the Claimant has only identified Account Owner Gabriele Fubini. However, the CRT further notes that the Claimant was young during the Second World War, and that many years have passed, and therefore determines that it is plausible that the Claimant might no longer remember the names of members of his extended family.

The CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified Account Owner Gabriele Fubini.

Status of Account Owner Gabriele Fubini as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Gabriele Fubini was a Victim of Nazi Persecution. The Claimant stated that Account Owner Gabriele Fubini was Jewish, and that he perished in Auschwitz.

As noted above, a person named Mario Fubini was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to Account Owner Gabriele Fubini by

⁴ The CRT notes that the Claimant indicated that his uncle's name was Mario and that the Bank's records indicate that Account Owner Gabriele Fubini's middle name was Mario. The CRT further notes that the Claimant could not recall if his uncle used an additional name, and determines that, given the other positive information provided by the Claimant, the use of the Claimant's uncle's middle name appears plausible and does not impair the positive identification of the Account Owner.

submitting specific biographical information, demonstrating that Account Owner Gabriele Fubini was the Claimant's uncle.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, and a page of testimony to the Yad Vashem Memorial of Israel, identifying the relationship between Account Owner Gabriele Fubini and the Claimant, prior to the publication in February 2001 of the ICEP List. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that Account Owner Gabriele Fubini was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to Account Owner Gabriele Fubini, as he has asserted in his Claim Form.

The CRT notes that of the Account Owners, the Claimant has only indicated that he is related to Account Owner Gabriele Fubini. However, the CRT further notes that the Claimant was young during the Second World War, and that many years have passed, and therefore determines that it is plausible that the Claimant might no longer remember the names of members of his extended family. Furthermore, the CRT notes that the Account Owners lived in the same city, and that they shared the same last name, and therefore determines that it is plausible that they were related, and that by plausibly demonstrating that he is related to Account Owner Gabriele Fubini, the Claimant has therefore also plausibly demonstrated that he is related to all of the Account Owners. Finally, the CRT notes that the Claimant has the same last name as the Account Owners, and that he resides in Italy, the Account Owners' country of residence. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

Given that Account Owner Gabriele Fubini and his family perished in the Holocaust; that there is no record of the payment of the Account Owners' account to them; that the Account Owners and their heirs would not have been able to obtain information about their 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 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner Gabriele Fubini was his uncle, and that the Account Owners were members of his extended family, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owners held one account of unknown type. 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 current 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 (“SF”). 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 a total award amount of SF 49,375.00.

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 claims 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
7 June 2006