

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Rafael Fischer
also acting on behalf of Michal Fischer

and to Claimant Evamarie Solanke

and to Claimant Helge Ernst Fischer
represented by Maria Luisa Balcazar

and to the Estate of Claimant Lea Mandelbaum¹
represented by Nurit Eizenberg

in re Accounts of Ernst Fischer

Claim Numbers: 003629/AX;² 004028/AX; 201558/AX; 209837/AX

Award Amount: 59,750.00 Swiss Francs

This Certified Award is based upon the claims of Rafael Fischer (“Claimant Rafael Fischer”), Lea Mandelbaum, née Fischer (“Claimant Mandelbaum”), and Evamarie Solanke, née Fischer (“Claimant Solanke”) to the published accounts of Ernst Fischer, and the claim of Helge Fischer (“Claimant Helge Fischer”) (together, the “Claimants”) to the account of Elsa Fischer, née Manesz.³ This Award is to the published accounts of Ernst Fischer (the “Account Owner”) at the [REDACTED] (the “Bank”).⁴

¹ Claimant Lea Mandelbaum passed away in 2003.

² The CRT previously awarded the accounts of Otto Fischer to Claimant Rafael Fischer. See *In Re Accounts of Otto Fischer*, which was approved by the Court on 11 April 2005.

³ The CRT did not locate an account belonging to Claimant Helge Fischer’s relative, Elsa Fischer, née Manesz, 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”). Claimant Helge Fischer should be aware that the CRT will carry out further research on his claim to determine whether an award may be made based upon the information provided by Claimant Helge Fischer or upon information from other sources.

⁴ The CRT notes that the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to the ICEP Investigation did not determine that the accounts at issue were held by the same individual. However, given that there is no information to the contrary, the CRT has determined that, for the purposes of this Award, the accounts shall be treated as having been held by the same person.

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimants

Claimant Rafael Fischer

Claimant Rafael Fischer submitted a Claim Form identifying the Account Owner as his father, Ernst Otto Fischer, who was born in Vienna, Austria on 8 July 1918, and was married to Rachel Fischer, née Krieger. Claimant Rafael Fischer stated that his father, who was Jewish, resided in Vienna, where he was a medical student. Claimant Rafael Fischer further stated that his father was unable to continue his studies after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”). Claimant Rafael Fischer stated that in approximately 1938, his father fled to Palestine (today, Israel), where he and his wife had two children, both born in Haifa: the Claimant’s sister, Michael Fischer, who was born on 16 November 1950, and Claimant Rafael Fischer, who was born on 5 February 1958. Finally, Claimant Rafael Fischer stated that his mother died in Haifa on 9 May 1991, and that his father passed away, also in Haifa, on 5 September 1992.

Claimant Rafael Fischer submitted his father’s birth certificate and certificate of right of residence (“*Heimatschein*”), issued in Vienna, both of which identify him as Ernst Otto Fischer, and an Israeli court decision regarding the estate of Ernst Fischer and his wife, dated 3 February 1993, identifying Claimant Rafael Fischer and Michal Fischer as their children and indicating that they were entitled to equal shares of that estate. Claimant Rafael Fischer is representing his sister, Michal Fischer.

Claimant Solanke

Claimant Solanke submitted a Claim Form identifying the Account Owner as her father, Ernst Fischer, who was born on 22 February 1879 in Vienna, and was married to Johanna Fischer, née Tugendhat, in Vienna. Claimant Solanke indicated that before the Second World War, her father lived in Vienna at Rathausplatz 2. Claimant Solanke further indicated that her father, who was Jewish, was a textile merchant who co-owned a factory. According to Claimant Solanke, in 1938, her father’s business was aryanized and the family home was confiscated by the Nazis. Claimant Solanke indicated that her father remained in Vienna until 1939, when he fled to London, England. Claimant Solanke indicated that her father died in February 1971 in London. In support of her claim, Claimant Solanke submitted her birth certificate and marriage certificate indicating that her father was Ernst Fischer. Claimant Solanke indicated that she was born on 9 December 1921 in Vienna.

Claimant Solanke previously submitted an Initial Questionnaire (“IQ”) with the Court in 1999 asserting her entitlement to a Swiss bank account owned by her father, Ernst Fischer.

Claimant Helge Fischer

Claimant Helge Fischer submitted a Claim Form identifying himself, Helge Ernst Fischer, as the

Account Owner. Claimant Helge Fischer indicated that he was born Ernst Helge Fischer on 16 May 1936 in Halle an der Saale, Germany, to Heinrich Fischer and Elsa Fischer, née Manesz. According to Claimant Helge Fischer, both his parents were musicians, who met in the Netherlands, where his mother lived. Claimant Helge Fischer stated that he traveled with them through Germany until 1939. Claimant Helge Fischer stated that in 1939, his father joined the German army and that the Nazi Party advised him to divorce Claimant Helge Fischer's mother because she was Jewish. As a result, Claimant Helge Fischer stated that he and his mother fled Germany to Vienna, and later to Budapest, Hungary, where his mother's family lived and where they remained in hiding until 1942. According to Claimant Helge Fischer, in 1942, his father, who was a member of the resistance, arranged for them to hid in Neumunster, Germany, where they traveled via Vienna. Claimant Helge Fischer stated that they felt themselves to be safe there to the extent that he attended school, but that he was discovered in 1943 and deported to a concentration camp, where he was tortured in attempts to have him denounce his family. Claimant Helge Fischer stated that he remained in the concentration camp until May 1945. In support of his claim, Claimant Helge Fischer submitted his birth certificate, indicating that his name was Ernst Helge Fischer.

Claimant Mandelbaum

Claimant Mandelbaum submitted a Claim Form identifying the Account Owner as her father, Ernst Fischer, who was born in Czechoslovakia, and was married to Elsa Fischer. Claimant Mandelbaum indicated that the family lived in Liberec, Czechoslovakia before the Second World War. Claimant Mandelbaum further indicated that her father, who was Jewish, was a merchant, and owned a pharmacy, named *M.V.O.B.* According to Claimant Mandelbaum, her father was deported to a concentration camp, where he was killed. In support of her claim, Claimant Mandelbaum submitted her marriage certificate, indicating that her father was Ernst Fischer. Claimant Mandelbaum indicated that she was born on 29 June 1916 in Czechoslovakia.

Information Available in the Bank's Records

Account 1

The Bank's records consist of a printout from the Bank's database and a list of savings accounts transferred to a suspense account. According to these records, the Account Owner was Ernst Fischer, whose domicile is not indicated. The Bank's records indicate that the Account Owner held one savings account, numbered 3460. The Bank's records further indicate that the account was considered dormant by the Bank and was transferred to a suspense account on 15 June 1977. The amount in the account on the date of the transfer was 6.50 Swiss Francs ("SF"). The account remains in the Bank's suspense account.

Account 2

The Bank's records consist of a printout from the Bank's database and a list of accounts which were transferred to a suspense account or to a profit and loss account. According to these records, the Account Owner was Ernst Fischer, whose domicile is not indicated. The Bank's records indicate the Account Owner held one account, the type of which is not indicated. The

Bank's records indicate that the account was transferred to the Bank's profit and loss account on 30 June 1937, on which date the amount in the account was SF 4.45.

Information Available in the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Ernst Fischer, numbered 14996. These records indicate that Ernst Fischer, a businessman born on 22 February 1879, was married to Johanna Tugendhat. These records further indicate that Ernst Fischer resided in Vienna I at Adolf Hitlerplatz 2. According to these records, Ernst Fischer was the co-owner of a weaving factory named *Weberei Selinko*, and his share of the company was worth 50,779.79 Reichsmark ("RM"). These documents also indicate that Ernst Fischer owned securities denominated in United States Dollars valued at RM 57,039.34, in addition to various other securities worth RM 55,585.66. The 1938 Census records further indicate that Ernst Fischer had left for England no later than 19 April 1939. In addition, the records show that on 4 July 1939, Ernst and Johanna Fischer were assessed "flight tax" (*Reichsfluchtsteuer*) of RM 110,556.00. These records make no mention of assets held in a Swiss bank account.

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 Claimants in one proceeding.

Identification of the Account Owner

Claimant Rafael Fischer's father's name, Claimant Solanke's father's name, Claimant Helge Fischer's name,⁵ and Claimant Mandelbaum's father's name match the published name of the Account Owner. The CRT notes that the Bank's records do not contain any specific information about the Account Owner other than his name. In support of their claims, Claimant Rafael Fischer submitted his father's birth certificate and certificate of right of residence ("*Heimatschein*"), both of which identify him as Ernst Otto Fischer, Claimant Solanke submitted her birth certificate and marriage certificate indicating that her father was Ernst Fischer, Claimant Helge Fischer submitted his birth certificate, indicating that his name was Ernst Helge Fischer, and Claimant Mandelbaum submitted her marriage certificate, indicating that her father was Ernst Fischer, providing independent verification that the person who is claimed to be the

⁵ The CRT notes that although Claimant Helge Fischer indicated his name as Helge Ernst Fischer, his birth certificate indicates that his name was Ernst Helge Fischer.

Account Owner had the same name recorded in the Bank's records as the name of the Account Owner.

The CRT notes that Claimant Solanke filed an IQ with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Ernst Fischer, prior to the publication in February 2001 of the 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"). This indicates that Claimant Solanke 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 Claimant Solanke 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 Claimant Solanke.

The CRT notes that Claimant Rafael Fischer's relative, Claimant Solanke's relative, Claimant Mandelbaum's relative, and Claimant Helge Fischer are not the same person. However, given that the Claimants have identified all published information about the Account Owner that is available in the Bank's records; that the information provided by each claimant supports and in no way contradicts any information available in the Bank's records; and that there is no additional information in the Bank's records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner, the CRT finds that the Claimants have each plausibly identified the Account Owner.

The CRT notes that the other claim to this account was disconfirmed because that claimant, unlike the Claimants here, could not demonstrate that any of her relatives were named Fischer.

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. Claimant Rafael Fischer indicated that the Account Owner was Jewish, and that he fled Austria to Palestine in 1938. Claimant Solanke indicated that the Account Owner was Jewish, that his business was aryanized, that his house was confiscated, and that he fled Austria to England in 1939. Claimant Helge Fischer indicated that he is the Account Owner, that his mother was Jewish, and that he and his mother fled Germany to Vienna and later to Budapest, where they remained in hiding until 1942, before returning to Germany and going into hiding there. Claimant Helge Fischer stated that he was separated from his family in 1943 and interned in a concentration camp, where he was tortured in attempts to have him denounce his family. Claimant Mandelbaum indicated that the Account Owner was Jewish, and that he perished in a concentration camp.

The Claimants' Relationships to the Account Owner

Claimant Rafael Fischer has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant Rafael Fischer's father. These documents include an Israeli court decision regarding

the estate of Ernst Fischer and his wife, which identifies Claimant Rafael Fischer and his sister, Michal, as their children.

Claimant Solanke has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant Solanke's father. These documents include her birth certificate and marriage certificate indicating that her father was Ernst Fischer.

Claimant Helge Fischer has plausibly demonstrated that he is the Account Owner by submitting his birth certificate, indicating that he is Ernst Helge Fischer.

Claimant Mandelbaum has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant Mandelbaum's father. Claimant Mandelbaum submitted her marriage certificate, indicating that her father was Ernst Fischer.

The Issue of Who Received the Proceeds

With respect to Account 1, the Bank's records indicate that the account remains in the Bank's suspense account.

With respect to Account 2, the Bank's records indicate that the account was transferred to the Bank's profit and loss account.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant Rafael Fischer, Claimant Solanke and Claimant Mandelbaum have plausibly demonstrated that the Account Owner was their father, and Claimant Helge Fischer has plausibly demonstrated that he is the Account Owner, and those relationships justify an Award. Third, the CRT has determined that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one savings account and one account of unknown type. With respect to Account 1, the Bank's records indicate that the balance of the account on 15 June 1977 was SF 6.50. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 495.00, which reflects standardized bank fees charged to the account between 1945 and 1977. Consequently, the adjusted balance of the account at issue is SF 501.50. According to Article 29 of the Rules, if the amount in a savings account was less than SF 830.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 830.00. With respect to Account 2, the Bank's records indicate that the value of the account on 30 June 1937 was SF 4.45. 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. Thus, according to Article 29 of the Rules, the total value of the accounts at issue should be SF 4,780.00. 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 59,750.00.

Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each Claimant has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, each of the Claimants is entitled to one-fourth of the total award amount.

With respect to Claimant Rafael Fischer's portion of the Award, the CRT notes that Claimant Rafael Fischer represents his sister, Michal Fischer, and has submitted a court document identifying them as heirs in equal shares of their parents' estate. According to Article 23(2)(a) of the Rules, if a claimant has submitted the account owner's will or other inheritance documents pertaining to the account owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. Accordingly, Claimant Rafael Fischer and Michal Fischer are each entitled to one-eighth of the total 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
21 September 2005