

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Arnold Fleischmann

in re Account of Nelly Fleischmann

Claim Number: 223889/RS¹

Award Amount: 27,050.00 Swiss Francs

This Certified Award is based upon the claim of Arnold Fleischmann (the “Claimant”) to the unpublished account of Nelly Fleischmann (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).²

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 mother, Nelly (Nelli) Fleischmann, née Fleischer, who was born on 18 October 1900 in Bayreuth, Germany, and was married to Ludwig Fleischmann in 1923 in Bayreuth. The Claimant indicated that his mother, who was Jewish, was a housewife, and that she had one child, the Claimant, who was born in 1925 in Bayreuth. According to the Claimant, his mother resided at 30 Badstrasse in Bayreuth between 1900 and 1938. The Claimant stated that his mother died on 17 August 1938 in the Jewish Hospital in Fürth, Germany, and that she was buried in the Jewish Cemetery in Bayreuth.

The Claimant indicated that he remembered his father traveling to Zurich, Switzerland, to deposit money at a bank which he believed was the Bank. The Claimant submitted a letter, dated 20 September 1956, that Ludwig Fleischmann wrote to the Bank, in which he indicated that his late wife Nelly Fleischmann held a custody account numbered 43500 at the Bank with a 1938

¹ In a separate decision, the CRT awarded another account of Nelly Fleischmann to the Claimant. See *In re Account of Nelly Fleischmann* (approved on 14 May 2002).

² 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”), Nelly Fleischmann was listed as having one account. The CRT awarded that account to the Claimant in the award referenced above. In that award, the CRT noted that it had also identified an unpublished demand deposit account belonging to Nelly Fleischmann, and that that account would be addressed in a separate determination. That demand deposit account is the subject of the current Award.

value of approximately 25,000.00 Swiss Francs (“SF”). In the letter, Ludwig Fleischmann stated that in December 1938, under orders from the Reich, he requested that the Bank sell the securities in Nelly Fleischmann’s custody account, and forward the proceeds to the *Deutsche Golddiskont Bank* in Germany. In the 1956 letter, Ludwig Fleischmann indicated that he was pursuing restitution proceedings in Germany, and that to that end, he would appreciate the Bank confirming the 1938 sale of the securities in the custody account.

The Claimant also submitted the Bank’s 3 October 1956 response to Ludwig Fleischmann’s letter. In its response, the Bank indicated that it was impossible for the Bank to confirm the existence of any accounts that might have existed in 1938, as the Bank had destroyed its records from that era.

In support of his claim, the Claimant submitted copies of: (1) his birth certificate, indicating that his mother was Nelly Fleischmann, née Fleischer, and that his father was Ludwig Fleischmann; and (2) his mother’s birth certificate, indicating that Nelli Fleischer was born on 18 October 1900 in Bayreuth, and that her parents were both Jewish.

The Claimant indicated that he was born on 7 November 1925 in Bayreuth.

The Claimant submitted a copy of an application he filed in 1997 with the Contact Office for the Search of Dormant Accounts Administered by Swiss Banks (the “Swiss Bank Contact Office”), indicating that he requested a search for accounts held by Ludwig Fleischmann, and that he paid a search fee of SF 300.00 for this purpose. The Claimant also submitted a copy of a 21 August 1997 letter that he wrote to the Swiss Banking Ombudsman, in which he acknowledged receiving a check from that office, drawn on the *Zürcher Kantonalbank*, in the amount of SF 200.00, which the Claimant indicated was a partial refund of the SF 300.00 application fee he had submitted with his claim. The letter indicates that the check was dated 3 February 1997, but that the Swiss Banking Ombudsman did not send the check to the Claimant until late July 1997. In his letter, the Claimant stated that after he deposited the check with his bank in the United States on 1 August 1997, his bank returned the check to him with a notice that the foreign bank had declined to honor the check because of its stale date. In his letter, the Claimant requested that the Swiss Banking Ombudsman promptly send him a replacement check bearing a current date, so that he might deposit it and obtain the benefit of the “promised partial refund of the application fee.” The Claimant did not indicate whether the Swiss Banking Ombudsman ever provided him with the promised refund check.

Information Available in the Bank’s Records

The Bank’s records consist of a client card and a printout from a list of accounts that the Bank reported to the Swiss Compensation Office in Bern. According to these records, the Account Owner was Mrs. (*Frau*) Nelly Fleischmann, who resided at Badstrasse 30, Bayreuth, Germany. The Bank’s records indicate that the Account Owner held one custody account, numbered 43500, which was closed on 10 January 1939. The CRT notes that this account was awarded to the

Claimant in a previous decision.³ The Bank's records also indicate that the Account Owner held one demand deposit account, which had a balance of SF 216.00 Swiss Francs on 13 March 1954.

The Bank's records indicate that the demand deposit account was closed on 20 June 1959. The amount in the account on the date of its closure is unknown.

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

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's mother's name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant identified the Account Owner's street address, and the account number of one of the accounts held by the Account Owner, which matches unpublished information about the Account Owner contained in the Bank's records.

In support of his claim, the Claimant submitted documents, including his birth certificate and his mother's birth certificate, 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 name Nelly Fleischmann appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of victims of Nazi persecution ("ICEP" or the "ICEP List").

The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim or Target 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 she resided in Germany from 1933 through 1938, when she died.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's mother. These documents include the Claimant's birth certificate, indicating that his mother was Nelly Fleischmann, née Fleischer. There is no information to indicate that the Account Owner has other surviving heirs.

³ See footnotes 1 and 2.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records.

The Issue of Who Received the Proceeds

The Bank's records indicate that the account was closed on 20 June 1959.

Given that the Account Owner died in 1938; that the Bank, in a 1956 letter to the Account Owner's husband, denied having the ability to verify whether an account belonging to the Account Owner existed; and given the application of Presumptions (h) and (j), as provided 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 or her 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 mother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one demand deposit account and one custody account. As noted above, the custody account was awarded to the Claimant in a previous decision. With regard to the demand deposit account, the Bank's records indicate that the value of the account as of 13 March 1954 was SF 216.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 150.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1954. Consequently, the adjusted balance of the account at issue is SF 366.00. According to Article 29 of the Rules, if the amount in a demand deposit was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. 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 26,750.00.

The CRT also notes that the Claimant paid a search fee of SF 300.00 in 1997, when he requested that the Swiss Bank Contact Office search for accounts held by Ludwig Fleischmann. While the Claimant provided information indicating that the Swiss Banking Ombudsman initially indicated that it would provide the Claimant with a refund of SF 200.00, the Claimant provided no information to indicate that this refund was ever provided after the Swiss Banking Ombudsman first sent the Claimant an invalid, stale-dated refund check. In the absence of any evidence indicating that the Swiss Banking Ombudsman provided the Claimant with a partial refund of the

search fees, the full amount of the search fee, namely SF 300.00, is added to the amount being awarded to the Claimant, for a total award amount of SF 27,050.00.

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
15 November 2007