

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]

in re Accounts of Friedrich Freud and Fritzi Freud

Claim Numbers: 213425/GO; 778941/GO; 784509/GO; 784510/GO¹

Award Amount: 242,750.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the unpublished account of Friedrich Freud (“Account Owner Friedrich Freud”) at the New York branch of the [REDACTED] (the “Bank”) and to the unpublished accounts of Account Owner Friedrich Freud and Fritzi Freud (“Account Owner Fritzi Freud”) (together the “Account Owners”) at the Lausanne branch of the Bank.² The accounts awarded are from the Total Accounts Database (“TAD”) at the Bank.

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 owners, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owners as his parents, Dr. Friedrich (Frederick, Frigyes, Ficki, Fritz) Freud, who was born on 30 March 1894 in Novi Sad, Yugoslavia (today Serbia), and Fredericka (Fritzi) Freud, née von Rothenburg

¹ [REDACTED 2] (“Claimant [REDACTED 2]”) did not submit a Claim Form to the CRT. However, in 1999 she submitted three Initial Questionnaires (“IQs”), numbered ENG-0347-194, ENG-0569-029 and ENG-0569-030, to the Court in the United States. Although these IQs were not Claim Forms, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQs were forwarded to the CRT and have been assigned claim numbers 778941, 784509 and 784510, respectively.

² In these claims, Claimant [REDACTED 2] also claimed accounts of Abraham Noe Stilman and Julius Katz. The CRT will treat the claims to these accounts in separate determinations.

(Rothenberg), who was born on 6 September 1909. Claimant [REDACTED 1] stated that his parents were married on 29 July 1934 in Budapest, Hungary, and that he is their only child. According to Claimant [REDACTED 1], Friedrich and Fritzi Freud, who were Jewish, resided in Budapest, where Dr. Friedrich Freud worked as a physician and surgeon at Fazor Sanatorium, located at Vilma Kiraly utca 9 in Budapest. The Claimants indicated that Dr. Friedrich and Fritzi Freud fled to New York, New York, the United States in February 1941. Claimant [REDACTED 1] further indicated that Dr. Friedrich Freud died on 2 April 1966 in New York and that Fritzi Freud died on 28 June 1992 in New York.

In support of his claim, Claimant [REDACTED 1] submitted a copy of a decision from the Foreign Claims Settlement Commission of the United States, dated 8 June 1959, indicating that Frederick and Fredericka Freud resided in Budapest and that Frederick Freud was the owner of Fazor Sanatorium in Budapest. Claimant [REDACTED 1] further submitted a copy of letters of administration from the State of New York, indicating that Frederick Freud was a medical doctor and authorizing [REDACTED 1] to administer his estate.

Claimant [REDACTED 1] indicated that he was born on 6 February 1942 in New York. Claimant [REDACTED 1] previously submitted two Initial Questionnaires to the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by Dr. Frederick Freud and Fredericka Freud.

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted three Initial Questionnaires identifying the Account Owners as her maternal aunt and uncle by marriage, Dr. Frederick Freud and Frieda Freud. In a telephone conversation with the CRT on 19 June 2006, Claimant [REDACTED 2] explained that Frieda Freud was her mother's sister, and that she and Frederick Freud resided in Budapest, where Frederick Freud practiced medicine in a sanatorium. Claimant [REDACTED 2] further stated that Frederick and Frieda Freud fled from Hungary to the United States after the Nazi occupation of Hungary. Claimant [REDACTED 2] indicated that she was born on 6 November 1927.

Information Available in the Bank's Records

The Bank's records consist of two customer cards and a printout from the Bank's database. Additionally, in the United States National Archives there is a list of accounts blocked in 1941 under the U.S. Trading with the Enemy Act (the "1941 Freeze").³ According to these records,

³ 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). See Plunder & Restitution: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report, SR-44 (United States Government Printing Office, 2000), available at http://www.pcha.gov/PlunderRestitution.html/html/Home_Content.html.

Account Owner Friedrich Freud held one account at the New York branch of the Bank, and the Account Owners jointly held three accounts at the Lausanne branch of the Bank.

Account Owner Friedrich Freud

With respect to the account held by Account Owner Friedrich Freud, the record from the United States National Archive indicates that Account Owner Friedrich Freud was Friedrich Freud, who resided in New York, New York, the United States. This record indicates that Account Owner Friedrich Freud held a demand deposit account, which was frozen on 14 June 1941 with a balance of 113.02 United States Dollars (“US \$”). This record does not contain any information regarding the disposition of the account.

Account Owner Dr. Friedrich Freud and Account Owner Fritzi Freud

With respect to the accounts jointly held by the Account Owners, the Bank’s records indicate that the Account Owners were Dr. Friedrich Freud and *Mme.* (Mrs.) Fritzi Freud, née Rothenberg, who were Hungarian nationals and resided at Vilma Kivalzno 9 in Budapest VII, Hungary. The Bank’s records indicate that the Account Owners held a demand deposit account, numbered 12489, which was opened on 28 December 1938, and a custody account and a second demand deposit account, both numbered 12484, which were opened on 28 December 1938. The Bank's records indicate that Account Owner Friedrich Freud used an address at Fazor Sanatorium in Budapest. According to the Bank's records, the Account Owners resided in New York as of 11 March 1941. The Bank’s records indicate that both demand deposit accounts were closed on 29 October 1941, and that the custody account was closed on 13 November 1941. The amounts in the accounts on the dates of their closure are unknown. There is no evidence in the Banks’ records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

These four accounts were not part of the Account History Database at the CRT, but were identified as a result of matching and research carried out at the Bank and using, as noted above, the TAD at the Bank. The TAD at the Bank is one of the several databases that comprise a total of approximately 4.1 million accounts. These are part of the approximately 6.9 million accounts that were identified by the ICEP auditors as open or opened in the 1933-1945 period in Swiss banks, less the estimated 2.8 million accounts for which no records remain. These 4.1 million accounts, in databases located at the 59 ICEP audited Swiss banks,⁴ are composed of 1.9 million savings accounts with a 1930-1940s value of 250 Swiss francs or less or of unknown value and accounts with Swiss addresses, and 2.2 million accounts that ICEP concluded should not be included within the Account History Database, that is within the 36,000 accounts that ICEP determined were “probably or possibly” owned by victims of Nazi persecution.

The accounts awarded are part of a group of accounts identified in the TAD.

⁴ These 59 audited banks represent 254 banks that existed in the 1933-1945 period.

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 four claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The Claimants' relatives' names and city and country of residence match the unpublished names and city and country of residence of the Account Owners contained in the Bank's records.⁵ The Claimants also identified Account Owner Friedrich Freud's profession and title, and Claimant [REDACTED 1] indicated that he owned and worked at Faszor Sanatorium in Budapest, all of which matches unpublished information about Account Owner Friedrich Freud contained in the Bank's records.

In support of his claim, Claimant [REDACTED 1] submitted documents, including a decision from the Foreign Claims Settlement Commission of the United States, indicating that Frederick and Fredericka Freud resided in Budapest, providing independent verification that the persons who are claimed to be the Account Owners had the same names and resided in the same city recorded in the Bank's records as the names and city of residence of the Account Owners. The CRT notes that the other claims to these accounts were disconfirmed because these claimants provided a different country of residence than the country of residence of the Account Owners.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and that they fled from Hungary to the United States in 1941.

The Claimants' Relationships to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting specific biographical information, demonstrating that the Account Owners were Claimant [REDACTED 1]'s parents and Claimant [REDACTED 2]'s maternal aunt and maternal uncle by marriage. The CRT notes that the Claimants identified unpublished information about the Account Owners as contained in the Bank's records. The CRT further notes that Claimant [REDACTED 1] submitted a copy of letters of administration from the State of New York, authorizing Claimant [REDACTED 1] to administer the Account Owner's estate. The CRT notes that it is plausible that this document is a document which most likely only a

⁵ The CRT notes that the ICEP auditors did not reach a determination as to whether the accounts at issue were held by the same individual, Friedrich Freud. However, given that there is no information to the contrary, and on the basis of the information provided by the Claimants, the CRT has determined that, for the purposes of this Award, the accounts shall be treated as having been held by the same person.

family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owners were well known to the Claimants as family members, and all of this information supports the plausibility that the Claimants are related to the Account Owners, as they have asserted in their Claim Form. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

With respect to Account Owner Friedrich Freud's demand deposit account, the CRT notes that the account was frozen in the 1941 Freeze. The CRT notes that the Account Owner fled from Hungary to the United States in February 1941. The CRT notes, however, that there is no record of the account being released to the Account Owner and no evidence that the account was closed to any other authorized party.

The CRT notes that although persecutees who had arrived in the United States by 23 February 1942 could, under the provisions of the US Treasury's general licensing system, access their accounts, there is no documentation on the extent to which eligible persons availed themselves of these provisions.⁶ Furthermore, there is no indication in the Bank's records of such a release of funds.

Absent evidence in the Bank's records and, in this case, in the official records of the State of New York, and given the facts above, and given that this account was frozen under the 1941 Freeze; that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; 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 Friedrich Freud 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.

With respect to the custody account and the two demand deposit accounts owned jointly by the Account Owners, the CRT notes that the Bank's records indicate that the demand deposit accounts were closed on 29 October 1941, and that the custody account was closed on 13 November 1941, at which time, according to information provided by the Claimant, the Account Owners were outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the account was closed, that the Account Owners fled their country of origin due to Nazi persecution, that the Account Owners may have had relatives remaining in their

⁶ With regard to assets frozen under the Trading with the Enemy Act, according to the Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report (December 2000) ("PCHA Report"), no exceptions nor distinctions were made for assets belonging to Holocaust victims. PCHA Report, at 11-12. Furthermore, many Holocaust victims did not recover their frozen assets or the full value of their assets. *Id.* The PCHA Report can be found at <http://www.pcha.gov>. However, bona fide refugees and immigrants were enabled to access their accounts first under GL 42 and GL 42A, which covered persons who had entered the United States by 17 June 1941, and, beginning on 23 February 1942, under GL42 as amended, which covered those persons who had arrived in the United States on or before that date. For a full history of GL42 and 42A, see U.S. Treasury Department, *Documents Pertaining to Foreign Funds Control*, August 16, 1941, General License 42, p. 31; (amended February 23, 1942), *Id.*, March 30, 1942, p. 33.

country of origin and that they may therefore have yielded to Nazi pressure to turn over their accounts to ensure their safety, that the Account Owners and their heirs would not have been able to obtain information about their accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 Owners or their 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 Claimant [REDACTED 1]. 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 Owners were his parents, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts. Further, the CRT notes that Claimant [REDACTED 1], as the Account Owners' son, has a better entitlement to the accounts than Claimant [REDACTED 2], the Account Owners' niece.

Amount of the Award

In this case, the Account Owners jointly held two demand deposit accounts and one custody account and Account Owner Friedrich Freud held one demand deposit account.

With respect to the accounts jointly held by the Account Owners, 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 demand deposit account was 2,140.00 Swiss Francs ("SF"), and the average value of a custody account was SF 13,000.00. Thus, the total 1945 average value of the accounts at issue is SF 17,280.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 216,000.00.

With respect to Account Owner Friedrich Freud's one demand deposit account, the Bank's records indicate that the value of the demand deposit account as of 14 June 1941 was US \$113.02, which at the time was equivalent to SF 487.12.⁷ According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of

⁷ The CRT uses official exchange rates when making currency conversions.

plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 26,750.00.

Consequently, the total award amount is SF 242,750.00.

Division of the Award

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 1] is the Account Owners' son. Accordingly, Claimant [REDACTED 1] is entitled to the entire award amount.

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) at banks other than the Bank.

Certification of the Award

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

Claims Resolution Tribunal
24 September 2008