

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Dr. Heinrich Fink

Claim Number: 601643/ZP¹

Award Amount: 107,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Max Juliusburger.² This Award is to the accounts of Heinrich Fink (the “Account Owner”) at the Zurich branch of 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 to the Holocaust Claims Processing Office (“HCPO”) identifying the Account Owner as her uncle, Heinrich Fink, who was born in approximately 1914 in Radoschau Upper Silesia, Germany. The Claimant stated that her uncle, who was Jewish, was the brother of her mother, [REDACTED], née [REDACTED]. The Claimant stated that her family lived in Breslau, Germany before the Second World War, and that her uncle was murdered in Auschwitz. In support of her claim, the Claimant submitted her birth certificate and a document issued by the Red Cross, dated 13 February 1943, in which the Claimant’s father, [REDACTED] of Breslau, Germany, forwarded a message to his children in Shanghai; the marriage certificate of businessman [REDACTED] and [REDACTED], dated 2 July 1914; a certification dated 7 January 1941 of the religious marriage of [REDACTED] and [REDACTED], née [REDACTED]; and an inheritance certificate.

The Claimant indicated that she was born on 24 January 1921 in Loslau Kreis Rybnik, Germany.

¹ The Claimant submitted a claim, numbered B-02195, on 28 April 2000, 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 601643.

² The CRT will treat the claim to this account in a separate decision.

Information Available in the Bank Records

The bank records consist of an account opening card, excerpts from the Bank's ledger, internal bank correspondence, and printouts from the Bank's database. According to these records, the Account Owner was Dr. med. Heinrich Fink, who resided at Breitestrasse 19 in Breslau, Germany, and the Power of Attorney Holder was [REDACTED], an attorney. The bank records indicate that the Account Owner held a custody account numbered 30965 and an account of an unknown type.

The internal bank correspondence refers to the Seventh Implementation Order to the Law of Foreign Exchange Control of 19 November 1936 ("*Siebente Durchführungsverordnung zum Gesetz über die Devisenbewirtschaftung vom 19. November 1936*"). These foreign currency restriction measures mandated that German owners of foreign securities must deposit their securities with a German bank or, with a bank outside Germany, into a German bank account there. According to the correspondence in the records, the original deadline for such transfers was 4 December 1936. The bank correspondence dated 16 February 1937 indicates that, in the period from the effective date of the Foreign Exchange Control Law until 31 January 1937, securities from 291 customer custody accounts in the amount of 6,266,760.00 Swiss Francs were transferred to various banks in Germany.

The records indicate that securities in the amount of 5,000.00 Swiss Francs were transferred from the Account Owner's custody account numbered 30965 to the *Dresdner Bank* in Berlin on 14 December 1936. The records indicate that as a result of this transfer, the account was closed. With regard to the account of unknown type, the bank records indicate that the account was closed on 10 December 1936. The amount in the account on the date of its closure is unknown. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, 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. Her uncle's name and city of residence match the published name and city of residence of the Account Owner. The CRT notes that the Claimant filed a claim with the HCPO in April 2000 asserting her entitlement to a Swiss bank account owned by her father, [REDACTED], in which she identified her mother's maiden name as Fink, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather on a family relationship that was known to her before the publication of the ICEP List. In support of her claim, the Claimant submitted documents, including a document issued by the Red Cross, dated 13 February 1943, in which the Claimant's father is identified as [REDACTED] of Breslau, Germany. The identification of the Claimant's mother as a member

of the Fink family and the residence of the Claimant's family in Breslau, which was also the city of residence of the Account Owner, support the Claimant's identification of the Account Owner as her uncle. The CRT also notes that there are no other claims to these accounts.

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 was killed in Auschwitz.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that Heinrich Fink was her uncle. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With regard to the custody account numbered 30965, the bank documents show that the assets in the account were transferred to the Nazi-controlled *Dresdner Bank* in Berlin on 14 December 1936.

With regard to the account of unknown type, given the application of Presumptions (f), (h) and (j) as provided by 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 Owners, 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 uncle, and that relationship justifies an Award. Finally, 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 accounts.

Amount of the Award

In this case, the Account Owner held one custody account and one account of an unknown type. With regard to the custody account numbered 30965, the bank records indicate that the value of the custody account when it was transferred to a Nazi-controlled bank, on 14 December 1936, was 5,000.00 Swiss Francs. The present value of this amount is determined by multiplying the historic balance by a factor of 12, in accordance with Article 31(1) of the Rules. Consequently, the award amount for this account is 60,000.00 Swiss Francs.

With regard to the account of unknown type, closed on 10 December 1936, 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 present value of the account being awarded. Based on the investigation carried out pursuant to the instructions of the ICEP, in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an award amount of 47,400.00 Swiss Francs for this account.

Accordingly, the total award amount for both accounts is 107,400.00 Swiss Francs.

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
April 4, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).