

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Susan Mary Fleischmann
also acting on behalf of Joseph Henry Fleischmann

in re Account of Gustav Herzstein

Claim Number: 207475/MBC

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of Susan Mary Fleischmann (the “Claimant”) to the published account of Gustav Herzstein (the “Account Owner”) at the Zurich branch of 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 her maternal grandfather, Gustav Herzstein, who was born on 2 January 1878 in Bayreuth, Germany, and was married to Gretel Herzstein, née Schülein. According to the Claimant, Gustav and Gretel Herzstein had one child, Friedel Herzstein (the Claimant’s mother), who was married to Albert Fleischmann (the Claimant’s father). The Claimant stated that her grandfather, who was Jewish, owned a manufacturing business in Germany. The Claimant stated that Gustav and Gretel Herzstein fled Germany in 1938 and joined the Fleischmann family in Rome, Italy. The Claimant further stated that her grandparents and parents left Rome in March 1939 for the United States, where they stayed for one week before they left for Guatemala in April 1939. The Claimant stated that in July 1940 her grandfather emigrated to the United States, where he passed away on 13 February 1955. In support of her claim, the Claimant submitted her birth certificate, indicating that she is the daughter of Albert Fleischmann and Friedel Fleischmann, née Herzstein, and her mother’s death certificate, indicating that she was the widow of Dr. Albert Fleischmann and the daughter of Gustav Herzstein. The Claimant also submitted her parent’s passport, which indicates that her father was a dentist, and her father’s death certificate. The Claimant indicated that she was born on 4 July 1947 in Hartford, Connecticut, the United States. The Claimant is representing her brother, Josef Henry Fleischmann, who was born on 13 November 1935 in Rome.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form, which was signed in Rome on 13 October 1938, and printouts from the Bank's database. According to these records, the Account Owner was Gustav Herzstein, who resided at Via Filippo Civinini 19 in Rome, and the Power of Attorney Holder was Dr. Albert Fleischmann, who resided at the same address. The Bank's records indicate that the Account Owner held one account, the type of which is not indicated, which was opened no later than 13 October 1938 and was closed on 20 March 1939. The amount in the account on the date of its closure is unknown. There is no evidence in the Bank's records that the Account Owner, his heirs or the Power of Attorney Holder closed the account and received the proceeds.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner and the Power of Attorney Holder. The names of the Claimant's grandfather and father match the published names of the Account Owner and the Power of Attorney Holder. The Claimant indicated that her grandparents and her parents resided in Rome, Italy, which matches published information about the Account Owner and the Power of Attorney Holder contained in the Bank's records. The Claimant identified the Power of Attorney Holder's title of "Doctor," which matches unpublished information about the Power of Attorney Holder contained in the Bank's records. In support of her claim, the Claimant submitted documents, including her birth certificate, indicating that she is the daughter of Albert Fleischmann and Friedel Fleischmann, née Herzstein, and her mother's death certificate, indicating that she was the widow of Dr. Albert Fleischmann and the daughter of Gustav Herzstein, providing independent verification that the person who is claimed to be the Account Owner and the person who is claimed to be the Power of Attorney Holder had the same names recorded in the Bank's records as the names of the Account Owner and the Power of Attorney Holder. Furthermore, the CRT notes that there are no other claims to this account.

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 fled Germany in 1938.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's maternal grandfather, and that the Power of Attorney Holder was the Claimant's father.

These documents include the Claimant's birth certificate, indicating that she is the daughter of Albert Fleischmann and Friedel Fleischmann, née Herzstein, and her mother's death certificate

indicating that she was the widow of Dr. Albert Fleischmann and the daughter of Gustav Herzstein. There is no information to indicate that the Account Owner has other surviving heirs other than the Claimant and her brother whom she is representing.

The Issue of Who Received the Proceeds

The CRT notes that the Bank's records indicate that the account was closed on 20 March 1939, at which time, according to information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. Furthermore, the CRT also notes that the date of German occupation of Italy was 10 June 1940. However, for the purposes of the investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), the date on which a country allied itself to the Reich is considered the date from which victimization can be assumed to have existed. Italy formally allied itself with Germany on 25 October 1936. Accordingly, an asset closed between 25 October 1936 and 10 June 1940 will only be considered closed properly if there is evidence that the asset was paid to the account owner or an authorized party. In this case, the original Bank documents record only the closure date of the account, and give no information as to the circumstances surrounding the closure of the asset. Given that the Bank's records do not indicate to whom the account was closed, that the Account Owner fled his country of origin due to Nazi persecution, that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety, 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, even for the stated purpose of obtaining indemnification from the German authorities, 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 there is a sufficient probability that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, 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 Account Owner was her maternal grandfather, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner 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.

Division of the Award

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 Claimant is representing her brother, Josef Henry Fleischmann. Accordingly, the Claimant is entitled to one-half of the total award amount and her brother, Josef Henry Fleischmann, is entitled to one-half 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 her claim to determine whether there are additional Swiss bank accounts to which she 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
3 March 2006