

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED]

in re Accounts of Alfred Fleischer and *Bankgeschäft A. Fleischer & Co.*

Claim Number: 222724/HS

This Certified Denial is based upon the claim of [REDACTED], née [REDACTED] (the “Claimant”), to accounts potentially owned by Alfred Fleischer (“Claimed Account Owner Fleischer”) at the Zurich branch of the [REDACTED] (“Bank I”) and by *Bankgeschäft A. Fleischer & Co.* (“Claimed Account Owner *Fleischer & Co.*”) (together the “Claimed Account Owners”) at the [REDACTED] (“Bank II”) (together the “Banks”).

All denials 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 claimed account owners, and the banks have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying Claimed Account Owner Fleischer as her father, Alfred Fleischer, who was born on 29 July 1883 in Korneuburg, Austria, and identifying Claimed Account Owner *Fleischer & Co.* as *Bankgeschäft A. Fleischer & Co.*, a bank and foreign exchange firm owned by her father, located at Wipplingerstrasse 15 in Vienna, Austria. The Claimant stated that her father, who was Jewish, was married to the Claimant’s mother, [REDACTED], née [REDACTED], who died before 1936, and that he later married [REDACTED], with whom he resided at Döblingerhauptstrasse 57 in Vienna. The Claimant stated that her father, who divorced his second wife on 30 June 1938, had no other children.

The Claimant explained that following the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”), the Nazis confiscated her father’s business. The Claimant stated that in 1938 and 1949, her father resided with his sister, [REDACTED], at Siebensterngasse 2, and that he later moved to Dorotheergasse 6/29 in Vienna. The Claimant stated that her father obtained a visa for France, the use of which became impossible following the Nazi occupation of France in 1940. The Claimant stated that her father then attempted to obtain a visa for Ciudad Trujillo (now Santo Domingo, Dominican Republic), with the help of his cousin, [REDACTED], who was the director of *Ullmann & Co.*, a bank located in London, the United Kingdom. According to the Claimant, in 1939 her father sent a parcel containing money and valuables to [REDACTED] for safekeeping. The Claimant stated that her father may have sent other assets to Switzerland, possibly under a different name than his own. The Claimant stated that on 2 June

1942 her father was deported to Minsk, the Union of Soviet Socialist Republics (now Belarus), from which he never returned.

In support of her claim, the Claimant submitted documents, including copies of:

- (1) A copy of the business letterhead of *Bankgeschäft A. Fleischer & Co.* of Wipplingerstrasse 15 in Vienna, dating from the 1920s, which is further described below.
- (2) The Claimant's marriage certificate, dated in 1936, which indicates that up to the time of her marriage, [REDACTED], née [REDACTED], resided with her father, the banker Alfred Fleischer, at Döblingerhauptstrasse 57 in Vienna.
- (3) The first page of an asset declaration, numbered 05765, which her father was obliged to submit to the Nazi authorities, indicating that Alfred Fleischer was born on 29 July 1883, that he was formerly married to [REDACTED], and that he resided at Siebensterngasse 2 in Vienna. The CRT has obtained additional documents from Alfred Fleischer's asset declaration from the Austrian State Archive, which are further described below.
- (4) A receipt (*bordereau*), dated 3 January 1939, issued by the Zurich branch of Bank I, to *Herr* (Mr.) [REDACTED] of London, which is further described below.
- (5) A letter dated 5 January 1945 in London, to the Claimant from [REDACTED], which states that Alfred Fleischer's whereabouts were unknown, and that [REDACTED] "received from Switzerland, a parcel the contents of which are unknown to me and which we have in safekeeping for your father since August 1939."
- (6) A letter dated 15 February 1946, from [REDACTED] to the Claimant's husband, which states that [REDACTED] had in his possession a small parcel which had been sent to him by the Claimant's father during the latter's time in Switzerland, and which was, as of the date of the letter, stored in [REDACTED]'s safe deposit box in London.
- (7) A certificate from the Jewish Community of Vienna (*Israelitische Kultusgemeinde Wien*) dated in 1947, indicating that Alfred Fleischer was deported to Minsk on 2 June 1942 and that there was no record of his return.
- (8) A letter dated 9 June 1961 from the Claimant to [REDACTED], the daughter of [REDACTED], the latter by that time having passed away, which states that the Claimant had received part of the contents of the above-mentioned parcel during her last visit to the United Kingdom in 1948, and inquiring about the remaining contents of the parcel, including unnamed Yugoslavian securities, which should still be located in [REDACTED]'s safe deposit box in London.
- (9) Letters dated 13 and 26 June 1961, from the late [REDACTED]'s daughters in response to the Claimant's inquiry, indicating that [REDACTED]'s safe deposit box in London had been closed on 23 June 1948, and that no record had been located in their father's effects of the Yugoslavian securities sought by the Claimant.
- (10) A letter to the Claimant from Bank I, dated 21 September 1967 in Zurich, which is further described below.
- (11) A letter to the Claimant from the Swiss Federal Department of Justice, Registration Office for Assets of Missing Foreigners (*Meldestelle für Vermögen verschwundener Ausländer*) (the "Registration Office"), dated 5 May 1977 in Bern, Switzerland, which is further described below.
- (12) A letter from Bank II, dated 22 January 2000 in Basel, Switzerland, which is further described below.

The Claimant previously submitted an Initial Questionnaire ("IQ") with the Court in 1999, asserting her entitlement to Swiss bank accounts owned by Alfred Fleischer.

The Claimant indicated that she was born on 20 June 1914 in Vienna.

Information Available in the Banks' Records

The CRT notes that the auditors who carried out the investigation of the Banks 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 report an account belonging to Alfred Fleischer or *Bankgeschäft A. Fleischer & Co.* during their investigation of the Banks.

The documents described below regarding accounts potentially held by the Claimed Account Owners were forwarded by the Claimant to the CRT.

Bank I

In support of her claim that her father, Claimed Account Owner Fleischer, held an account at Bank I, the Claimant submitted a receipt (*bordereau*) dated 3 January 1939, issued by the Zurich branch of Bank I, to *Herr* (Mr.) [REDACTED] of London, the United Kingdom, which contains a handwritten list of numbers, possibly funds denominated in various currencies, as well as "7% Jugosl.," apparently referring to Yugoslavian bonds. The handwritten notation "9 777 wegen Alfred" (concerning Alfred) appears at the bottom of this receipt, which also bears a signature, possibly that of [REDACTED], dated 1 February 1947.

The Claimant also submitted a letter addressed to her from Bank I, dated 21 September 1967 in Zurich, indicating that the Claimant had inquired about assets in the name of Alfred Fleischer, formerly of Wipplingerstrasse 15 in Vienna, Austria. Bank I's letter states: "Unfortunately, we must communicate to you that - so far as we could determine - no relationship in the name of [Alfred Fleischer] currently exists nor has any existed since 1935 with the head office [of Bank I]." ¹

Bank II

In support of her claim that Claimed Account Owner *Fleischer & Co.* held an account at Bank II, the Claimant submitted a sheet of business letterhead, dating from the 1920s, which indicates that *Bankgeschäft A. Fleischer & Co.* was located at Wipplingerstrasse 15 in Vienna, Austria, and that it held accounts in Vienna, Prague, Czechoslovakia, and Berlin, Germany, as well as an account at Bank II, numbered 15.921. The date on the letterhead is pre-printed to show the year "192_" and is otherwise not filled in. It reads: "Wien, am ____ 192_" (Vienna, [date] 192_"). The Claimant also submitted a letter addressed to her from Bank II, dated 22 January 2000 in Basel, Switzerland, indicating that no record of any accounts was located.

¹ "Leider müssen wir Ihnen mitteilen, dass - soweit wir feststellen konnten - auf den Namen des Obgenannten beim Hauptsitz unserer Bank keine Beziehungen bestehen bzw. seit 1935 bestanden haben."

The Registration Office

The Claimant also submitted a letter addressed to her from the Swiss Federal Department of Justice, Registration Office for Assets of Missing Foreigners (*Meldestelle für Vermögen verschwundener Ausländer*) (the “Registration Office”), dated 5 May 1977 in Bern, Switzerland, indicating that the Claimant had inquired about assets in the name of Alfred Abraham Fleischer. The Registration Office’s letter states: “We inform you that we conducted the appropriate investigations in our records. So far as verifiable, no assets of any kind or safe deposit boxes were registered with us by the obligated custodians (banks, insurance companies, etc.) in the course of the legally required registration. We also could not find anything under a numbered account.”²

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Alfred Fleischer, numbered 05765.

These records indicate that Alfred Fleischer was born on 29 July 1883, that he was formerly married to [REDACTED], and that he resided at Siebensterngasse 2 in Vienna. According to these records, Alfred Fleischer owned the *Bank und Wechslergeschäft A. Fleischer & Co.*, located at Wipplingerstrasse 15 in Vienna. Alfred Fleischer reported in his 1938 Census declaration that, as of 12 November 1938, his bank held assets valued at 76,601.15 Reichsmark (“RM”) and liabilities valued at RM 66,383.89, for a total equity of RM 10,217.26. These records contain a list of various securities held by *A. Fleischer & Co.*, however the location of the securities is not indicated. Among the assets listed as belonging to *A. Fleischer & Co.* are entries referring to assets held at two Austrian banks listed on the firm’s letterhead from the 1920s, but the 1938 Census record does not include any listing for assets held at the three other banks listed on the letterhead from the 1920s, including Bank II.

These records make no mention of a Swiss bank account.

² “Wir teilen Ihnen mit, dass wir in unsern Registern die entsprechenden Nachforschungen angestellt haben. Soweit nachweisbar, sind uns von den gesetzlich zur Anmeldung verpflichten Verwahrern (Banken, Versicherungsgesellschaften etc.) weder Vermögenswerte irgendwelcher Art noch Schrankfächer mitgeteilt worden. Auch unter einem Nummernkonto konnten wir nichts finden.” The “legally required registration” resulted from the Federal Decree of 20 December 1962 (the “Federal Decree”), by which the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution (“the 1962 Survey”).

The CRT's Analysis

Basis for the Denial

While the CRT has previously awarded accounts to claimants when the ICEP Investigation failed to locate an account belonging to their relative (an account not included in the Account History Database, the Account Dossiers, and the Total Accounts Database), the evidence submitted by these claimants falls into very limited categories. Article 17 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), lists certain categories of evidence that the CRT has used to justify an award when an account is not identified in the ICEP Investigation. These categories include Austrian State Archives Records and other government records, records of the New York State Holocaust Claims Processing Office, and any other historical and factual material available to the CRT. Examples of facially reliable evidence submitted by claimants include actual bank documents evidencing the existence of an account, documents submitted to an official governmental agency, and official letterhead indicating a connection to a Swiss bank.

While the CRT bears in mind the difficulties of proving a claim after the destructive events of the Second World War, it has determined in this case that the documents submitted by the Claimants are insufficient to support the existence of Holocaust-era bank accounts owned by the Claimed Account Owners.

With respect to Claimant Account Owner Fleischer, the Claimant submitted a receipt issued by Bank I on 3 January 1939, to [REDACTED] of London, which bears the handwritten notation "9 777 concerning Alfred" at the bottom of the page, as well as an illegible signature and the date 1 February 1947. The CRT notes that this receipt was actually issued to [REDACTED], not to Claimed Account Owner Fleischer, that the handwritten notation does not include Alfred's last name, and that the date written at the bottom of the page is several years after the death of Claimed Account Owner Fleischer. Accordingly, this receipt alone is insufficient to support a conclusion that Claimed Account Owner Fleischer held an account at Bank I.

With respect to the post-War correspondence between [REDACTED], [REDACTED]'s daughters, the Claimant, and the Claimant's husband, which the Claimant submitted in support of her claim, the CRT notes that these letters refer to a parcel, potentially containing Yugoslavian securities and other assets, which Claimed Account Owner Fleischer sent from Switzerland to [REDACTED] in London in August 1939. However, to the extent that these letters, together with the above-mentioned Bank I receipt (dated in January 1939 and bearing the notation "7% Jugosl."), show that Claimed Account Owner Fleischer originally held these assets on deposit in Switzerland (which they do not), these documents show that Claimed Account Owner Fleischer exercised control over the assets and sent them in a parcel to [REDACTED] in London for safekeeping in August 1939, eight months after the date of the Bank I receipt. Thus, the CRT concludes that no award is appropriate based upon these documents.

With respect to Claimed Account Owner *Fleischer & Co.*, the Claimant submitted a sheet of business letterhead, dating from the 1920s, which indicates that, in addition to bank accounts at two banks in Vienna and one bank each in Prague and in Berlin, Claimed Account Owner *Fleischer & Co.* held an account at Bank II, numbered 15.921. The CRT notes that the

letterhead has a pre-printed date that reads “192_” and that limits its validity through 31 December 1929. After that date, new letterhead would have to be printed to reflect the decade of the 1930s. The CRT notes that there is no evidence to suggest that the company’s bank accounts remained the same and were included on the new letterhead dated for the 1930s. The letterhead from the 1920s does not demonstrate that Claimed Account Owner *Fleischer & Co.* maintained an account at Bank II during the Relevant Period, which is defined by the Rules as the period from 1 January 1933 to 31 December 1945, or that the account continued to exist until the time of the *Anschluss* in March 1938, when it would have been subject to Nazi confiscation. The CRT also notes that in his 1938 Census declaration, Alfred Fleischer listed assets belonging to *Fleischer & Co.* that were held at two Austrian banks listed in the letterhead, but no assets at the three other banks listed on the letterhead from the 1920s, including Bank II. Given that the latest possible date on the letterhead (31 December 1929) predates the *Anschluss* by more than eight years, and given that there is no evidence to conclude that the company maintained a bank account at Bank II after 31 December 1929, the CRT is unable to recommend an award to the Claimant based upon this document.

Given the above considerations, the CRT is unable to recommend an award to the Claimant.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, the Claimant may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT’s conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. The Claimant should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimant should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimant should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal
17 December 2010