

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Feliks and Helena Bornstein

Claim Number: 790439/JW¹

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Ernst Bornstein.² This Award is to the published account of Feliks Bornstein (“Account Owner Feliks Bornstein”) and Helena Bornstein (“Account Owner Helena Bornstein”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).³

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 for accounts belonging to her husband, Ernst Bornstein, who was born on 26 April 1922, and resided in Warthenau, Germany (now Zawiercie, Poland). In a telephone conversation with the CRT on 23 September 2005, the Claimant

¹ [REDACTED] (the “Claimant”) did not submit a Claim Form to the CRT. However, in 1999 she submitted two Initial Questionnaires (“IQ”), numbered ENG-0435-025 and ENG-0428-108, 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). These IQs were forwarded to the CRT. The CRT has determined that these IQs are duplicate claims and is treating them under the assigned, consolidated Claim Number 790439.

² The CRT did not locate an account belonging to Ernst Bornstein in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

³ The CRT notes that, on the February 2001 published 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”), Feliks Bornstein and Helena Bornstein are each indicated as having an account. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only one account, which was jointly held by Feliks and Helena Bornstein.

identified Account Owner Feliks Bornstein as her husband's paternal cousin, Feliks Bornstein, who was Jewish, and resided in Lodz, Poland with his family during the Second World War. The Claimant indicated that her husband resided in Warthenau until he was deported to different concentration camps, where he was imprisoned until the end of the Second World War. In a telephone conversation with the CRT on 29 August 2006, the Claimant indicated that she was also interned in a concentration camp during the Second World War. The Claimant indicated that her husband died on 14 August 1978 in Munich, Germany. The Claimant indicated that she was born on 10 February 1934.

Information Available in the Bank's Records

The Bank's record consists of a printout from the Bank's database. Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). The Bank provided the CRT with an additional document. This document consists of a joint account opening contract. According to the Bank's records, the Account Owners were Dr. Feliks Bornstein and *Frau* (Mrs.) Dr. Helena Bornstein, who resided at Cegielniana 4 in Lodz, Poland. The Bank's records indicate that the Account Owners held a joint account, the type of which is not indicated. The Bank's records, which include signature samples for the Account Owners, indicate that the account was opened in 1931.

The Bank's records do not show when the account at issue was closed, 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 this 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 account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant's husband's cousin's name and city and country of residence match the published name and city and country of residence of Account Owner Feliks Bornstein.

The CRT notes that the name Feliks Bornstein appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the "ICEP List"). The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her husband, prior to the publication in February 2001 of 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 direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified Account Owner Felix Bornstein.

The CRT notes that the Claimant did not identify Account Owner Helena Bornstein or the professional title of Account Owner Feliks Bornstein. However, the CRT also notes that the Claimant and her husband were interned in different concentration camps during the Second World War, that her husband died 28 years ago, that she indicated that Account Owner Feliks Bornstein was her husband's cousin, and therefore, it is plausible that she would not possess detailed information regarding her husband's distant relatives.

The CRT notes that the other claim to this account were disconfirmed because that claimant provided a different city of residence than the city of residence of the Account Owners. The CRT notes that the other claimant indicated that the city of residence of his relatives was another large Polish city over 250 kilometers from the city of residence of the Account Owners, making it unlikely that a person who lived in one would indicate the other as his or her city of residence, even for the purposes of maintaining a bank account.

Status of Account Owner Feliks Bornstein as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Feliks Bornstein was a Victim of Nazi Persecution. The Claimant stated that Account Owner Feliks Bornstein was Jewish and that he resided in Nazi-occupied Poland. The CRT also notes that Account Owner Feliks Bornstein's cousin, Ernst Bornstein, was a Victim of Nazi Persecution. The Claimant stated that Account Owner Feliks Bornstein's cousin was Jewish, resided in Nazi-Germany, and was deported to different concentration camps.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to Account Owner Feliks Bornstein by submitting specific biographical information, demonstrating that Account Owner Felix Bornstein was the cousin of the Claimant's husband. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that Account Owner Feliks Bornstein was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to Account Owner Feliks Bornstein, as she has asserted in her Claim Form.

As noted above, the Claimant did not identify Account Owner Helena Bornstein. The CRT notes, however, that the Account Owners shares the same last name and resided at the same address, rendering it plausible that the Account Owners were related, and that by plausibly showing that she is related to Account Owner Feliks Bornstein, the Claimant has thereby also made a plausible showing that she is related to Account Owner Helena Bornstein. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owners resided in Nazi-occupied Poland during the Second World War; that there is no record of the payment of the Account Owners' accounts to them nor any record of a date of closure of the account; that the Account Owners and their heirs would not have been able to obtain information about their 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 Account Owners 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 Account Owner Feliks Bornstein was the cousin of the Claimant's husband, and the CRT has determined that it is plausible that the Account Owners were related, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owners held one account of unknown type. 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 3,950.00 Swiss Francs ("SF"). 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 49,375.00.

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
27 February 2007