

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to [REDACTED], née [REDACTED]

in re Accounts of Richard Bial and Gertrud Bial

Claim Number: 202287/MBC^{1 2}

Award Amount: 237,447.50 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Richard Bial (“Account Owner Richard Bial”) and Gertrud Bial, née Quetscher, (“Account Owner Gertrud Bial”) (together, the “Account Owners”) 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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owners as her paternal uncle, Richard Bial, and his wife, Gertrud Bial, née Quetscher. The Claimant stated that her uncle, who was Jewish, was born on 23 March 1873 in Breslau, Germany, and that the date of birth of her aunt, who was not Jewish, is not known. The Claimant also stated that Richard Bial, [REDACTED] (her father, who was also known as [REDACTED]), [REDACTED], and [REDACTED] were brothers. The Claimant further stated that her uncle and aunt lived at Frankenberggasse 8 in Vienna, Austria. The Claimant indicated that during a visit to Vienna in 1938 after the annexation of Austria (the *Anschluss*), she was told that her uncle, in an effort to protect his assets, had transferred all of his holdings into his wife’s name because she was not Jewish. The Claimant stated that she was also told that she and her brother, [REDACTED], were to be the sole heirs of her uncle and aunt’s assets, as they had no children of their own. The

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 202287 and 202288. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 202287.

² The Claimant submitted additional claims to the accounts of [REDACTED] and [REDACTED], which are registered under the Claim Numbers 202286 and 202289. The CRT will treat the claim to the account of [REDACTED] in a separate decision and has already treated the claim to the account of Franz Bial. *See* In re Account of Dr. Franz Bial (approved on 24 October 2002).

Claimant indicated that [REDACTED] was born on 30 July 1921 in Germany and died on 4 November 1983 in the United Kingdom, and that he did not have any children. According to the Claimant, [REDACTED] lived in Switzerland and probably opened a Swiss bank account on behalf of his brother, Richard. The Claimant stated that Richard Bial died in Vienna in 1939, that she does not know when Gertrud Bial passed away, and that she is the only living relative of Richard and Gertrud Bial. The Claimant submitted documents in support of her claim, including a statement from the United States Department of the Interior, dated 15 January 1898, identifying the Claimant's grandfather, [REDACTED], the Claimant's grandmother, [REDACTED], and their children: [REDACTED] (the Claimant's father), Richard, [REDACTED] and [REDACTED], who were born on 2 February 1872, 23 March 1873, 31 August 1875, and 16 January 1882, respectively; a copy of her own German-Jewish identity card, dated 20 June 1939, identifying her as [REDACTED] of Breslau, Germany; a sworn declaration made by her aunt on 18 July 1938, stating that the property situated at Frankenbergstrasse could only be transferred to Aryan owners after her death; and a certified letter, dated 1 August 1938, from the property registration office in Vienna to a notary public, approving Richard Bial's transfer of the property located at Frankenbergstrasse to his wife by gift and making reference to Gertrude Bial's 18 July 1938 sworn declaration. The Claimant indicated that she was born on 5 August 1924 in Gleiwitz, Germany.

Information Available in the Bank's Records

The Bank's records consist of customer cards, internal lists of dormant accounts, documents relating to the 1945 Freeze of German assets held in Switzerland (the "1945 Freeze"), documents prepared by the Bank in course of the 1962 survey of assets held by foreigners or stateless persons who were victims of racial, religious or political persecution (the "1962 Survey"), and printouts from the Bank's database. According to these records, the Account Owners were Richard Bial and Gertrud Bial, née Quetscher, who were husband and wife and resided at Frankenberggasse 8 and Bernbrunnngasse 37 in Vienna, Austria.

According to the Bank's records, Account Owner Richard Bial held one custody account, numbered 25911, and one demand deposit account.³ The Bank's records show that the correspondence concerning those accounts was sent to [REDACTED], Carmenstrasse 42, Zurich, Switzerland. These records indicate that the custody account was opened in 1928 and closed on 18 October 1937. The value of the securities in the custody account on the date of its closure is not indicated. The Bank's records do not show when the demand deposit account at issue was closed or to whom it was paid, nor do these records indicate the value of this account. 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 the demand deposit account in the Bank's

³ The CRT notes that the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List") indicated that Account Owner Richard Bial held three accounts and Account Owner Gertrud Bial held also three accounts. The Bank's records submitted to the CRT by the auditors who carried out the ICEP Investigation show that Account Owner Richard Bial held two accounts and that Account Owner Gertrud Bial held two accounts.

system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945.

The Bank's records also indicate that Account Owner Gertrud Bial held one custody account, numbered 41463, that was opened in 1937, as well as a demand deposit account. The power of attorney to those accounts was held by Account Owner Richard Bial. The correspondence was sent to [REDACTED], Carmenstrasse 42, Zurich, until 13 August 1938, at which date the Bank was ordered to hold any correspondence. According to the Bank's records, the custody account was closed on 10 August 1938. The value of the securities held in the custody account is unknown. The demand deposit account was opened on 20 October 1937. The amount in the account as of 17 February 1945 was 453.00 Swiss Francs. The Bank's records indicate that the Bank considered the account for registration in the 1962 Survey, but did not register it. The Bank's records do not show when the demand deposit account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. The auditors who carried out the ICEP Investigation did not find the demand deposit account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the Bank's records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

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 Richard Bial and Gertrud Bial, née Quetscher, numbered 08514 and 09818, respectively. The records indicate that Richard Bial and Gertrud Bial, who were married, resided at Frankenbergstrasse 8, that Richard Bial was Jewish, and that Gertrud Bial was Catholic. The records indicate that Richard and Gertrud Bial held assets worth more than 150,000.00 Reichsmarks (1938 value), including real estate at Frankenberggasse 8 in Vienna IV worth 64,000.00 Reichsmarks (1938 value), which had been transferred to Gertrud Bial in May 1938 with the approval of the *Gestapo*. The Austrian State Archives' records also include a letter to Gertrud Bial from the finance authorities dated 4 September 1939, stating that she was no longer required to pay "flight tax" (*Reichsfluchtsteuer*) or "security" (*Sicherheit*) as her husband, Richard Bial, had since died. The records also indicate that Richard Bial's brother was [REDACTED], who had been residing in Zurich, Switzerland, and who had emigrated to the United States. Finally, these records also show that Gertrud Bial owned 7% *Meridionale Elektr. A.G.* at a nominal value of 2,000.00 United States Dollars, which were held at the Bank. Gertrud Bial indicated that the market value of those securities amounted to 67% of their nominal value. Furthermore, the Austrian census records indicate that Gertrud Bial held approximately 11,000.00 Swiss Francs as of 8 July 1938 at the Bank, and that the *Reichsbank* (the German national bank) had demanded a transfer of the latter assets to them.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her uncle and aunt's names match the published names of the Account Owners. The Claimant identified her relatives' street address, which matches unpublished information about the Account Owners contained in the Bank's records. In support of her claim, the Claimant submitted documents, including a statement from the United States Department of the Interior, dated 15 January 1898, identifying the Claimant's grandfather, [REDACTED], and his sons [REDACTED] (the Claimant's father), Richard, [REDACTED], and [REDACTED]; a copy of her own German-Jewish identity card dated 20 June 1939, identifying her as [REDACTED] of Breslau, Germany. The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different maiden name than that of Account Owner Gertrud Bial, and/or provided different countries of residence than that of the Account Owners.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that Account Owner Richard Bial was Jewish and that he lived in Nazi-controlled Austria until his death in 1939. Moreover, Account Owner Gertrud Bial, who was not Jewish, but who had a Jewish spouse, was also a Target of Nazi Persecution. The Nazi government in Austria, at least for some purposes, treated her as a Jew. After the March 1938 German annexation of Austria (the "*Anschluss*") she was required to report her assets in an Austrian census form as required of Jews residing in Austria, and it is plausible that the accounts she reported on the Austrian census form were paid to the Nazis, as indicated by the demand of the Reichsbank for her 11,000 Swiss Franc account at the Bank.⁴

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners as their niece. The Claimant submitted documents, including her parents' marriage certificate, which indicates her father's name; and a copy of her own German-Jewish identity card, identifying her as [REDACTED]. The Claimant also submitted a copy of a statement from the United States Department of the Interior, dated 15 January 1898, identifying the Claimant's grandfather, [REDACTED], the Claimant's grandmother, [REDACTED], and their children: [REDACTED] (the Claimant's father), Richard, [REDACTED], and [REDACTED], who were born on 2 February 1872, 23 March 1873, 31 August 1875, and 16 January 1882, respectively. The CRT notes that it is plausible that this 1898 document, which indicates Account Owner Richard Bial's name, date of birth, both parents' names, and three siblings' names, is a document which most likely only a family member would possess. Finally, the Claimant identified unpublished information about the Account Owners' address (Frankenberggasse 8, Vienna, Austria). There is no information to indicate that the Account Owners have other surviving heirs.

⁴ See The Issue of Who Received the Proceeds section below.

The Issue of Who Received the Proceeds

With respect to the custody account, numbered 25911, held by Account Owner Richard Bial, given that this account was closed in 1937, prior to the 1938 *Anschluss*, and given that Gertrud Bial opened an account at the Bank in 1937, the CRT determines that it is plausible that Account Owner Richard Bial received the proceeds of this account.

With respect to the demand deposit account held by Account Owner Richard Bial, given that the closing of this account is unknown; that Nazi confiscatory legislation applied in Austria after the *Anschluss*; that Account Owner Richard Bial was Jewish and that he resided in Austria after the *Anschluss* until his death in 1939; that there is no record of payment of the Account Owner's account to him; that Account Owner Richard Bial 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 Account Owner Richard Bial or his heirs.

With respect to Account Owner Gertrud Bial's custody account, numbered 41463 and closed on 10 August 1938, and her demand deposit account that was presumed closed, which were both reported by Gertrud Bial in her Austrian census form, the facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, subsequently, and in many cases within the same year, their accounts were transferred to Nazi-controlled banks or were closed unknown by whom. Given that the CRT's precedents indicate that it is plausible in such situations that the account proceeds were paid to the Nazis; that Account Owner Gertrud Bial's custody account was closed unknown to whom on 10 August 1938; that the balance of the demand deposit account as of 17 February 1945 was merely a fraction of the balance reported by Account Owner Gertrud Bial in the Austrian census; that the demand deposit account existed after the Second World War; that there is no record of payment of either the custody account or the demand deposit account to Account Owner Gertrud Bial or her heirs; and given the application of Presumptions (a), (h) and (j), as provided in Article 28 of the Rules (see Appendix A) with respect to the custody account and the application of Presumptions (h) and (j) with respect to the demand deposit account, the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Gertrud Bial or her 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 Owners were her uncle and aunt, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

For the purposes of the Award in this case, Account Owner Richard Bial held one demand deposit account, and Account Owner Gertrud Bial held one demand deposit account and one custody account. With regard to the demand deposit account held by Account Owner Richard Bial, 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 a demand deposit account was 2,140.00 Swiss Francs. 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 an amount of 26,750.00 Swiss Francs.

The Austrian State Archives indicate that the value of Account Owner Gertrud Bial's demand deposit account as of 8 July 1938 was 11,000.00 Swiss Francs and that the market value of the securities held in her custody account as of the same date was 1,340.00 United States Dollars, which is the equivalent to 5,855.80 Swiss Francs.⁵ Thus, the total value of the assets held by Account Owner Gertrud Bial was 16,855.80 Swiss Francs. The current value of these amounts is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an amount of 210,697.50 Swiss Francs. Consequently, the total award amount is 237,447.50 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
20 May 2004

⁵ When converting amounts in foreign currencies into Swiss Francs, the CRT uses official exchange rates.