

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant John Felix Polachek¹
represented by Jacqueline L. Polachek

in re Account of Friedrich Fischer

Claim Number: 212934/AH

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of John Felix Polachek (the “Claimant”) to the account of Friedrich Fischer (the “Account Owner”), at the [REDACTED] (the “Bank”).

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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his maternal grandfather, Friedrich Fischer, who was born in 1858, in Prague, Czechoslovakia, and was married to Ida Fischer, née Wolf, in Prague. The Claimant stated that his grandfather had four children, Ernst Fischer, who died at a young age, Grete Klein, Dr. Robert Fischer, and Gertrude Pollacsek, née Fischer (the Claimant’s mother). The Claimant stated that his grandfather, who was Jewish, owned and managed a retail store at Kärntnerstrasse 31 in Vienna, Austria. The Claimant stated that his grandfather resided in Reichenberg and at Mariahilferstrasse 6, in Vienna, and that he often traveled to Switzerland on vacations. In a telephone conversation with the CRT on 6 June 2002, the Claimant stated that his father’s brother, Ernst Pollacsek, managed the store together with the Claimant’s grandfather until Friedrich Fischer’s death in 1923, in Vienna. The Claimant further indicated that following his grandfather’s death, the Claimant’s mother and her sister-in-law, Ernst Pollacsek’s wife, took over the management of the store. The Claimant stated that his maternal grandmother Ida Fischer, who was Jewish, died in Theresienstadt in 1944. According to the information submitted by the Claimant, Ernst Pollacsek died in 1964, the Claimant’s father died in 1983 and the Claimant’s mother died in 1990. The Claimant further indicated that Friedrich Fischer’s children are all deceased and stated that he is the closest surviving heir of his grandfather.

In support of his claim, the Claimant submitted a detailed family tree indicating the name Ernst

¹ The CRT notes that the Claimant’s name is spelled “Polachek,” whereas the claimed power of attorney holder’s name is spelled “Pollacsek.” However, the Claimant’s grandfather’s obituary uses the spelling “Pollacsek” for the Claimant’s parents’ name.

Pollacsek; and the Claimant's grandfather's obituary, which indicates that he died on 26 July 1923 in Vienna, and which includes the names of his wife, children, brothers and nephews, including Dr. Robert and Berta Fischer, and Dr. Artur and Trude Pollacsek. The Claimant indicated that he was born on 18 September 1922 in Vienna.

Information Available in the Bank's Records

The Bank's records consist of a Power of Attorney form and printouts from the Bank's database. The Bank's records also contain documents relating to an account held by another account owner.

According to these records, the Account Owner was Friedrich Fischer, who owned a leathersgoods store located at Kärntnerstrasse 31, Vienna I, Austria, and the Power of Attorney Holder was *Ing.* (engineer) Ernst Pollacsek, who resided at Rossauerlande 23, Vienna IX, Austria. The Bank's records indicate that the Account Owner held an account, the type of which is unknown, and that the power of attorney form for this account was signed on 1 October 1931. A handwritten note on the form states: "No power of attorney form sent as the account is going to be closed soon. 27 October 1931." (*"Keine Vollmacht gesandt, da Konton demnächst geschlossen wird."*).

The Bank's records do not show if or when the account at issue was closed, or to whom it was paid, 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 records that the Account Owner, the Power of Attorney Holder or their heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/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 Dr. Robert Fischer, numbered 27667. These records show that Robert Fischer, who was Jewish, was born on 8 April 1890, lived at Mariahilfer 8 in Vienna VII, and was married to Berta Fischer, née Katz, who was also Jewish. The records further show that Robert Fischer practiced medicine and owned a clinic at Mariahilferstrasse 8 in Vienna VII, and was also employed as a doctor by a health insurance fund. The records further show that Robert Fischer was also partner and owner of shares of a leathersgoods store, "*Firma Friedrich Fischer*" in Kärntnerstrasse 31, Vienna I. These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner and the Power of Attorney Holder. His grandfather's name and his city and country of residence, match the published name, city and country of residence of the Account Owner and the Claimant's uncle's name matches the published name of the Power of Attorney Holder. The Claimant indicated that his grandfather owned a retail store, located at Kärnterstrasse 31 in Vienna, both of which match unpublished information about the Account Owner's business contained in the Bank's records and in the records of the Austrian State Archive. Furthermore, the Claimant identified his maternal uncle's name, title, address, as well as his spouse's name and her maiden name, all of which matches the information about Robert Fischer provided in the Austrian State Archive records.

In support of his claim, the Claimant submitted documents, including a detailed family tree indicating the name Ernst Pollacsek; and the Claimant's grandfather's obituary, indicating his date of death on 26 July 1923 in Vienna, 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 Bank's records as the name and city of residence of the Account Owner.

The CRT notes that the power of attorney form contained in the Bank's records carries a date several years after the Account Owner's death; however, given the consistency between the information provided by the Claimant and other information about the Account Owner contained in the Bank's records, the CRT concludes that it is plausible that the form was prepared and signed in advance by the Account Owner or that it had been signed following his death by someone else on his behalf.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Ida Fischer, and indicates that her date of birth was 1863 and place of birth was Prague, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Furthermore, the CRT notes that the other claims to this account were disconfirmed because these claimants provided different first names and different addresses than the name and address of the Account Owner and failed to identify the Account Owner's business and the Power of Attorney Holder of the account. Taking all of these factors into account, the CRT concludes that the Claimant has identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The CRT notes that while the Account Owner was not a Victim of Nazi Persecution, the Account Owner's wife, who was his likely heir, was a Victim of Nazi Persecution. The CRT notes that the notation in the Bank's records that is dated after the date of death of the Account Owner strongly suggests that the Account Owner's heir was in contact with the Bank after his death and assumed ownership of the account. The CRT further notes that the Claimant stated that the

Account Owner and his wife were Jewish, and that Ida Fischer perished in Theresienstadt in 1944.

As noted above a person named Ida Fischer was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting detailed biographical information and documents demonstrating that the Account Owner was his maternal grandfather. These documents include a detailed family tree indicating the names Friedrich Fischer, Ernst Pollacsek and Arthur Pollacsek; and Friedrich Fischer's obituary, indicating his date of death on 26 Juli 1923 in Vienna, and the names of his wife and his children, including the name of the Claimant's parents. The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all this information supports the plausibility that the Claimant is related to the Account Owner as he has asserted in his Claim Form.

The CRT notes that the Claimant did not submit any information showing whether the Account Owner's other children's heirs, who would be entitled to a portion of the award, are still living, and that there are no other claims to this account.

The Issue of Who Received the Proceeds

Given the Account Owner passed away in 1923 and his account continued to exist in 1931; that the records strongly suggest that the account's ownership was assumed by the Account Owner's heir, his spouse; that the Account Owner's spouse, who took over his business following his death, was deported to a concentration camp where she perished and that their children and heirs resided in Nazi Austria; given that there is no record of the payment of the Account Owner's accounts to him or his heirs; 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 Presumptions (h) and (j) contained 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, the Power of Attorney Holder 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 the Account Owner was his maternal grandfather, and

that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder 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 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
12 January 2005