

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and Claimant [REDACTED 2]

in re Account of Sigmund Fichmann

Claim Numbers: 204530/JW; 209987/JW; 400841/JW; 500214/JW; 727776/JW; 730359/JW;¹
731956/JW²

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the 2005 published account of Sigmund Fichmann (the “Account Owner”) held in the custody of a person named Gottfried Schaerer (the “Custodian”).³

¹ Lorandne Rajcsányi (“Claimant Rajcsányi”) submitted an Initial Questionnaire (“IQ”), numbered HUN-0062121, to the Court in the United States in 1999. 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). The IQ was forwarded to the CRT and has been assigned claim number 730359. Claimant Rajcsányi submitted an additional IQ, numbered HUN-0062122, which was forwarded to the CRT and assigned claim number 730360. The CRT will treat this claim in a separate determination.

² László Endrödi (“Claimant Endrödi”) submitted two IQs, numbered HUN-0002166 and HUN-0112093, to the Court in the United States in 1999. These IQs were forwarded to the CRT and have been assigned claim numbers 727776 and 731956, respectively.

³ The CRT notes that it has jurisdiction over accounts held by Gottfried Schaerer (the “Custodian”) under the Settlement Agreement reached by the parties to the Holocaust Victim Assets Litigation (the “Settlement Agreement”), even though the Custodian is not a bank and was not included in the investigation of Swiss banks carried out pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) in order to identify accounts of Victims of Nazi Persecution. According to the Settlement Agreement, “Deposited Assets means (1) any and all Assets actually or allegedly deposited ... with *any custodian, including, without limitation, a bank, branch or agency of a bank, other banking organization or custodial institution or investment fund established or operated by a bank incorporated, headquartered or based in Switzerland at any time (including, without limitation, the affiliated, subsidiaries, branches, agencies, or offices of such banks, branches, agencies, or offices of such banks, branches, agencies, custodial institutions, and investment funds that are or were located either inside or outside Switzerland at any time)* in any kind of account (including without limitation, a safe deposit box or securities account) prior to May 9, 1945, that belonged to a Victim or Target of Nazi Persecution ... and/or (2) *any and all Assets that the ICEP or the Claims Resolution Tribunal determines should be paid to a particular claimant or to the Settlement Fund because the Asset definitely or possibly belonged to an individual [or business entity] ... actually persecuted by the Nazi Regime or targeted for persecution by the Nazi Regime for any reason.*” [emphasis added] In re Holocaust Victim Asset Litigation, 105 F.

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 Claimants

The Claimants, who are mother and son, submitted Claim Forms, Initial Questionnaires and an ATAG Ernst & Young claim form in 1998 identifying the Account Owner as Claimant [REDACTED 1]'s maternal uncle, Sigmund (Zsigmond) Fichmann, who was born on 4 April 1884 in Kalush, Poland (now Ukraine). The Claimants indicated that Sigmund Fichmann, who was Jewish, had one sister, [REDACTED], and that he resided at Falk Miksa Utca 23 in Budapest, Hungary, during the Second World War. The Claimants further indicated that Sigmund Fichmann worked as a sales representative for the textile wholesaler *Wehrli & Co.* of St. Gallen, Switzerland, and that he died on 29 June 1951 in Budapest.

In support of his claim, Claimant [REDACTED 2] submitted copies of documents, including 1) a certificate of inheritance issued by the Office of the State Notaries Public of Budapest, indicating that Zsigmond Fichmann formerly resided in Budapest, that his heir, under the title of statutory collateral succession and on the basis of an agreement is his sibling's grandchild, [REDACTED 2]; and that [REDACTED], ceded her rights of inheritance to the estate of her brother Zsigmond Fichmann to her grandson [REDACTED 2], and 2) a notarized protocol of an inheritance proceeding in Budapest dated 26 October 1976, indicating that Zsigmond Fichmann died on 29 June 1951 in Budapest and that [REDACTED 2] was entitled to an apartment previously owned by Zsigmond Fichmann. Claimant [REDACTED 1] submitted a copy of her birth certificate, indicating that [REDACTED 1] was born on 11 April 1924 in Budapest and that her parents were [REDACTED] and [REDACTED].

Claimant [REDACTED 1] indicated that she was born on 11 April 1924 in Budapest. Claimant [REDACTED 2] indicated that he was born on 26 September 1947 in Budapest.

Claimant [REDACTED 1] previously submitted Initial Questionnaires in 1999 and an ATAG Ernst & Young claim form in 1998, asserting her entitlement to Swiss bank accounts owned by Sigmund Fichmann and Ignacz Rózsa.⁴ Claimant [REDACTED 2] previously submitted Initial Questionnaires in 1999 asserting his entitlement to Swiss bank accounts owned by Sigmund Fichmann.

The CRT notes that, with his claim form, Claimant [REDACTED 2] submitted a copy of a facsimile apparently sent by legal counsel on his behalf on 18 February 1998 to the Swiss Bankers Association. In the fax, the writer notes that [REDACTED 2] contacted him "concerning the list of 37 (administrated by the office of Andrászi and Partners Attorneys) published in November of last year [1997], so that he could be informed by the Swiss Bankers Association of the amount of money of the account holder, the late Mr. Zsigmond Fishmann

Supp. 2d 139 (E.D.N.Y. 2000), Exhibit I to Plan of Allocation, Class action Settlement Agreement (26 January 1999), 2-3, text available at http://swissbankclaims.com/PDFs_Eng/exhibit1toPlanofAllocation.pdf.

⁴ The CRT will treat the claim to this account in a separate determination.

[sic], whose name appeared in the list that was given to the Hungarian Ministry of Foreign Affairs in February of this year.” The letter continues to say that [REDACTED 2] was disputing the validity of the inter-state agreement of 1972 on both the Hungarian and Swiss sides, and requested details about the account and payment of the assets to the Hungarian state. According to the letter, “[REDACTED 2] mentioned that in his opinion the Swiss bank is also responsible for the illegal inter-state agreement, because it wasn’t entitled to possess the money that was left to it either.” Claimant [REDACTED 2]’s submission does not include any reply from the Swiss Bankers Association in response to this letter.

The CRT further notes that on 20 October 2004, Claimant [REDACTED 2] wrote to the Contact Office for the Search of Dormant Accounts Administered by Swiss Banks (the “Contact Office”) regarding an account owned by Sigmund Fichmann. In a letter dated 28 October 2004, the Contact Office responded: “Unfortunately we are not in possession of the information concerning the account of Mr. Fichmann. As far as the possibility of a claim for compensation is concerned, you should consult with a lawyer specializing in international law.” It is not clear why the Contact Office did not have access to the files of assets registered pursuant to the 1962 Survey, as detailed below, why it was not aware of (or did not draw attention to) the account’s apparent inclusion in the 1972 transfer of assets from Switzerland to Hungary, or why it simply did not refer Claimant [REDACTED 2] to the CRT.

Information Available in the Custodian’s Records

The CRT notes that the auditors who carried out the investigation of Swiss banks 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 Sigmund Fichmann during their investigation. The documents evidencing an account belonging to Sigmund Fichmann were obtained from the Swiss Federal Archive, and are further described below.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962 (the “Federal Decree”), the Swiss Federal Council obliged all individuals, legal entities, 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”).

In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the registration of assets belonging to Sigmund Fichmann, numbered 1009. According to these records, the Account Owner was Sigmund Fichmann, who resided in Budapest, Hungary. These records indicate that the Account Owner was Jewish, a Hungarian citizen, and that he was a textiles salesman. According to the records, Sigmund Fichmann had not been heard from since the occupation of Budapest in 1944.

According to these records, on 24 January 1964 Gottfried Schaerer, a businessman in Zurich, registered assets totalling 1,992.65 Swiss Francs (“SF”) with the Swiss Federal Department of Justice. According to Mr. Schaerer, these assets belonged to Sigmund Fichmann of Budapest and constituted the balance owed to Sigmund Fichmann from the sale and purchase of goods (*Restguthaben aus Warenverkehr*). Mr. Schaerer stated that he administered (*verwaltet*) the assets on behalf of Sigmund Fichmann, and asked where he might deposit the funds, as he was preparing to close his business in consideration of his advanced age. According to the records, on 24 February 1964 the Swiss Federal Department of Justice instructed Mr. Schaerer to transfer the assets to an account administered by Swiss authorities (*Eidg. Kassen- und Rechnungswesen (Sektion Wertschriften und Anlagen)*). According to a letter dated 26 February 1964, Mr. Schaerer completed the transfer. On 27 December 1966, the custodial authorities (*Vormundschaftsbehörde*) of the city of Zurich named a custodian for the assets. Although the records indicate that the assets were to be governed by the measures specified in the Federal Decree, including the naming of a custodian, completion of a process listing the asset holder as missing, opening of the estate process, liquidation of the estate, etc., the records do not indicate the ultimate disposition of the assets.

As noted above, this account was not reported during the ICEP Investigation. The Account Owner’s name was published in January 2005 and that the records regarding the account from the Swiss Federal Archive were obtained by the CRT after prolonged negotiations between the parties in the *In re Holocaust Victim Assets* litigation.

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 seven claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant [REDACTED 1]’s maternal uncle’s name matches the published name of the Account Owner. The Claimants identified the Account Owner’s city and country of residence, which matches information about the Account Owner contained in the records of Swiss Federal Archive. The Claimants also identified the profession of the Account Owner, which matches unpublished information contained in the records.

In support of their claims, the Claimants submitted documents, including a certificate of inheritance and a notarized protocol of an inheritance proceeding in Budapest, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the records of the Swiss Federal Archive as the name and city of residence of the Account Owner.

The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different country of residence than the country of residence of the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, and that he resided in Nazi-allied Hungary during the Second World War.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant [REDACTED 1]'s maternal uncle and Claimant [REDACTED 2]'s great-uncle. These documents include Claimant [REDACTED 1]'s birth certificate, indicating that her parents were [REDACTED] and [REDACTED], and a certificate of inheritance, indicating that Claimant [REDACTED 2] was the grandson of Zsigmond Fichmann's sister, [REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner resided in Hungary during the Second World War and died in Budapest in 1951; that the assets were registered with Swiss authorities in 1964, after the Account Owner's death, as part of the 1962 Survey; that the Account Owner's name was included in a 1997 publication regarding accounts that had been transferred to Hungary pursuant to a 1972 agreement between Switzerland and Hungary; that there is no record of the payment of the Account Owner's account to him or his heirs nor any record of a date of closure of the account; that the Account Owner's 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 Presumption (h) and (i), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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 [REDACTED 1]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was Claimant [REDACTED 1]'s great-uncle, and that relationship justifies an Award. Third, the

CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

The CRT notes that Claimant [REDACTED 2] submitted a certificate of inheritance issued by the Office of the State Notaries Public of Budapest, indicating that Zsigmond Fichmann's heir, under the title of statutory collateral succession and on the basis of an agreement, is his sibling's grandchild, [REDACTED 2]. Accordingly, Claimant [REDACTED 2] is more entitled to the account than his mother, Claimant [REDACTED 1].

Amount of the Award

In this case, the Swiss Federal Archive's records indicate that the value of the Account Owner's assets as of 1 September 1963 was SF 1,992.65. The CRT is treating these assets as if they were held in an account of unknown type. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 285.00, which reflects standardized bank fees charged to the custody account between 1945 and 1 September 1963. Consequently, the adjusted balance of the account at issue is SF 2,277.65. According to Article 29 of the Rules, if the amount in an account of unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 49,750.00.

Division of the Award

In this case, Claimant [REDACTED 2] submitted a certificate of inheritance issued by the Office of the State Notaries Public of Budapest, indicating that Zsigmond Fichmann's heir, under the title of statutory collateral succession and on the basis of an agreement, is his sibling's grandchild, [REDACTED 2]. Accordingly, Claimant [REDACTED 2] is entitled to the entire award amount, and Claimant [REDACTED 1] is not entitled to share in the award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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
23 April 2007