

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
acting on behalf of himself and [REDACTED]

in re Account of Jakob Fränkel

Claim Number: 209529/MBC

Award Amount: 1,416,240.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Jakob Fränkel (the “Account Owner”) at the Zurich 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 a Claim Form and an Initial Questionnaire identifying the Account Owner as his grandfather, Jakob Fränkel, who was born on 20 August 1882 in Witkow Stary, Poland, and was married to [REDACTED] on 10 July 1910. The Claimant stated that Jakob and [REDACTED] Fränkel had two children: Victor (Wiktor), born on 7 May 1914, and [REDACTED], born on 1 May 1911. The Claimant stated that he is the son of Victor Fränkel, and the grandson of Jakob Fränkel. The Claimant provided alternate spellings of his grandfather’s family name as “Fraenkel” and “Frenkel” and indicated that he and his father spelled the family name “Frenkel.” According to the Claimant, Jakob Fränkel, who was Jewish, was a pharmacist and proprietor of the pharmacy, “Under the Eagle,” in Chorzow, Poland, where he lived and worked between 1922 and 1939 at Ul. 3 Maja 1. The Claimant stated that his grandfather owned property in other places in Poland and that he deposited money in banks in Switzerland prior to the Second World War, and that he could have deposited the money under the code names “Ego,” “Ferdinand” (or “Ferdynand”) or “Ben Fogcye” (or “Ben Fogce” or “Ben Fogcie”). The Claimant further stated that his grandfather and grandmother perished sometime after 12 September 1942, when they were deported to an extermination camp, and that their daughter Irmie perished sometime after 1944, when she was taken from Rzeszow, Poland to an extermination camp. The Claimant stated that he is the grandson of Jakob Fränkel and that he was born on 25 March 1953.

In support of his claim, the Claimant submitted a letter dated 1 January 1938 from his grandfather, Jakob Fränkel, to his grandfather's cousin. In that letter, Jakob Fränkel wrote that his cousin's relative had written him and asked him to send money to a relative in the Soviet Union. In that letter, Jakob Fränkel wrote that he would never do such a thing, because at that time currency transfers were strictly forbidden in Poland, and that he had never and would never disobey the law.

The Claimant also submitted several documents that demonstrate his grandfather's wealth. These documents include a letter dated 4 April 1936 from Jakob Fränkel to his cousin in Israel indicating that he wanted to purchase substantial property in Israel, a letter dated 24 January 1950 from the Chase National Bank in New York to the Claimant's father informing him that he is entitled to the sum of 6,500.00 United States Dollars that had been deposited with that bank in the name of Jakob Fränkel, and documents demonstrating that in 1993 the Claimant sold property in Krakow once belonging to his grandfather worth 80,000 United States Dollars. The Claimant also submitted documents from the Regional Court of Krakow that indicates that his father inherited real estate at three locations, as well as the pharmacy that once belonged to Jakob Fränkel.

The Claimant also submitted correspondence that details the efforts he and his father took since 1950 to reclaim his grandfather's account. This correspondence includes letters addressed to various Swiss banks and authorities from the Claimant's father that span a period of several years, beginning immediately following the Second World War. In a letter dated 1 February 1963, the Zurich branch of the Bank wrote to the Claimant's father in response to his request for information about his father's account and informed him that his father did not have any assets at the Bank. In that letter, the Bank also informed the Claimant's father that he owed the Bank 10.00 Swiss Francs for the costs of their investigation. In another letter, dated 4 October 1965, a lawyer for the Claimant's father wrote to the Swiss Department of Justice and reported that Victor Fränkel had finally been able to establish that his father owned money and assets at the Basel branch of another Swiss bank, and that this bank transferred a small amount of money from his account to Copenhagen in 1939. The lawyer reported that the transfer was made pursuant to the use of the password "Mr. Ferdynand." In another letter to the Swiss Department of Justice, dated 25 October 1971, the lawyer reported that Victor Fränkel had learned that his father had transferred money in January 1936 to an account in the name of Jakob Fränkel at the Zurich branch of the Bank through the [REDACTED] in Katowice, Poland. In a letter to another of his lawyers, dated 8 July 1974, regarding the Account Owner's assets, the Claimant's father recounted that "in the summer of one of the years 1936-1938, but most probably in 1937," he went with his father to the [REDACTED] in Katowice to arrange for another transfer, this time of 6,000 Pounds Sterling to the Zurich branch of the Bank, and that he personally witnessed the transaction. In that letter, the Claimant's father stated that the transfer was arranged through a clerk at the bank in Poland, and that the clerk's name was likely "Mr. Steiner." The Claimant also stated that he remembers his father receiving confirmation from the Bank that the transfer had been completed.

The Claimant also submitted a letter addressed to him from the Bank, dated 21 March 1988, that informed him that his grandfather did not hold any assets or maintain a safe deposit box at the Zurich branch of the Bank at the time of his death. In that letter, the Bank informed the Claimant that if he wanted to investigate other branches of the Bank, he would have to pay the sum of

1,000.00 Swiss Francs, and that the search would be limited to the situation on or after the date of death of the account owner in question. The Claimant also submitted a letter addressed to him from the Swiss Bankers Association (“SBA”), dated 8 February 1996, that responded to his request for information about his grandfather’s account. In that letter, the SBA informed the Claimant about the creation of a Contact Office, to be managed by the Swiss Banking Ombudsman, to assist claimants of dormant accounts. In a letter dated 26 August 1996 to the Claimant, the Contact Office informed the Claimant that no dormant accounts held in his grandfather’s name were found in any Swiss banks.

Information Available in the Bank Records

The bank records consist of a customer card and printouts from the Bank’s electronic database. According to these records, the Account Owner was Jakob Fränkel and the Power of Attorney Holder was Wiktor Fränkel. According to the bank documents, the Account Owner resided at Ul. 3-go Maja 1 in Chorzow, Poland. The bank records indicate that the Account Owner held a custody account. According to the records, the account was opened in 1934 and closed on 5 March 1939. The amount in the account on the date of its closure is unknown. There is no evidence in the records that the Account Owner or his 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. His grandfather’s name matches the published name of the Account Owner and his father’s name matches the published name of the Power of Attorney Holder. Additionally, the Claimant provided a street address in Chorzow, Poland for his grandfather and father that matches unpublished information about the Account Owner contained in the bank documents. In support of his claim, the Claimant submitted documents, including the death certificate of his father, letters the Claimant sent to other Swiss banks attempting to locate his family’s assets, family correspondence, photos of his grandfather, a letter from the Polish consulate confirming that the Claimant’s grandfather had owned land in Poland, and the Claimant’s own birth certificate.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Jakob Fränkel, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimant has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his 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.

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 died after being deported to an extermination camp.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that he is the Account Owner's grandson.

The Issue of Who Received the Proceeds

Based on its precedent and the Rules, the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.¹ The CRT notes that the Account Owner's custody account was closed on 5 March 1939, prior to the Nazi invasion of Poland, the Account Owner's country of residence. However, beginning in the early 1930s, the Nazis embarked on a campaign to seize the assets of Jews held abroad, particularly assets in Switzerland. Between April 1936 and the end of 1938, the Polish Government required all transactions between Polish and foreign banks to be centralized and later all foreign assets to be registered with Polish authorities. These developments are apparently reflected in a letter submitted by the Claimant dated 1 January 1938, in which the Account Owner admonishes his cousin for a relative's request for a transfer of currency to a foreign country. In that letter, the Account Owner wrote that currency transfers were strictly forbidden in Poland, and that he had never and would never disobey the law. The content and tone of the letter indicates that the Account Owner was writing to an audience that included not only his cousin, but also the authorities who he may have suspected were monitoring his correspondence. This letter suggests that the Account Owner may have been concerned that his assets were being traced prior to the Nazi invasion of Poland, and that the Nazis could have had knowledge of his account even prior to the outbreak of the Second World War.

Moreover, the CRT notes that the account was closed after the imposition of Swiss visa requirements in January 1939, and that, even without the visa restrictions on entry, given the political situation in Europe at the time, it is not likely that the Account Owner, who perished in the Holocaust, would have traveled from Poland to Switzerland in March 1939 to close the account or otherwise receive the proceeds of the account himself. Moreover, the CRT notes that the son of the Account Owner attempted on several occasions, beginning immediately after the War, to obtain information about the account, but the Bank provided no information to him. Furthermore, there is no information in the bank records to indicate that the Account Owner closed the account and received the proceeds himself. The CRT therefore concludes in this case that presumptions (a), (e), and (j) apply and it is therefore plausible that the account proceeds were not paid to the Account Owner or his heirs.

¹ An expanded version of Appendix A 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his grandfather, and that relationship justifies an Award. Finally, 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

The bank records in this case provide no information on the value of the custody account owned by the Account Owner. As provided in Article 35 of the Rules, in the absence of evidence to the contrary the CRT uses the average value in 1945 of the account to determine the amount of the award. In this case, there is information about the value of the custody account provided by the Claimant. The Claimant provided a letter written by his father who witnessed the Account Owner transfer 6,000.00 Pounds Sterling to an account at the Zurich branch of the Bank. The Account Owner's ability to transfer this large sum of money is fully consistent with the Account Owner's position as a pharmacist and owner of a pharmacy in Poland, his documented ability to purchase property in Palestine in 1936, and the size of the estate he left to his heirs. Thus, the Claimant's assertion that his father transferred 6,000.00 Pounds Sterling to a custody account in Switzerland is entirely credible. Moreover, in the letter submitted by the Claimant, the Claimant's father correctly identified the branch and name of the Bank identified in the bank records. This further supports the credibility of the Claimant's father's recollection of the nature of the transaction and amount of the deposit.

The credibility of the Claimant's documentation of his grandfather's transaction is a sufficient basis for the CRT to use this value in place of the average value provided for in Article 35. Average values obviously have the defect of over-compensating those with accounts of less than the average and under-compensating those with more than the average. In the absence of bank records on valuation of accounts, averages are a necessary tool, but when there is credible evidence of payment or valuation, the CRT should use this evidence to inform its decisions. In this case, the record credibly indicates that 6,000.00 Pounds Sterling were deposited in a custody account in the Zurich branch of the Bank in the years between 1936 and 1937, and this credible valuation should be used to value this custody account. The CRT accordingly determines that the amount in the custody account was 6,000.00 Pounds Sterling, which was equivalent to 118,020.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 1,416,240.00 Swiss Francs.

Division of the Award

The Claimant is representing his sister in these proceedings. According to Article 29 of the Rules, his sister is entitled to receive one-half of any payment made to the Claimant.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 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

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:¹

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner was a child at the time of the Second World War;
- h) the Account Owners and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners or their heirs received the proceeds of the Account.³

¹ See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); see also Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees,

and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

² See Bergier Final Report at 443-44, 446-49; *see also* ICEP Report at 81-83.

³ As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, *see Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, *see* Bergier Final Report at 450 -51, and possibly Romania as well, *see* Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. *See* Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." *Id.* at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. *See In re Holocaust Victim Asset Litig.*, 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).