

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]

in re Account of Francis Maurice Heyberger

Claim Number: 218131/SB

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published account of Francis Maurice Heyberger (the “Account Owner”) at the [REDACTED] (the “Bank”).

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 a Claim Form identifying the Account Owner as her maternal grandfather, Francis Maurice Heyberger, who was born on 7 April 1885 in Boulogne-Billancourt, France, and was married to [REDACTED]. The Claimant stated that her grandfather, who was Jewish, was a businessman, and that prior to the outbreak of the Second World War he resided in Paris, France on Rue Pierre Demours, with his wife and daughter, [REDACTED]. The Claimant further stated that during the War the family resided in Switzerland, returning to Paris after hostilities had ended. The Claimant indicated that her grandfather died in 1959. The Claimant submitted several documents in support of her application, including: (1) her and her sister’s birth certificates, which indicate that their mother was [REDACTED], née [REDACTED]; (2) the Claimant’s mother’s birth certificate, dated 5 October 1932, which indicates that [REDACTED]’s father was Francis Maurice Thibault Heyberger, who resided in Rue Pierre Demours, Paris; and (3) the Claimant’s mother’s marriage certificate, dated 6 December 1957, which indicates that [REDACTED]’s father was Francis Maurice Thibault Heyberger.

The Claimant indicated that she was born on 18 October 1960 in Vevey, Switzerland. The Claimant is representing her sister, [REDACTED 2], who was born on 23 July 1959 in Vevey.

Information Available in the Bank's Records

The Bank's records consist of two lists of dormant accounts. One of these lists was produced as a result of the Bank's internal inquiry into accounts whose owners last contacted the Bank in the period from 1 September 1939 to 31 December 1948. The other list was the result of the research conducted by the Bank in course of the 1962 Federal survey of assets held in Switzerland by foreigners or stateless persons who were or were presumed to have been victims of racial, religious, or political persecution (the "1962 Survey").

According to the Bank's records, the Account Owner was Francis Maurice Heyberger who resided in France. The Bank's records also indicate that the Account Owner may have had an American domicile or nationality. The Bank's records indicate that the Account Owner held a demand deposit account, and that the Account Owner last contacted the Bank in 1941. The Bank's records further indicate that the account had a balance of 61.50 Swiss Francs ("SF") in 1959 and a balance of SF 41.50 in 1963. The CRT notes that the account was not registered in the 1962 Survey. 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. There is no evidence in the Bank's records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's grandfather's name and country of residence matches the published name and country of residence of the Account Owner. In support of her claim, the Claimant submitted her mother's birth and wedding certificates which indicate that the Claimant's mother's father was Francis Maurice Thibault Heyberger, who resided in Paris, France, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same country recorded in the Bank's records as the name and country of residence of the Account Owner.

The CRT notes that the name Francis Maurice Heyberger appears only once 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 CRT also 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 Paris for Switzerland, where he remained for the duration of the Second World War.

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 grandfather. These documents include the Claimant's birth certificate, indicating that her mother was [REDACTED], and the Claimant's mother's birth and wedding certificates, indicating that [REDACTED]'s father was Francis Maurice Thibault Heyberger. There is no information to indicate that the Account Owner has other surviving heirs other than the parties which 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 account was considered by the Bank for registration in the 1962 Survey but was eventually not registered; 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 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 Owner or his 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 grandfather, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The Bank's records indicate that the value of the demand deposit account in 1959 was SF 61.50. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 225.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1959. Consequently, the adjusted balance of the account at issue is SF 286.50. 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

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 sister, Caroline Bourgeois. Accordingly, the Claimant and her sister, [REDACTED 2] are each 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
18 November 2004