

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]
also acting on behalf of [REDACTED 3] and [REDACTED 4]

in re Accounts of Karl Fischer

Claim Numbers: 200141/RS; 401049/RS

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the published account of Hans Fischer, and the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the published accounts of Karl Fischer. This Award is to the published accounts of Karl Fischer (the “Account Owner”) at the Lucerne branch of the [REDACTED] (the “Bank”).¹

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form and Initial Questionnaire identifying the Account Owner as her paternal grandfather, Karl Fischer, who lived in Mährisch Aussee, Czechoslovakia (now Úsov, Czech Republic), and was married to [REDACTED]. Claimant [REDACTED 1] indicated that her grandparents, who were Jewish, had a son, [REDACTED] (Claimant [REDACTED 1]’s father), who lived in Vienna, Austria, until 1940, when he was deported to Sajmiste/Zemun concentration camp, near Niš in Yugoslavia. Claimant

¹ The CRT notes that on the February 2001 published 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”) and on the List of Account Owners Published in 2005 (the “2005 List”), the name Karl Fischer appears in total four times. Upon careful review, the CRT has determined that the other three Karl Fischers are not the same person addressed in the aforementioned decision and, consequently, Claimant Freeman and Claimant Fisher did not identify these other three account owners as their relatives.

[REDACTED 1] further indicated that her father and mother perished in a mass killing following detention in the camp in 1942. In a telephone conversation with the CRT on 11 January 2007, Claimant [REDACTED 1] stated that she also remembered her grandfather and grandmother living in an apartment above a store that they owned in Vienna.

In support of her claim, Claimant [REDACTED 1] submitted copies of documents, including 1) her grandmother's birth certificate, indicating that [REDACTED] was born on 23 January 1855 in Freiwaldau, Czechoslovakia (now Jeseník, Czech Republic); 2) her father's birth certificate, indicating that [REDACTED] was born on 27 June 1877 in Mährisch Aussee to Karl Fischer and [REDACTED]; 3) her parents' marriage certificate, indicating that [REDACTED] and [REDACTED], son of Karl and [REDACTED] Fischer, were married on 23 February 1914 in Vienna, and 4) her own birth certificate, indicating that [REDACTED 1] was born on 7 February 1920 in Vienna to [REDACTED] and [REDACTED].

Claimant [REDACTED 1] indicated that she was born on 7 February 1920 in Vienna. Claimant [REDACTED 1] previously submitted an Initial Questionnaire to the Court in 1999, asserting her entitlement to a Swiss bank account owned by her father, [REDACTED].²

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as her late husband's father, Karl (Karoly) Fischer, who lived at 9 Grosse Schiffgasse in Vienna, as well as in Deutschkreuz, Burgenland, Austria. Claimant [REDACTED 2] indicated that her father-in-law, who was Jewish, owned a furniture business, and was married to [REDACTED]. Claimant [REDACTED 2] indicated that Karl Fischer had two children, including Claimant [REDACTED 2]'s husband, [REDACTED], later known as [REDACTED], who was born on 16 December 1924 in Vienna. Claimant [REDACTED 2] stated that her father-in-law perished in the Holocaust, and that her husband died on 4 September 1999 in Newcastle upon Tyne, the United Kingdom.

In support of her claim, Claimant [REDACTED 2] submitted copies of documents, including: 1) her husband's birth certificate, indicating that [REDACTED] was born on 16 December 1924 in Vienna to Karoly Fischer and [REDACTED]; 2) several of her husband's medical certificates, issued upon his emigration as a child refugee in December 1938 to the United Kingdom, indicating that [REDACTED]'s parents were Karl and [REDACTED] Fischer, and that they resided at Gr. Schiffgasse 9 1/5 in Vienna; 3) her own marriage certificate, indicating that [REDACTED 2] and [REDACTED], son of Karl Fischer, were married on 23 November 1966; 4) her daughter's birth certificate, indicating that [REDACTED] was born on 24 November 1967 to [REDACTED] and [REDACTED 2]; and 5) [REDACTED]'s death certificate, indicating that [REDACTED] was born on 16 December 1924 in Austria and died on 4 September 1999 in Newcastle upon Tyne.

Claimant [REDACTED 2] indicated that she was born in 1936. Claimant [REDACTED 2] is also representing her two children, [REDACTED 3], who was born on 24 November 1967 in

² In a separate decision, the CRT awarded the account of Hans Fischer to Claimant Freeman. See *In re Account of Hans Fischer* (approved on 27 December 2002).

Gosforth, the United Kingdom, and [REDACTED 4], who was born on 17 November 1971 in Newcastle.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Karl Fischer, who resided in Vienna, Austria. The Bank's record indicates that the Account Owner held two accounts: one demand deposit account, and one custody account, numbered L 7822.

The Bank's record indicates that the demand deposit account was opened on 19 August 1939 and closed on 23 March 1940, and that the custody account was opened on 6 January 1940 and closed on 16 March 1940. The Bank's record does not indicate the value of either account. There is no evidence in the Bank's record that the Account Owner or his heirs closed the accounts 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, 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 four persons named Karl Fischer, numbered 2932, 3832, 38353, and 5316. The CRT has reviewed these records and has determined that none refer to Claimant [REDACTED 1]'s or Claimant [REDACTED 2]'s relative. Furthermore, the bank accounts referenced in the Bank's records are not included among any of the assets listed in any of the declarations filed by the four persons named Karl Fischer pursuant to the 1938 Census.

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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The name and city and country of residence of both Claimant [REDACTED 1]'s grandfather and Claimant [REDACTED 2]'s father-in-law match the published name and city and country of residence of the Account Owner.

In support of her claim, Claimant [REDACTED 1] submitted her father's birth certificate and her parents' marriage certificate, providing independent verification that the person who is claimed

to be the Account Owner had the same name recorded in the Bank's records as the name of the Account Owner. The CRT notes that Claimant [REDACTED 1] filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by the Account Owner's son, 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 [REDACTED 1] 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 [REDACTED 1] 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 [REDACTED 1].

In support of her claim, Claimant [REDACTED 2] submitted her husband's birth certificate, her own marriage certificate, and her husband's medical certificates, providing independent verification that the person who is claimed to be the Account Owner had the same name and lived in the same city recorded in the Bank's records as the name and city of residence of the Account Owner. Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Karl Fischer, and indicates that his date of birth was 26 February 1888, and place of birth was Deutschkreuz, Burgenland, Austria which matches the information about the Account Owner provided by Claimant [REDACTED 2]. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that Claimant [REDACTED 1]'s relative and Claimant [REDACTED 2]'s relative 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; 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; and that the other claims to these accounts were disconfirmed because they indicated different countries of residence, the CRT finds that Claimant [REDACTED 1] and Claimant [REDACTED 2] have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim or Target of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim or Target of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, living in Nazi occupied Austria. Claimant [REDACTED 2] stated that the Account Owner perished in the Holocaust. As noted above, a person named Karl Fischer was included in the CRT's database of victims.

The CRT notes that, according to Claimant [REDACTED 1], the Account Owner's son was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner's son and daughter-in-law perished in a mass killing following detention in a concentration camp near Niš in Yugoslavia.

The Claimants' Relationships to the Account Owner

Claimant [REDACTED 1]

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was her grandfather. These documents include her father's birth certificate, her own birth certificate, and her parents' marriage certificate. There is no information to indicate that the Account Owner has other surviving heirs.

Claimant [REDACTED 2]

Claimant [REDACTED 2] has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was her father-in-law, and the grandfather of represented parties [REDACTED 3] and [REDACTED 4]. These documents include her husband's birth certificate, her own marriage certificate, and her daughter's birth certificate. There is no information to indicate that the Account Owner has surviving heirs other than the parties whom Claimant [REDACTED 2] is representing.

The Issue of Who Received the Proceeds

Given that there is no record of the payment of the Account Owner's accounts to him; that the Account Owner and his heirs would not have been able to obtain information about his 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 (h) and (j), 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was her grandfather, and Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was the grandfather of represented parties [REDACTED 3] and [REDACTED 4], and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts. Further, the CRT notes that represented parties [REDACTED 3] and [REDACTED 4], as the Account Owner's grandchildren, have a better entitlement to the accounts than Claimant [REDACTED 2], the Account Owner's daughter-in-law.

Amount of the Award

In this case, the Account Owner held one custody account and one demand deposit account. 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 ICEP (the “ICEP Investigation”), in 1945 the average value of a custody account was 13,000.00 Swiss Francs (“SF”) and the average value of a demand deposit account was SF 2,140.00, for a sum total of SF 15,140.00 for the two accounts. The current value of this amount is also multiplied by a factor of 12.5, to produce a total award amount of SF 189,250.00.

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 group of Claimants has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1] is entitled to one-half of the total award amount, and Claimant [REDACTED 2] and the parties whom she represents are collectively entitled to one-half of the total award amount.

With respect to the share of the award amount belonging to the parties represented by Claimant [REDACTED 2], 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, Claimant [REDACTED 2] is representing her children, [REDACTED 3] and [REDACTED 4], the grandchildren of the Account Owner. Therefore represented party [REDACTED 3] and represented party [REDACTED 4] are each entitled to one-quarter of the total award amount. As mentioned above, represented parties [REDACTED 3] and [REDACTED 4], as the Account Owner’s grandchildren, have a better entitlement to the accounts than Claimant [REDACTED 2], who is related to the Account Owner through marriage only.

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