

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Oskar Fischer

Claim Number : 223642/MD

Award Amount: 332,476.85 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Oskar Fischer (the “Account Owner”) at 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 her paternal grandfather, who was born in 1884 in Vienna, Austria. According to the information in the Claim Form, Oskar Fischer married [REDACTED] in 1906, and they had one child, the Claimant’s father. The Claimant stated that her grandfather owned a publishing house in Vienna and that he lived in Mauer near Vienna until 1938. The Claimant further stated that her grandfather, who was Jewish, was interned at the concentration camps in Buchenwald and Dachau from June 1938 to May 1939, and that he went to France after his release. According to the information provided by the Claimant, her grandfather was later interned in a labor camp in Vichy France and was released in September 1942. The Claimant stated that her grandfather then went into hiding in France. The Claimant asserted that her grandfather died in Austria in 1956, his wife died in France in 1943, and their son died in 1987. The family tree submitted by the Claimant indicates that she is Oskar Fischer’s only granddaughter and his only surviving heir.

Information Available in the Bank Records

The bank records consist of a customer card and a list of numbered accounts. These records indicate that the sole Account Owner was Oskar Fischer who lived in Mauer near Vienna and owned a numbered custody account, which was closed on 3 June 1939. The bank records do not

indicate who closed the account or who received its proceeds nor do they indicate the value of the account as of the date of closure.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archive (Archive of the Republic, Finance), are documents concerning the assets of Oskar Fischer. These documents indicate that Oskar Fischer, who was married to [REDACTED], owned a publishing company in Vienna. These documents further indicate that the Account Owner declared the value of the securities held in the custody account at the Bank to the Nazi authorities in Austria in June 1938. The declared value of the securities as of 27 April 1938 amounted to 16,475.40 Reichsmarks.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. She stated that her grandfather was married to [REDACTED] and that he owned a publishing company in Vienna. This information matches the unpublished information about the Account Owner contained in the documents made available to the Tribunal by the Austrian State Archive.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has provided evidence indicating that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and that he was interned in concentration and labor camps. She submitted a copy of her grandfather's membership card issued by the Association of Anti-Faschist Austrian Prisoners of Concentration Camps confirming the information provided in the Claim Form.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting a letter of release from the Vichy France Ministry of Interior demonstrating that her father was the son of the Account Owner and by providing specific biographic information about the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning her relationship to the Account Owner.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the account at issue was paid to the Account Owner or his heirs, the Tribunal must consider the question of what happened to the funds in this case.

The historical evidence developed by the Independent Committee of Eminent Persons during its investigation of Swiss banks (the "ICEP Investigation") demonstrates that the funds of Nazi victims in Swiss banks were disposed of in various ways. In some cases, the account owners and/or their families withdrew and received the funds. In other cases, Nazi authorities coerced account owners to withdraw the balances in their Swiss accounts and transfer the proceeds to banks designated by the Nazi authorities, and the funds fell into Nazi hands. For other accounts, no transfers occurred, but account values were consumed by regular and special bank fees and charges, which resulted ultimately in closure without any payment to the account owners. In still other cases, particularly after a period of inactivity or dormancy, the proceeds were paid to bank profits. Thus, since the funds in this case apparently were not paid to the Account Owner, there is a substantial likelihood that these funds went to the Nazis.

Although the Tribunal cannot determine with certainty who received the proceeds of the account, the Tribunal concludes that a plausible showing has been made that neither the Account Owner nor his heirs received the proceeds.¹ The application of the confiscatory laws in Austria by the Nazi Regime after the *Anschluss* of March 1938, as described in more detail in the footnote below, makes it unlikely that the Account Owner received the proceeds himself. The Tribunal notes that the Account Owner declared the assets deposited in Switzerland to the Nazi authorities in June 1938, at which time the Account Owner was interned in concentration camps, and his entire estate was confiscated by the Nazis. The Account Owner was not released until May 1939, when he went to France and lived for approximately one year before being interned again in a camp. In view of the Account Owner's Austrian nationality, his declaration of assets and the confiscation of his estate, his internment in 1938 and again in 1940, and the application of confiscatory laws in Austria by the Nazi Regime after the *Anschluss* in March 1938, as described in more detail in the footnote below, it is not plausible that the Account Owner received the proceeds of the account closed in June 1939.

The Tribunal's conclusion is also required by Article 34(d) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that where an account was declared in a Nazi census of Jewish assets, the Tribunal shall presume that neither the account owners nor their heirs received the proceeds of the claimed account. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the account and received the proceeds himself.

¹ In reaching this conclusion, the Tribunal is relying in part on research cataloguing more than forty different laws, acts, and decrees used by the Nazi Regime to confiscate Jewish assets abroad. After the annexation of Austria, German laws were extended to apply there as well, and these laws applied to foreign assets of Austrian citizens as a result of a law promulgated on 23 March 1938. Although many of the laws were facially non-discriminatory, the Nazi Regime enforced these laws on a discriminatory basis against Jewish asset holders. These laws included, for example, increasingly stringent registration and repatriation requirements for assets held outside the Reich and special confiscatory taxes for emigrants who wished to flee. After the occupation of Austria, wholesale and systematic Nazi expropriations of Jewish assets held in Swiss banks and elsewhere were widespread. A decree dated 26 April 1938 required Jews to register their assets, and subsequent to that date the Nazi Regime began to enact legislation and orders to repatriate and confiscate foreign assets both for Jews who sought permission to flee the Reich and for those unable to flee. A listing of the principal laws invoked by the Nazi Regime in specific confiscatory situations appears at the CRT-II website, www.crt-ii.org.

Basis for the Award

The Tribunal 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her grandfather and that relationship justifies an Award. Finally, the Tribunal has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

The property declaration filed by the Account Owner with the Nazi authorities in Vienna indicates that the value of the custody account as of 27 April 1938 was 16,475.40 Reichsmarks. The present value of the amount of the award is determined by multiplying the historic value of 28,911.03 Swiss Francs, calculated according to the exchange rates used by the Swiss National Bank, by a factor of 11.5, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case is 332,476.85 Swiss Francs.

In cases where the Tribunal has determined that an account may be subject to later competing valid claims, claimants shall receive an initial payment of 35% of the total award amount. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 65% of the total award amount. In this case, there is the possibility of other competing claims. In this instance, 35% of the total award amount is 116,366.89 Swiss Francs.

Scope of the Award

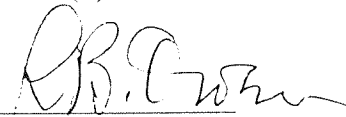
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a plausible case for entitlement to an award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same account will be forthcoming. Article 37(3)(a) and (b) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, and/or the Tribunal determines that an account may be subject to later competing claims, the initial payment to the claimant shall be 35% of the Certified Award, and the claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. Thus, the Rules instruct and require the Tribunal to certify and recommend an initial 35% payment in awards submitted for Court approval in particular cases where either the Tribunal has used the value presumptions of Article 35 or it has determined that the account may be subject to later competing claims, or both.

In this case, the Tribunal is of the opinion that the account/s at issue may be subject to later competing claims. On this basis, the Tribunal certifies this Award for approval by the Court and for payment by the Special Masters in accordance with Article 37(3) of the Rules.

26 March 2002
Date


Roberts B. Owen
Senior Claims Judge