

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 Accounts of Harry Feiwelsohn and *Firma Feinstein u. Feiwelsohn*

Claim Number: 787178/BE¹

Award Amount: 98,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (the “Claimant”) to the accounts of Norbert and Elisa Feiwelsohn. This Award is to the unpublished account of Harry Feiwelsohn (“Account Owner Feiwelsohn”), over which Norbert Feiwelsohn (the “Power of Attorney Holder”) held power of attorney, and the unpublished account of *Firma Feinstein u. Feiwelsohn* (“Account Owner *Firma Feinstein u. Feiwelsohn*”) both at the Zurich branch of the [REDACTED 1] (the “Bank”). The accounts awarded are from the Total Accounts Database (“TAD”) at 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 an Initial Questionnaire (“IQ”) identifying Account Owner Feiwelsohn as her half-brother, Harry Feiwelsohn, who was born in the 1920s in Vienna, Austria, the Power of Attorney Holder as her father, Norbert Feiwelsohn, who was born on 30 March 1891, and Account Owner *Firma Feinstein u. Feiwelsohn* as a company owned by her father.

The Claimant stated that her half-brother, who was Jewish, was the son of her father and his first wife. The Claimant further stated that, before the outbreak of the Second World War, her half-brother was sent to study in England, and that after the incorporation of Austria into the Reich in

¹ Claimant [REDACTED 1](the “Claimant”) did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered ENG-0284-008, to the Court in the United States. Although this IQ was not a Claim Form, 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 IQ was forwarded to the CRT and has been assigned claim number 787178.

March 1938 (the “*Anschluss*”), he left to Canada, where he first joined the army, and then worked in the advertising industry. The Claimant stated that her half-brother married a Canadian woman and that they had one daughter, her niece [REDACTED 2].

The Claimant indicated that her father, who was also Jewish, was married twice, that her mother [REDACTED] was his second wife, that they married on 17 June 1933 or 1934 in Vienna, and that they resided at 2 Ferdinandstrasse in Vienna. The Claimant stated that her father was in the ladies’ wear business, that he owned a large business together with an associate named Feinstein, and that the business was located on Dorotheergasse in Vienna. The Claimant further stated that her father and Mr. Feinstein remained in business together until Mr. Feinstein left it when he fled Austria to the United States. According to the Claimant, after the *Anschluss*, the Nazis confiscated her father’s business and all of his assets and forced him to pay flight tax for his and his wife’s families before allowing them to flee Vienna. The Claimant stated that the families fled first to London, England, then to Glasgow, Scotland, and finally to the United States. The Claimant indicated that her father died on 13 August 1970, in Brooklyn, New York, United States.

The Claimant indicated that she was born on 12 February 1938 in Vienna. The Claimant is representing her niece, [REDACTED 2].

Information Available in the Bank’s Records

The Bank’s records consist of a power of attorney form, printouts from the Bank’s database, a letter from Power of Attorney Holder Norbert Feiwelsohn, dated 18 February 1939 to a person named Ferdinand H. Moos of Zurich, a letter from Mr. Moos, dated 20 February 1939 to the Bank, forwarding Norbert Feiwelsohn’s letter, and a letter from the Bank to Harry Feiwelsohn, dated 21 February 1939, regarding this correspondence, which was never sent but added only to the client’s file.² According to these records, Account Owner Feiwelsohn and Account Owner *Firma Feinstein u. Feiwelsohn* each held one account, the types of which are not indicated.

According to these records, Account Owner Feiwelsohn was Harry Feiwelsohn, who resided at Obere Weissgerberstrasse in Vienna III, Austria, and the Power of Attorney Holder was Norbert Feiwelsohn, who resided at Dorotheergasse 6/13 in Vienna I. The Bank’s records indicate that Account Owner Feiwelsohn held an account, the type of which is not indicated, over which power of attorney was granted in 1932 to Norbert Feiwelsohn. The records indicate that the amount in the account as of February 1939 was 1,500.00 Swiss Francs (“SF”). The Bank’s records indicate that this account was closed on either 13 September 1939 or 20 July 1939 (both dates are included on the record). The amount in the account on the date of its closure is unknown. There is no evidence in the Bank’s records that Account Owner Feiwelsohn, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

² Although the remaining Bank’s records do not include such an instruction, this letter was likely never sent due to “hold mail” instructions from Account Owner Harry Feiwelsohn.

The letter dated 18 February 1939 from Norbert Feiwelsohn to Mr. Moss is noteworthy in that it was clearly written to avoid revealing too much, should the letter fall into the wrong hands. In it, Norbert Feiwelsohn wrote that the “since yesterday, the father of little Susi is in such a situation, that he no longer act of his own free will. The family asks that you please immediately inform the Bank in Zurich, Crédit Fonce Paris, Bank Bruxelles Brüssel, and further, personally through your mother in law Midland Bank at Newgatestreet in London, that no one should provide information about his personal account, not even if a letter from him himself comes asking for it. He is so sick that he does not know what he is doing.”³ The note is not signed, but is dated 18 February 1939.

On 20 February 1939, Mr. Moos forwarded this note to the Bank, stating that he received it from Budapest and that it referred to Norbert Feiwelsohn of Vienna. In its letter to Harry Feiwelsohn, dated 21 February 1939, which was not mailed but only inserted in the file, the Bank noted that it had received Mr. Moos letter and the accompanying note, according to which Norbert Feiwelsohn of Vienna requested that questions regarding his private account should not be answered, even if he himself requests information. The Bank wrote, “apart from the fact that Norbert Feiwelsohn is not the account owner, but only the power of attorney holder, we cannot accept Mr. Moos’ correspondence as binding for us, because he is not identified here as your representative.”⁴

On the 20 February 1939 letter from Mr. Moos to the Bank, there is a handwritten note from a Bank employee. According to this note, *Firma Feinstei u. Feiwelsohn* also owned an account, the type of which is not indicated, and Norbert Feiwelsohn was co-owner and an authorized partner of the company. The note does not state where *Firma Feinstei u. Feiwelsohn* was located, nor does it indicate the name of any other co-owner of the company. According to the handwritten note, the note from Norbert Feiwelsohn referred exclusively to his *private* (emphasis in the original) account, so it did not apply to the company account. According to the handwritten note, the Bank had just written to the company on 21 February [1939] because its account was overdrawn. The Bank’s records do not show when this account was closed, nor do these records indicate the value of this account at the time of closure. There is no evidence in the Bank’s records that Norbert Feiwelsohn, who was authorized to act on the account of *Firma Feinstei u. Feiwelsohn*, any other authorized party, or their heirs closed the account and received the proceeds themselves.

These two accounts were not part of the Account History Database at the CRT, but were identified as a result of matching and research carried out at the Bank and using, as noted above, the TAD at the Bank. The TAD at the Bank is one of the several databases that comprise a total of approximately 4.1 million accounts. These are part of the approximately 6.9 million accounts

³ The German original reads: “Lieber Herr Moos, Vater von kleinen Susi ist ab gestern in einer solchen Lage, dass er über seinen Willen nicht frei verfügen kann. Die Familie bittet Sie sehr, [the Bank] Zürich, Crédit Fonce Paris, Bank Bruxelles Brüssel, weiters durch Ihre Schwiegermutter persönlich an Midland Bank, London, Newgatestreet, sofort verständigen, dass über sein Privat-Konto niemanden eine Auskunft gegeben werden soll, nicht einmal dann, wenn von ihm selbst ein diesbezüglicher Brief kommen sollte. Er ist so krank, dass er nicht weiss, was er macht.”

⁴ The German original reads: “Abgesehen davon, dass Herr Norbert Feiwelsohn nicht Konto-Inhaber, sondern lediglich Ihr Bevollmächtigter ist, können wir von den Mitteilungen des Herrn Moos nicht in für uns verbindlicher Weise Notiz nehmen, weil sich der Genannte hier nicht als Ihr Vertreter ausweist.”

that were identified by the Independent Committee of Eminent Persons (“ICEP”) auditors as open or opened in the 1933-1945 period in Swiss banks, less the estimated 2.8 million accounts for which no records remain. These 4.1 million accounts, in databases located at the 59 ICEP audited Swiss banks,⁵ are composed of 1.9 million savings accounts with unknown values or a 1930-1940s value of 250.00 Swiss Francs or less and accounts with Swiss addresses, and 2.2 million accounts that ICEP concluded should not be included within the Account History Database, that is, within the 36,000 accounts that ICEP determined were “probably or possibly” owned by victims of Nazi persecution.

The accounts awarded are part of a group of accounts identified in the TAD.

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 Norbert Feiwelsohn, numbered 20877. These records consist of Norbert Feiwelsohn’s asset declaration, signed by him on 15 July 1938 in Vienna, as well as a letter from Norbert Feiwelsohn, dated 15 December 1938, to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or “VVSt.”). According to his asset declaration, Norbert Feiwelsohn was born on 31 March 1891, resided at Ferdinandstrasse 28/2 in Vienna, and was married to [REDACTED], née [REDACTED]. Norbert Feiwelsohn indicated that both he and his wife were Jewish. In his asset declaration, Norbert Feiwelsohn stated that he was a businessman, that he owned half of a real estate property located at Siebenbrunnenplatz 3 in Vienna III, as well as and half of a company called *Feinstein & Feiwelsohn*, which was a business for ladies’ wear located at Dorotheergasse 6 in Vienna. His share of this company was listed as worth 35,959.75 Reichsmark (“RM”). In his declaration, Norbert Feiwelsohn also indicated that he held bonds, two insurance policies, carpets, and jewelry. In his letter, dated 15 December 1938, Norbert Feiwelsohn registered changes in his asset declaration and indicated that a country house that had been previously declared had been confiscated (*beschlagnahmt*), and that prior to 12 November 1938 he had paid flight tax (*Reichsfluchtsteuer*) in the amount of RM 13,675.00 in cash. Norbert Feiwelsohn also indicated that since 1930 he paid RM 3,200.00 annually in alimony and maintenance, which was to continue as long as he had the possibility to earn a living.

The Austrian State Archive also contains documents concerning the assets of [REDACTED], née [REDACTED], numbered 40570. These documents consist of [REDACTED]’s asset declaration, signed by her on 15 July 1938 in Vienna. According to these documents, [REDACTED] was born 26 July 1901 in Vienna, resided at Ferdinandstrasse 28/2, and was married to Norbert Feiwelsohn. According to her asset declaration, [REDACTED] owned half of a real estate property in Vienna, as well as a country house and jewelry. In her declaration, [REDACTED] stated that she was supporting her parents [REDACTED] and [REDACTED].

⁵ These 59 audited banks represent 254 banks that existed in the 1933-1945 period.

The Austrian State Archive also contains documents concerning the assets of [REDACTED], née [REDACTED], numbered 40549. These documents consist of [REDACTED]'s asset declaration, signed by her on 16 April 1938 in Vienna. According to these documents, [REDACTED] was born on 4 January 1892, was Jewish, resided at Obere Weissgarber Platz 6 in Vienna III, and was divorced. [REDACTED] indicated that she owned jewelry valued at RM 330.00, and that she received alimony and maintenance payments of RM 3,200.00 for her minor son, which was to continue so long as her ex-husband was able to earn a living. Based on these records, it is apparent that [REDACTED] was Norbert Feiwelsohn's first wife and the mother of Harry Feiwelsohn.

None of these records refer to assets held in Swiss banks.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Feiwelsohn, the Power of Attorney Holder, and Account Owner *Firma Feinstein u. Feiwelsohn*. The Claimant's half-brother's name and city and country of residence match the unpublished name and city and country of residence of Account Owner Feiwelsohn, the Claimant's father's company's name and place of business match the unpublished name and place of business of Account Owner *Firma Feinstein u. Feiwelsohn*, and the Claimant's father's name and city and country of residence match the unpublished name and city and country of residence of the Power of Attorney Holder, who was also the owner of Account Owner *Firma Feinstein u. Feiwelsohn*.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Norbert Feiwelsohn, and indicates that he resided at Ferdinandstrasse in Vienna, Austria, which matches the information about the Power of Attorney Holder provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Feiwelsohn, and the Power of Attorney Holder, who was also an owner of Account Owner *Firma Feinstein u. Feiwelsohn*, were Victims of Nazi Persecution. The Claimant stated that Account Owner Feiwelsohn and the Power of Attorney Holder were Jewish, that Account Owner Feiwelsohn fled to Canada after the *Anschluss*, that Account Owner *Firma Feinstein u. Feiwelsohn* was confiscated by the Nazis, that the Power of Attorney Holder's business and assets were confiscated by the Nazis, and that he was forced to pay flight tax before he was able to flee from Vienna to the United States. The CRT notes that Norbert and [REDACTED] were forced to register their assets pursuant to the 1938 Census, as was [REDACTED], who was Account Owner Feiwelsohn's mother.

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

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to Account Owner Feiwelsohn and to the Power of Attorney Holder by submitting specific biographical information, demonstrating that Account Owner Feiwelsohn was the Claimant's half-brother and that the Power of Attorney Holder, who was also an owner of Account Owner *Firma Feinstein u. Feiwelsohn*, was the Claimant's father. There is no information to indicate that Account Owner Feiwelsohn and the Power of Attorney Holder had surviving heirs other than the parties whom the Claimant is representing, or that *Firma Feinstein u. Feiwelsohn* had other owners whose heirs submitted a claim to the CRT.

The CRT further notes that the Claimant identified unpublished information about Account Owner Feiwelsohn, the Power of Attorney Holder, and Account Owner *Firma Feinstein u. Feiwelsohn*, as contained in the Bank's records; that the Claimant filed an IQ with the Court in 1999, identifying the relationship between them and the Claimant; and that the Claimant also identified information which matches information contained in the CRT database of victims. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that Account Owner Feiwelsohn and the Power of Attorney Holder, were well known to the Claimant as family members, and all of this information supports the plausibility that the Claimant is related to them, as she has asserted in her Claim Form.

The Issue of Who Received the Proceeds

With respect to the account owned by Account Owner Feiwelsohn, the CRT notes that the Bank's records indicate that the account was closed on either 13 September 1939 or 20 July 1939, at which time, according to information provided by the Claimant, Account Owner Feiwelsohn was outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the account was closed, that Account Owner Feiwelsohn fled his country of origin due to Nazi persecution, that Account Owner Feiwelsohn 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 Account Owner Feiwelsohn 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 it is plausible that the account proceeds were not paid to Account Owner Feiwelsohn, the Power of Attorney Holder, or their heirs.

With respect to the account owned by *Firma Feinstein u. Feiwelsohn*, given that there is no record of the payment of the account to its owner, nor any record of a date of closure of the account; that the owner of the company 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 owner of Account Owner *Firma Feinstein u. Feiwelsohn* 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 and the parties she represents. 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 Feiwelsohn was her half-brother, and that the Power of Attorney Holder, who was also an owner of Account Owner *Firma Feinstein u. Feiwelsohn*, was her father, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither Account Owner Feiwelsohn, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed accounts.

With respect to the account owned by Account Owner Feiwelsohn, the CRT notes that represented party [REDACTED 2], as Account Owner Feiwelsohn's daughter, has a better entitlement to the account than the Claimant, Account Owner Feiwelsohn's half-sister.

Amount of the Award

In this case, Account Owner Feiwelsohn and Account Owner *Firma Feinstein u. Feiwelsohn* each held one account of unknown type. With respect to the account belonging to Account Owner Feiwelsohn, the Bank's records indicate that the value of the account as of February 1939 was SF 1,500.00. According to Article 29 of the Rules, if the amount in an account of unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00.

With respect to the account held by Account owner *Firma Feinstein u. Feiwelsohn*, 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 SF 3,950.00.

Thus, the combined 1945 average value for the two accounts at issue is SF 7,900.00. 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 98,750.00.

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 the daughter of the Norbert Feiwelsohn, who was an owner of Account Owner *Firma Feinstein u. Feiwelsohn*, and she is representing her niece, [REDACTED 2], the daughter of Account Owner Feiwelsohn. Therefore, with respect to the account owned by Account Owner Feiwelsohn, represented party [REDACTED 2], as the daughter of the account owner, is entitled to the entire award amount, or SF 49,375.00. As noted above, with respect to this account, the Claimant is not entitled to share in the award amount.

With respect to the account owned by Account Owner *Firma Feinstein u. Feiwelsohn*, the Claimant, as daughter of an owner of the company, is entitled to one-half of the award amount, and represented party [REDACTED 2], as daughter of the son of an owner of the company, is entitled to the other half of the award amount, or SF 24,687.50 each.

In summary, the Claimant is entitled to SF 24,687.50 of the total award amount, and represented party [REDACTED 2] is entitled to SF 74,062.50 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) at banks other than the Bank.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
10 November 2007