

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 Emmy Feisenberger

Claim Number: 300335/AV

Award Amount: 402,147.50 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published account of [REDACTED].¹ This Award is to the unpublished accounts of Emmy Feisenberger (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).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 Form identifying the Account Owner as his paternal grandmother, Elizabeth Emilie Feisenberger, née Opdenhoff, who was born on 17 January 1883 in Dortmund, Germany, and was married to Dr. [REDACTED] on 24 May 1904. According to the Claimant, his grandparents had two children: [REDACTED], née [REDACTED], who was born on 10 April 1905 in Magdeburg, Germany, and [REDACTED], the Claimant’s father, who was born on 14 March 1909 in Magdeburg. The Claimant explained that his father and aunt fled Germany in 1933, and that his grandfather, who was Jewish, died in Leipzig, Germany on 20 July 1935. The Claimant stated that his grandmother resided in Leipzig throughout the Second World War, and initially remained in communist East Germany after the War, before escaping to West Germany in 1949. The Claimant further indicated that his grandmother died in Bad Godesberg, Germany in 1958. Finally, the Claimant indicated that his father died in Winter

¹ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Person (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), [REDACTED] is indicated as owning one account. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of three accounts. Furthermore, the CRT has concluded that the Bank’s records indicate that [REDACTED] was the original owner of these accounts, but that ownership of the accounts was transferred, after his death, to Emmy Feisenberger, née Opdenhoff, on 20 August 1935.

Park, Florida, the United States, on 27 August 1999, and that his aunt died in Flenington, New Jersey, the United States, on an unspecified date.

The Claimant submitted his certificate of baptism and the birth certificate of his brother, [REDACTED 2], identifying [REDACTED] as their father; his father's marriage certificate, identifying the Claimant's grandfather as [REDACTED], a lawyer; and his father's British certificate of naturalization, identifying the Claimant's grandmother as Elizabeth Emilie Feisenberger. In addition, the Claimant submitted his father's obituary, indicating that the Claimant's grandfather was appointed to the Supreme Court in Leipzig in 1913. The Claimant indicated that he was born on 14 October 1946 in London, England. The Claimant is representing his brother, [REDACTED 2], who was born on 29 October 1948 in London.

Information Available in the Bank's Records

The Bank's records consist of a customer card and two letters between the Bank and the Account Owner's attorney. According to these records, the accounts were opened by Dr. [REDACTED], an attorney who resided in Leipzig, Germany. The Bank's records indicate that on 20 August 1935, ownership of the accounts was transferred to the Account Owner, *Frau* (Mrs.) Emmy Feisenberger, née Opdenhoff. The Bank's records further indicate that the Account Owner held a custody account, numbered L39527, which was opened on 15 July 1930, and two demand deposit accounts.

The Bank's records include a letter from the Account Owner's attorney, Dr. Georg Benkard, dated 14 March 1950. This letter indicates that the Account Owner was [REDACTED]'s spouse and sole heir, and that the Account Owner acquired the custody account and a demand deposit account after her spouse's death. In this letter, Dr. Benkard informed the Bank that the Account Owner, whose husband was Jewish, was compelled by the German authorities to sell her foreign securities and that the Bank consequently transferred the following securities to the *Deutsche Bank und Disconto-Gesellschaft*:

- *4½% Oblig. Schwedische Staatsanleihe 1929* bonds, with a total nominal value of 4,000.00 Swedish Crowns ("SEK");
- *4½% Pfdbr. Schwedische Reichshypothekenbank 1929 amort. 1949/2009* bonds, with a total nominal value of SEK 4,000.00;
- *4½% Kassa-Oblig Schweizerische Bodenkreditanstalt kündbar ab 12 August 1937* bonds, with a total nominal value of 10,000.00 Swiss Francs ("SF");
- *4½% Bons du Tresor Français 1933/43* bonds, with a total nominal value of 52,000.00 French Francs ("FRF").

In the same letter, the Account Owner's attorney attempted to assure the Bank that his client was not seeking remedy from the Bank for that transfer.² The letter further indicates that the Account

² The German original of the letter, addressed to the Bank, reads, "*Frau Feisenberger, deren verstorbener Gatte Jude gewesen war, wurde durch die damalige Regierung genötigt, ihre ausländischen Werte zu veräußern. Sie haben die Wertpapiere damals zur Verfügung der Deutschen Bank- und Diskonto-Gesellschaft gehalten und sind davon entlastet.*"

Owner filed a claim for compensation from the German authorities after the Second World War. As the claim also concerned the securities transferred by the Bank to the *Deutsche Bank und Disconto-Gesellschaft*, the Account Owner's attorney requested a statement of the value of these securities from the Bank. Dr. Benkard also attached a transcript of the Bank's letter to the Account Owner, dated 16 March 1936, in which the Bank informed the Account Owner that, following the Account Owner's order of 10 March 1936, the Bank transferred the aforementioned securities to the Leipzig branch of the *Deutsche Bank und Disconto-Gesellschaft*.

Finally, the Bank's records include a letter from the Bank to the Account Owner's attorney, dated 30 March 1950, in which the Bank stated that it was not in a position to make inquiries regarding the transfer to the *Deutsche Bank- und Disconto-Gesellschaft* in 1936, as it was only required under Swiss law to maintain records for ten years. The Bank informed the Account Owner's attorney that the bonds matured, and that their value at the maturity was as follows:

- *4½% Oblig. Schwedische Staatsanleihe 1929* bonds matured at their nominal value as of 15 December 1939;
- *4½% Pfdbr. Schwedische Reichshypothekenbank 1929 amort. 1949/2009* bonds matured at their nominal value as of 15 October 1939;
- *4½% Kassa-Oblig Schweizerische Bodenkreditanstalt kündbar ab 12 August 1937* bonds matured at their nominal value during the period between 12 August 1937 and 12 February 1938;
- *4½% Bons du Tresor Français 1933/43* bonds matured at a value of 110% of the nominal value as of 1 February 1943.

In its letter, the Bank explained that because the bonds had matured before 1950, a determination of their current values was not possible.

With respect to the Account Owner's two demand deposit accounts, the Bank's records do not show when these accounts were closed, nor do these records indicate the value of these accounts. There is no evidence in the Bank's records that the Account Owner or her heirs closed the demand deposit accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's grandmother's name and city and country of residence match the unpublished name and city and country of residence of the Account Owner.³ Moreover, the Claimant's grandfather's name and city and country of residence match the published name and city and country of residence of [REDACTED], the

³ The CRT notes that the Claimant identified his grandmother as "Elizabeth Emilie Feisenberger," while the Account Owner is identified as "Emmy Feisenberger." The CRT further notes that the name "Emmy" is a shortened form of "Emilie," and that it is plausible that the Claimant's relative opened the accounts using her middle name.

original owner of the accounts. The Claimant further identified the professional title used by [REDACTED], as well as his relationship to the Account Owner, which matches unpublished information about the Account Owner and [REDACTED] contained in the Bank's records. In addition, the Claimant indicated [REDACTED]'s year of death, which is consistent with unpublished information about the Account Owner and the Account Owner's husband contained in the Bank's records.

In support of his claim, the Claimant submitted documents, including his father's British certificate of naturalization, identifying the Claimant's grandmother as Elizabeth Emilie Feisenberger, and his father's obituary, indicating that his father's family resided in Leipzig, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner. The CRT 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's spouse was Jewish, and that she and her spouse resided in Nazi Germany. The CRT notes that the Bank's records indicate that the Account Owner was forced to transfer securities to the Nazi government in 1936.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's grandmother. These documents include the Claimant's certificate of baptism, indicating that the Claimant's father was [REDACTED], and the Claimant's father's British certificate of naturalization, identifying his mother as Elizabeth Emilie Feisenberger. There is no information to indicate that the Account Owner has surviving heirs other than the party whom the Claimant is representing.

The Issue of Who Received the Proceeds

Given that the Account Owner's husband was Jewish, and that she resided in Nazi Germany through the Second World War; that she was forced to transfer foreign-held assets, including her custody account at the Bank, to Germany; that there is no record of the payment of the Account Owner's accounts to her, nor any record of a date of closure of the accounts; that the Account Owner and her heirs would not have been able to obtain information about her accounts 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 (f), (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 Owner 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 Owner was his grandmother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one custody account and two demand deposit accounts.

With respect to the custody account, the letter from the Bank to the Account Owner's attorney provides the dates of maturity and value of the bonds upon maturity as follows:

- *4½% Oblig. Schwedische Staatsanleihe 1929* bonds nominally valued at SEK 4,000.00, which was equivalent to SF 3,154.40,⁴ and which matured at their nominal value as of 15 December 1939;
- *4½% Pfdb. Schwedische Reichshypothekenbank 1929 amort. 1949/2009* bonds nominally valued at SEK 4,000.00, which was equivalent to SF 3,154.40, and which matured at their nominal value as of 15 October 1939;
- *4½% Kassa-Oblig Schweizerische Bodenkreditanstalt kündbar ab 12 August 1937* bonds with a total nominal value of SF 10,000.00 and which matured at their nominal value during the period between 12 August 1937 and 12 February 1938; and
- *4½% Bons du Tresor Français 1933/43* bonds, nominally valued at FRF 52,000.00, which matured at a value of 110% of the nominal value, or FRF 57,200.00, which was equivalent to SF 11,583.00 as of 1 February 1943.

The CRT notes that, had the Account Owner been able to retain control over her assets, she would have been able to hold the bonds to their maturity, at which time they would have had a total value of SF 27,891.80. The current value of this account 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 SF 348,647.50.

With respect to the demand deposit accounts, 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a demand deposit account was SF 2,140.00. Thus, the total 1945 average value of the two demand deposit accounts is SF 4,280.00. The current value of this amount is calculated by multiplying it by a

⁴ The CRT uses official exchange rates when converting the amounts in foreign currencies into Swiss Francs.

factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an amount of SF 53,500.00.

Consequently, the total award amount in this case is SF 402,147.50.

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 brother, [REDACTED 2], and both he and his brother are grandchildren of the Account Owner. Accordingly, the Claimant and [REDACTED 2] are each entitled to one-half 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 his claim 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
21 September 2005