

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of *Julius Figdor & Sohn*

Claim Number: 601585/HM¹

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] and [REDACTED 2] (the “Claimants”) to the account of *Julius Figdor & Sohn*² (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 Claimants submitted a claim to the Holocaust Claims Processing Office (“HCPO”) identifying the beneficial owner of the Account Owner, *Julius Figdor & Sohn*, as their paternal grandfather, Julius Figdor, who was born in 1868 in Vienna, Austria and was married to [REDACTED], née [REDACTED], in 1899. According to the Claimants, their grandparents had two children, the Claimants’ father, [REDACTED], who was born on 25 September 1905 in Austria and [REDACTED], who was born in approximately 1910 in Austria. The Claimants stated that their grandfather was Jewish and that he lived in Vienna, where he owned a jewelry business, “*Julius Figdor & Sohn*,” which was confiscated by the Nazis in 1939. The Claimants also provided documentation showing that the Nazis forced his grandfather to repatriate gold that he held in an account in Amsterdam, a city to which he traveled on business. The Claimants stated further that their grandfather died of a heart-attack in 1939 in Vienna. The Claimants indicated that their father fled to the United States, and was later followed by the Claimants’ grandmother. The Claimants’ uncle fled to Israel. Claimant [REDACTED 1] indicated that he

¹ The Claimant submitted a claim, numbered B-01713, on 4 February 1999 to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601585.

² The CRT will treat the Claimants’ claims to the accounts of [REDACTED] and Julius Figdor in a separate decision.

was born in Philadelphia, Pennsylvania, United States of America, on 19 July 1941 and Claimant [REDACTED 2] was born on 20 July 1944, also in Philadelphia.

Information Available in the Bank Records

The bank record consists of a registration card. According to this record, the Account Owner was the company *Julius Figdor & Sohn*, situated in Vienna, Austria. This record indicates that the Account Owner held four current accounts. Each of the accounts was closed on a different date: 28 February 1923, 31 October 1931, 20 January 1933, and 10 April 1938. There is no evidence in the bank records that the Account Owner or any of its successors in interest closed the accounts and received the proceeds themselves. The bank record does not show to whom the accounts were paid, nor does this record indicate the value of these accounts.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Julius Figdor and [REDACTED]. These records include an Austrian census form for Julius Figdor, numbered 35989, and an Austrian census form for [REDACTED], numbered 35698, both of which are dated 15 July 1938. These records indicate that Julius Figdor was Jewish, that he was born on 13 November 1868, and that he was married to [REDACTED], née [REDACTED], who was born on 17 October 1876. The records show that Julius Figdor resided at Krugerstrasse 18 Vienna I, Austria and owned a jewelry firm by the name of *Julius Figdor & Sohn*, situated at Graben 15, Vienna I, Austria. The records also show that Julius and [REDACTED] Figdor owned real estate worth approximately 75,000.00 Reichsmarks in 1938, as well as a considerable number of stocks and bonds in foreign companies, including a Swiss company. The records also show that the firm *Julius Figdor & Sohn* was valued at 99,534.07 Reichsmarks in 1938.

The CRT's Analysis

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their grandfather's company's name matches the unpublished name of the Account Owner. The Claimants identified their grandfather's company's business location as Vienna, which matches unpublished information about the Account Owner contained in the bank record. The Claimants further indicated that while the name Julius Figdor was published on the 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") in February 2001, that name might identify an account belonging to the company *Julius Figdor & Sohn*. This information matches unpublished information about the Account Owner contained in the bank record.

Furthermore, the Claimants provided the name of their grandfather's spouse and business, which matches information contained in the Austrian Census records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the beneficial owner of *Julius Figdor & Sohn*, Julius Figdor, was a Victim of Nazi Persecution. The Claimants stated that their grandfather was Jewish, and that he was persecuted by the Nazis while living in Vienna until the time of his death in 1939.

The Claimant's Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to Julius Figdor, the beneficial owner of *Julius Figdor & Sohn*, by submitting a detailed description of their family, demonstrating that they are Julius Figdor's grandsons. There is no information to indicate that Julius Figdor has other surviving heirs.

The Issue of Who Received the Proceeds

With respect to the current accounts closed on 28 February 1923, 31 October 1931, and 20 January 1933, the CRT has determined that, because the accounts were closed prior to the rise of Hitler to power in Germany and prior to the Nazi annexation of Austria in March 1938 (the "*Anschluss*"), that it is likely that the Account Owner closed the accounts and received the proceeds.

With respect to the account closed 10 April 1938, the facts of this case are similar to other cases that have come before the CRT in which after the *Anschluss* the assets of Austrian citizens who were Jewish are confiscated even before the announcement of the Austrian census or the filing of census forms. Given that CRT precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazi authorities and the application of Presumptions (a) and (j), the CRT concludes that it is therefore plausible that the account proceeds of the account closed 10 April 1938 were not paid to the Account Owner or its successors in interest. Based on its precedent and the Rules Governing the Claims Resolution Process, the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.³

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was a company owned by their grandfather, and this relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor its successors in interest received the proceeds of the claimed account.

³ An expanded version of Appendix A is available on the CRT II website – www.crt-ii.org.

Amount of the Award

The bank records indicate that the Account Owner held a current account closed 10 April 1938. 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 a current account was 2,140.00 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 a total award amount of 25,680.00 Swiss Francs.

Division of the Award

Claimant [REDACTED 1] and Claimant [REDACTED 2] are each entitled to one half of the total award amount.

Initial Payment

Articles 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 Claimants shall be 65% of the Certified Award, and the Claimants 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 16,692.00 Swiss Francs. Accordingly, each Claimant is entitled to an initial payment of 8,346.00 Swiss Francs.

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

December 31, 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).