

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Oskar Fleischhacker

Claim Number: 752848/WM¹

Award Amount: 79,586.88 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Oskar Fleischhacker (the “Account Owner”) at the New York branch of 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 an ATAG Ernst & Young claim form in 1997 (“ATAG Form”) identifying the Account Owner as her grandfather, Oskar Fleischhacker, who was born on 24 January 1890 in Siegburg, Germany, and was married to [REDACTED], née [REDACTED], who was born on 14 July 1896 in Wurzburg, Germany. The Claimant indicated that her grandparents, who were Jewish, had two children, [REDACTED] and [REDACTED]. The Claimant explained that her grandfather was a banker and had resided at Leonrodstrasse 33 in Munich, Germany, and that his last known address was Lindwurmstrasse 125 in Munich. The Claimant stated that her grandparents were deported to a ghetto in Piaski, Poland, where they perished in 1942. The Claimant further stated that her father, [REDACTED], who had two children, the Claimant and [REDACTED], fled Germany and emigrated to New York, the United States, in 1937, after which he changed his name to [REDACTED]. According to the Claimant,

¹ Claimant [REDACTED] (the “Claimant”) did not submit a CRT Claim Form. However, in 1997, she submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-NYC-B-71-216-032-050, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 752848.

her father died on 23 July 1971 in Chicago, the United States. Additionally, the Claimant stated that [REDACTED] fled to Palestine in 1935 and changed his name to [REDACTED]. In an e-mail to the CRT on 10 May 2004, the Claimant indicated that [REDACTED] died in 2000.

In a subsequent telephone conversation with the CRT on 1 March 2005, the Claimant indicated that she will split any amount awarded with her brother, [REDACTED], and that they are the only surviving heirs of Oskar Fleischhacker.

In support of her claim, the Claimant submitted documents, including: (1) an excerpt from Yad Vashem's archives indicating that Oskar Fleischhacker was Jewish and was arrested in Munich and deported to the east; (2) [REDACTED]'s birth certificate and passport dated in 1936, indicating his birth in Munich; (3) [REDACTED]'s and [REDACTED]'s report cards dated 1935 and 1936 respectively, indicating their attendance at school in Munich; (4) [REDACTED]'s death certificate indicating that he was born in Germany and that his father was Oscar Fleischhacker; and (5) [REDACTED]'s and the Claimant's birth certificates indicating that they were born to [REDACTED] and [REDACTED], and that [REDACTED] was born in Munich. The Claimant indicated that she was born on 28 March 1951 in St. Louis, Missouri, the United States.

Information Available in the Bank's Records

The Bank's record submitted by 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") consists of a printout from the Bank's database. According to this record, the Account Owner was Oskar Fleischhacker, who resided in Munich, Germany. The Bank's record indicates that the Account Owner held a demand deposit account, which contained a balance of 1,477.25 United States Dollars ("US \$") as of 14 June 1941.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of a customer card and a list of accounts held at the Bank which were blocked under the United States' Trading With the Enemy Act (the "1941 Freeze").² These records indicate that the Account Owner was Oskar Fleischhacker of Munich, Germany, and that this account was opened in January 1941 and closed on 23 February 1942.

There is no evidence in the Bank's records that the Account Owner or his heirs closed the account and received the proceeds themselves.

² During the Second World War, the United States government froze certain foreign assets located in the United States, under the powers of the Trading with the Enemy Act of 1917 (50 U.S.C. App.). On 14 June 1941, President Roosevelt extended freezing controls to cover all of continental Europe (the "1941 Freeze"). Executive Order 8785 Regulating Transactions in Foreign Exchange and Foreign-Owned Property, Providing for the Reporting of All Foreign-Owned Property, and Related Matters (6 Fed. Reg. 2897).

The CRT's Analysis

Identification of the Account Owner

The Claimant's grandfather's name, city and country of residence match the published name, city and country of residence of the Account Owner. In support of her claim, the Claimant submitted documents, including an excerpt from Yad Vashem's archives indicating that Oskar Fleischhacker was arrested in Munich and deported; her father's death certificate, indicating that he was born in Germany and that his father was Oskar Fleischhacker,³ providing independent verification that the person who is claimed to be the Account Owner had the same name, city and country of residence recorded in the Bank's records as the name, city and country of residence of the Account Owner.

The CRT further notes that a database containing the names of victims of Nazi persecution includes an individual named Oskar Fleischhacker, and indicates that his date of birth was 24 January 1890 and that his place of birth was Siegburg, Germany, 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.

Additionally, the CRT notes that the name Oskar Fleischhacker appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the "ICEP List").

The CRT notes that the Claimant filed an ATAG Form in 1997, asserting her entitlement to a Swiss bank account owned by Oskar Fleischhacker, prior to the publication of the ICEP List. This indicates that the Claimant 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 the Claimant 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 the Claimant. The CRT notes that there are no other claims to this account. Taking all these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has 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 and his wife were deported to a ghetto in Piaski, where they perished in 1942. As noted above, an individual named Oskar Fleischhacker was included in the CRT's database of victims.

³ The CRT notes the spelling discrepancy between the surnames Fleischhacker and Fleischhakker and deems the names to be substantially similar.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's grandfather. These documents include the Claimant's birth certificate, indicating that her father was [REDACTED] who was born in Munich, and [REDACTED]'s death certificate indicating that he was born in Germany and that his father was Oskar Fleischhacker. The CRT further notes that the Claimant submitted her uncle's birth certificate and passport indicating that his last name was Fleischhacker and that he was born in Munich, and her father's and uncle's report cards indicating that their last names were Fleischhacker and that they attended school in Munich, which provide independent verification that the Claimant's relatives bore the same family name as the Account Owner and that they resided in Munich. There is no information to indicate that the Account Owner has surviving heirs other than the Claimant's brother, [REDACTED].⁴

The Issue of Who Received the Proceeds

The CRT notes that the Account Owner's account was frozen in the 1941 Freeze and that the Bank's records indicate that the account was closed on 23 February 1942. The CRT further notes that, generally, an account frozen under the US Trading with the Enemy Act would only have been released by the US Department of Treasury to the account owner, if he/she were in the United States, or to some other authorized party in the United States. The CRT notes that the Account Owner's son emigrated to the United States in 1937, but there is no indication that the Account Owner authorized his son to act on his behalf with regard to the account. The Account Owner himself had been deported from Munich to a ghetto in Piaski, where he perished in 1942. Thus, there is no evidence that the account could have been closed to an authorized party.

Given these facts, that this account was frozen under the 1941 Freeze; that the Account Owner was deported from Munich and subsequently perished in a ghetto in Piaski in 1942; that there is no record of the payment of the Account Owner's account to him or to his heirs; that the Account Owner's heirs would not have been able to obtain information about the Account Owner's 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 (a), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendices A and C),⁵ 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.

⁴ The CRT notes that it is not in possession of a signed power of attorney form that would allow [REDACTED] to be formally represented by the Claimant in this process but further notes that in a telephone conversation with the CRT on 1 March 2005, the Claimant indicated that if the CRT were to award any account of her relative, she would share the proceeds with her sibling.

⁵ Appendix C appears on the CRT II website www.crt-ii.org.

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 her grandfather, and that relationship justifies 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 account.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The Bank's records indicate that the balance of the account as of 10 June 1941 was US \$1,477.25, which was equivalent to 6,366.95 Swiss Francs ("SF").⁶ The current value of the amount of the award is determined by multiplying its historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 79,586.88.

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 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

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
29 December 2005

⁶ The CRT uses official exchange rates to convert amounts in foreign currencies into Swiss Francs.