

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], [REDACTED],
and [REDACTED]

in re Account of Estate of Fanny Essinger

Claim Numbers: 402116/TC, 402083/TC, 402129/TC, 401953/TC

Award Amount: 43,224.38 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (the “Claimant”) to the published accounts of Ferdinand Essinger, Benjamin Essinger, Ludwig Essinger, and Isabelle Essinger. This award is to the account of the Estate of Fanny Essinger (the “Account Owner”), to which Ferdinand Essinger (“Beneficiary Ferdinand Essinger”), Benjamin Essinger (“Beneficiary Benjamin Essinger”), Ludwig Essinger (“Beneficiary Ludwig Essinger”), Isabelle Essinger (“Beneficiary Isabelle Essinger”), and Josef Friedberg (“Beneficiary Friedberg”) (together the “Beneficiaries”) were beneficiaries, at the [REDACTED] (the “Bank”).¹

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 Claim Forms identifying Beneficiary [REDACTED] as his paternal great-grandfather, [REDACTED]² who was born on 24 October 1858 in Ulm, Germany, to [REDACTED] and Fanny Essinger, née Kuhn, and was married to [REDACTED], née [REDACTED], on 21 June 1897 in Munich, Germany. The Claimant indicated that his great-grandfather had eight siblings, including [REDACTED], [REDACTED], [REDACTED],

¹ The CRT notes that, on the January 2005 published list of additional accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “2005 List”), Ferdinand Essinger, Benjamin Essinger, Ludwig Essinger, Isabelle Essinger and Josef Friedberg are indicated as having separate accounts. Upon careful review, the CRT has concluded that these individuals collectively held one account as the missing heirs of the Account Owner.

² In many of the documents provided by the Claimant, the Essinger family name is written in old German script. In this script, the first “s” in “Essinger” resembles the letter “f,” and the Claimant accordingly provided the alternative spelling of “Efsinger.” This letter is a “long s” and is similar to the old German script letter “h.” From the context and from other references in the document, however, it is clear that the letter is an “s” and that the family name was spelled “Essinger.”

[REDACTED], and [REDACTED]. The Claimant stated that [REDACTED] was married to [REDACTED], that both [REDACTED] and [REDACTED] had daughters named [REDACTED], and that [REDACTED]'s daughter married the Claimant's great-grandfather, [REDACTED].

The Claimant indicated that his family was Jewish. The Claimant stated that his great-grandfather lived at Grillparzerstrasse 53 in Munich, and owned the textile business *Firma Ferdinand Essinger, Münchener Textilwaren - Exportagentur* at Kaufingerstrasse 1-2 in Munich. The Claimant explained that his great-grandfather died on 7 August 1930, and that after his death, the firm was operated by his wife and their two sons, [REDACTED] (the Claimant's grandfather), who was born on 21 April 1902 in Munich, and [REDACTED], who was born 16 March 1904 in Munich. The Claimant stated that [REDACTED] was married to [REDACTED], née [REDACTED], and had a son, [REDACTED], who was born on 28 July 1933 in Munich. The Claimant indicated that in 1933, the company, as well as two cinemas owned by [REDACTED], was taken over by the Nazis. The Claimant further indicated that [REDACTED] died on 10 August 1935, and that after her death, her two sons fled to Amsterdam, the Netherlands.

According to the Claimant, on 27 April 1939 in Amsterdam his grandfather, [REDACTED], married [REDACTED], née [REDACTED], who was born on 20 November 1912 in Salzburg, Austria, and they had a daughter, [REDACTED], who was born on 15 February 1940 in Amsterdam, and a son, [REDACTED], who was born on 20 April 1942 in Amsterdam. The Claimant further indicated that [REDACTED] and [REDACTED] were divorced on 9 December 1936, and that their son [REDACTED] remained with his mother. The Claimant stated that [REDACTED] was remarried on 17 May 1939 in Amsterdam, to [REDACTED], née [REDACTED], who was born in Amsterdam in 1918, and that they had one son, [REDACTED], who was born on 1 January 1941 in Amsterdam. The Claimant explained that due to the rising threat in the Netherlands, the families attempted to flee in 1942, leaving [REDACTED] in the care of friends and [REDACTED] in the care of a priest. The Claimant stated that [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were caught during their escape attempt and were deported to Auschwitz, where they perished in August 1942.

In support of his claim, the Claimant submitted documents, including: (1) a family register for his great-great-grandfather from the city of Ulm, indicating that [REDACTED], a businessman in Ulm, and his wife, Fanny Essinger, née Kuhn, had nine children: [REDACTED], born on 3 March 1852, [REDACTED], born on 12 June 1854, [REDACTED], born on 2 January 1856, [REDACTED], born on 5 May 1857, [REDACTED], born on 24 October 1858, [REDACTED], born on 29 April 1860, [REDACTED], born on 6 August 1862, and two others who did not survive childhood; (2) a detailed family tree, indicating further that [REDACTED] and Fanny Essinger's children were all born in Ulm, that [REDACTED] married [REDACTED] on 6 June in Mainz, and had one daughter, [REDACTED], born on 9 May 1876, that [REDACTED] married [REDACTED], the daughter of his brother [REDACTED], and had two sons, who were both born in Munich and died in Auschwitz: [REDACTED], who was born on 21 April 1902 and married to [REDACTED] on 27 April 1939, who had two children: [REDACTED], born on 15 February 1940, and [REDACTED], born on 20 April 1942; and [REDACTED], who was

born 16 March 1904 and married to [REDACTED] on 16 December 1930, who had a son born on 27 July 1933; (3) a tax form for his great-grandfather with the city of Munich, indicating that [REDACTED] was born on 24 October 1858 in Ulm, died on 7 August 1930, that he was the son of [REDACTED] and Fanny Kuhn, that he was married to [REDACTED], born on 25 February 1877 in Ulm, and that he had two sons, [REDACTED] and [REDACTED]; (4) his great-grandparents' marriage certificate, indicating that [REDACTED] and [REDACTED] were married on 21 June 1897 in Munich, and including their signatures and the signatures of one of their witnesses as [REDACTED], [REDACTED], née [REDACTED], and [REDACTED]; (5) his great-grandmother's death certificate, indicating that [REDACTED], née [REDACTED], the wife of [REDACTED], died on 10 August 1935, and that the death was reported by [REDACTED]; (6) his great-grandfather's death certificate, indicating that [REDACTED], who was married to [REDACTED], died on 7 August 1930, and that the death was reported by [REDACTED]; (7) his grandfather's birth certificate, indicating that [REDACTED] was born on 23 April 1902 in Munich, that his parents were [REDACTED] and [REDACTED], née [REDACTED], that they were Jewish, and bearing the signature of [REDACTED]; (8) [REDACTED]'s birth certificate, indicating that [REDACTED] was born on 1 January 1940 in Jakob Obrechtstraat 92 in Amsterdam, son of [REDACTED] and [REDACTED]; and (9) his father's birth certificate, indicating that [REDACTED] was born on 20 April 1942 in Amsterdam, son of [REDACTED] and [REDACTED], and further indicating that he changed his name to [REDACTED] on 23 September 1965.

The Claimant indicated that he was born on 5 December 1971 in Amsterdam. The Claimant is representing his father, [REDACTED], formerly [REDACTED], who was born on 20 April 1942 in Amsterdam, as well as his father's cousins, [REDACTED], who was born on 28 July 1933 in Munich, and [REDACTED], who was born on 1 January 1941 in Amsterdam.

Information Available in the Bank's Records

The CRT notes that 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 report an account belonging to Fanny Essinger or her heirs during their investigation of the Bank. The existence of an account at the Bank is evidenced by documents from the Swiss Federal Archive in Bern, Switzerland.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962 ("the Registration Decree of 1962"), the Swiss Federal Council obliged all natural and judicial persons, commercial companies, 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").³ Assets of

³ See Article 3 of the Federal Council's Decree concerning the assets located in Switzerland of foreign nationals or stateless persons persecuted on racial, religious or political grounds (*Bundesbeschluss über die in der Schweiz befindlichen Vermögen rassisch, religiös oder politisch verfolgter Ausländer oder Staatenloser vom 20. Dezember*

such individuals were to be reported to the Justice Division of the Federal department of Justice and Police, which was used as a registration office for assets of foreigners whose whereabouts were unknown (*Meldestelle für Vermögen verschwundener Ausländer*) (“Justice Division”). Additionally, according to general Swiss Civil Law, the local authorities (*Vormundschaftsbehörde*) are responsible for establishing a guardianship (*Beistandschaft*) for individuals who are not able to act on their own because of being absent or in cases where assets of an individual are dormant because of the absence of a person with an unknown residence.⁴

In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the registration of assets belonging to [REDACTED], numbered 932; [REDACTED], numbered 907; [REDACTED], numbered 934; [REDACTED], numbered 909; and [REDACTED], numbered 911. According to a letter to the Zurich municipal administration responsible for guardianships (*Vormundschaftsbehörde der Stadt Zürich*) (“guardianship administration”) from the Justice Division, dated 7 April 1966, the Account Owner was *Frau* (Mrs.) Nini Fanny Essinger, who died on 30 August 1949. This letter indicates that the Account Owner’s heirs were the Beneficiaries: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The letter also states that the whereabouts of these individuals were unknown and that, in accordance with Swiss Civil Law, a guardianship over these individuals was established on 28 June 1963. The letter indicates that the Account Owner held one savings account, numbered 27236, at the Bank, with a total value in 1963 of 2,222.95 Swiss Francs (“SF”), of which [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were each entitled to SF 399.85, and [REDACTED] was entitled to SF 599.30.

The records from the Swiss Federal Archive also contain forms, dated 6 April 1966, reporting the assets of the Beneficiaries, pursuant to the 1962 Survey. According to these forms, Beneficiary [REDACTED] was born in 1858, Beneficiary [REDACTED] was born in 1854, Beneficiary [REDACTED] was born in 1860, Beneficiary [REDACTED] was born in 1861, and Beneficiary [REDACTED] was born in 1895, and the Beneficiaries all resided in Ulm.

There is no indication in the Swiss Federal Archive’s records that the Account Owner was in contact with the Bank after the Second World War. The records also do not indicate who informed the Bank about the death of the Account Owner. Furthermore, the records do not indicate that the Account Owner, the Beneficiaries, or any other heirs received any portion of the proceeds of the account.

The CRT notes that there is no indication that this account was opened after the Account Owner’s death. According to the Registration Decree of 1962, only Swiss-based assets or assets administered by Swiss natural and judicial persons, commercial companies, and associations were to be reported. Furthermore, only assets of foreigners whose whereabouts were unknown since 9 May 1945 were to be reported pursuant to that Decree. Accordingly, the CRT determines that this account was open during the Relevant Period, which is defined as 1 January 1933 to 31 December 1945, and that the Beneficiaries, who became the *de facto* owners of the account after Fanny Essinger’s death, were foreigners whose whereabouts were unknown since 1945.

1962).

⁴ See Articles 382,1 and 393,1 of the Swiss Civil Code (*ZGB*).

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the four claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified Beneficiary [REDACTED], Beneficiary [REDACTED], Beneficiary [REDACTED], and Beneficiary [REDACTED]. The Claimant's great-grandfather's name and the names of his siblings match the published names of Beneficiary [REDACTED], Beneficiary [REDACTED], Beneficiary [REDACTED], and Beneficiary [REDACTED]. The Claimant identified his relatives' city of residence and birth dates, which match unpublished information contained in the Swiss Federal Archive's records.⁵

In support of his claim, the Claimant submitted documents, including his great-great-grandfather's family register of [REDACTED] from the city of Ulm, a detailed family tree, his great-grandfather's tax form, his great-grandparents' marriage certificate and death certificates, and his grandfather's birth certificate, providing independent verification that the persons who are claimed to be the Beneficiaries [REDACTED], [REDACTED], [REDACTED], and [REDACTED] had the same name, resided in the same town, and had the same birth dates recorded in the Bank's records as the name, city of residence, and birth dates of Beneficiary [REDACTED], Beneficiary [REDACTED], Beneficiary [REDACTED], and Beneficiary [REDACTED].

Additionally, the CRT notes that the Beneficiaries are listed as the missing heirs of the Account Owner and that the surname of Beneficiary [REDACTED], Beneficiary [REDACTED], Beneficiary [REDACTED], and Beneficiary [REDACTED] is the same as the Account Owner's surname. The CRT further notes that the maiden name of the Claimant's great-grandfather's sister-in-law is the same as Beneficiary [REDACTED]'s surname and that the Claimant's great-grandfather's niece had the same first and last name as the Account Owner. Furthermore, the CRT notes that the Swiss Federal Archive's records indicate that the Beneficiaries all resided in the same city identified by the Claimant as his relatives' city of residence. Taking all of these factors into account, the CRT concludes that the Claimant has also plausibly identified the Account Owner and Beneficiary [REDACTED].

The CRT notes that the other claim to the account of Beneficiary [REDACTED] was

⁵ The CRT notes that the Bank's records indicate that Beneficiary [REDACTED] was born in 1861, whereas the information provided by the Claimant indicates that [REDACTED] was born on 6 August 1862. However, the CRT notes that the difference is only one year, and given that the Claimant identified the correct place of residence of Beneficiary [REDACTED], as well as the birth dates listed in the Bank records for Beneficiary [REDACTED], Beneficiary [REDACTED], and Beneficiary [REDACTED], the CRT finds it plausible that Beneficiary [REDACTED] in the Bank's records is the [REDACTED] identified by the Claimant.

disconfirmed because that claimant provided a different date of birth and city and country of residence than the date of birth and the city and country of residence of Beneficiary [REDACTED]. Finally, the CRT notes that there are no other claims to the accounts of the Account Owner, Beneficiary [REDACTED], Beneficiary [REDACTED], Beneficiary [REDACTED], or Beneficiary [REDACTED].

Status of the Account Owner and Beneficiaries as Targets of Nazi Persecution

Although the Claimant did not state that the Account Owner or Beneficiaries were Victims of Nazi Persecution, the Claimant has made a plausible showing that the heirs of Beneficiary [REDACTED] were Victims of Nazi Persecution. The Claimant stated that the business started by Beneficiary [REDACTED] was taken over by the Nazis in 1933, and that Beneficiary [REDACTED]'s sons [REDACTED] and [REDACTED] fled Nazi Germany for Amsterdam in 1935. The Claimant further indicated that Beneficiary [REDACTED]'s sons [REDACTED] and [REDACTED], as well as their wives, [REDACTED] and [REDACTED], and [REDACTED] and [REDACTED]'s daughter [REDACTED], were caught while fleeing the Nazi-occupied Netherlands, and were deported to Auschwitz, where they perished in August 1942, and that [REDACTED] and [REDACTED]'s sons, [REDACTED] and [REDACTED], were forced to live in hiding for the remainder of the Second World War.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes persons named [REDACTED], who was born in Munich in 1902, [REDACTED], who was born in Munich in 1904, [REDACTED], née [REDACTED], who was born in Salzburg, Austria, in 1912, [REDACTED], née [REDACTED], who was born in Berlin, Germany, in 1918, and [REDACTED], who was born in Amsterdam in 1940. The database indicates that all five [REDACTED] were deported from the Netherlands and perished in Auschwitz in 1942, which matches the information provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to Beneficiary [REDACTED], Beneficiary [REDACTED], Beneficiary [REDACTED], and Beneficiary [REDACTED] by submitting specific information and documents, demonstrating that they were the Claimant's great-grandfather, great-great-uncles, and great-great-aunt. These documents include: his great-great-grandfather's family register, indicating that [REDACTED] had children named [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; his great-grandfather's tax form indicating that [REDACTED] had children named [REDACTED] and [REDACTED]; his grandfather's birth certificate, indicating that [REDACTED]'s parents were [REDACTED] and [REDACTED], née [REDACTED], that they were Jewish, and bearing the signature of [REDACTED]; [REDACTED]'s birth certificate, indicating that his father was [REDACTED]; and his father's birth certificate, indicating that [REDACTED]'s father was [REDACTED]. There is no information to indicate that the Account Owner or Beneficiaries have surviving heirs who have submitted claims other than the parties whom the Claimant is representing.

The Issue of Who Received the Proceeds

The Swiss Federal Archive's records indicate that the whereabouts of the Beneficiaries and their respective heirs could not be ascertained and that these heirs were not paid their shares of the Account Owner's account. Given that the Account Owner's family resided in Nazi Germany and later in the Nazi-occupied Netherlands; that the Account Owner's family members and heirs were Victims of Nazi Persecution, and that they and their heirs could not be located after the War; that there is no record of the payment of the remaining heirs' portions of the estate to those heirs; that the Account Owner and her heirs would not have been able to obtain information about her 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 (see Appendix A), the CRT concludes that it is plausible that these proceeds were not paid to the Account Owner's 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 represented parties. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner and Beneficiary [REDACTED] were the relatives of the represented parties, and that Beneficiary [REDACTED], Beneficiary [REDACTED], Beneficiary [REDACTED], and Beneficiary [REDACTED] were the grandfather, great-uncles, and great-aunt of the represented parties, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Beneficiaries, nor their heirs received the proceeds of the claimed accounts.

Further, the CRT notes that represented party [REDACTED], represented party [REDACTED], and represented party [REDACTED], as the grandchildren and grand-nephews of Beneficiary [REDACTED], Beneficiary [REDACTED], Beneficiary [REDACTED], and Beneficiary [REDACTED], have a better entitlement to the accounts than the Claimant, the great-grandchild and great-grandnephew of Beneficiary [REDACTED], Beneficiary [REDACTED], Beneficiary [REDACTED], and Beneficiary [REDACTED].

Amount of the Award

In this case, the Account Owner held one savings account. The records of the Swiss Federal Archive indicate that the value of the savings account as of 28 June 1963 was SF 2,222.95. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 1,235.00, which reflects numbered account fees and standardized bank fees charged to the account between 1945 and 1963. Consequently, the adjusted balance of the account at issue is SF 3,457.95. The current value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 43,224.38.

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 representing his father, [REDACTED], and his father's cousins, [REDACTED] and [REDACTED], who are half-brothers. Accordingly, represented party [REDACTED] is entitled to one-half of the total award amount, and represented parties [REDACTED] and [REDACTED] are each entitled to one-fourth of the total award amount. As noted above, the Claimant is not entitled to share in the award.

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 his claims to determine whether there are additional Swiss bank accounts to which he 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
9 November 2006