

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Gary Fust

in re Account of Siegfried Freund and Else Elisabeth Freund

Claim Number: 202965/MBC

Award Amount: 181,680.00 Swiss Francs

This certified Award is based upon the claim of Gary Fust (the “Claimant”) to the Account of Siegfried Freund and Elsa Elisabeth Freund (the “Account Owners”) at the [REDACTED] (the “Bank”).

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 and Initial Questionnaires identifying the Account Owners as his grandparents, Siegfried and Else Elizabeth Freund, née Mosler. According to the Claimant, his grandfather was born on 27 July 1867 in Pshaw, Upper Silesia, Germany and his grandmother was born on 26 May 1884. The Claimant stated that his grandparents, who were Jewish, resided at Fregestrasse 58 in Berlin-Friedenau, Germany, and that his grandfather was a medical doctor. The Claimant stated that, prior to the First World War, his grandparents invested their money in real estate in Berlin and that, after the First World War, they lost much of their investment as a result of the inflation that engulfed the Germany currency during the world-wide economic depression. According to the Claimant, his grandparents established a Swiss bank account as early as 1924 in order to preserve their assets against devaluation caused by inflation. The Claimant explained that, in 1934, after the Nazi seizure of power in Germany, his grandparents transferred the equivalent of 31,000.00 US Dollars to the [REDACTED] in New York, United States, and transferred additional funds to their Swiss bank account. The Claimant stated that in 1937 he accompanied his grandparents as they fled Germany via Lugano, Switzerland to Abbazia, Italy. According to the Claimant, his grandparents paid their modest living expenses in Italy from an account that they held with branches of the [REDACTED] in Trieste and Fiume that was regularly replenished by money they had deposited at the Bank. The Claimant stated that beginning in approximately 1940, when Italy entered the Second World War, the remittances from the Swiss bank account stopped, and his grandparents were forced to rely upon the charitable contributions of the local Jewish community. The Claimant further

stated that approximately in November 1943, his grandparents were arrested by the Nazis, whereupon they took their own lives.

According to the Claimant, his grandparents had two children: Werner, who was killed in the First World War, and Stephanie, who was born on 20 May 1897 and died on 12 August 1988 in St. Petersburg, Florida. The Claimant stated that he is the son of Stephanie Fust and that he was born on 3 April 1921 in Berlin.

The Claimant stated that, in 1946, his mother, Stephanie Fust, inherited the 31,000.00 US Dollars that his grandparents had deposited in the [REDACTED] in New York. He further stated that he attempted to locate his grandparents' Swiss assets in 1995. At that time, he wrote to the Swiss Banking Ombudsman at the Contact Office for the Search of Dormant Accounts administered by Swiss Banks and, in 1996, paid a fee of 300.00 Swiss Francs to that office to cover the costs of the search. The Claimant stated that the Ombudsman responded that no information about his grandparents' account had been located.

In support of his claim, the Claimant submitted documents, including copies of his mother's death certificate and letters from the Claimant's earlier attempts to recover his grandparents' Swiss bank accounts.

Information available in the Bank Records

The bank records consist of a bank customer card, printouts from the Bank's database, and correspondence from the lawyer of Stephanie Fust to the Bank dated 21 September 1946. According to these records, the Account Owners were Dr. Siegfried Freund and Frau Elsa Elisabeth Freund, née Mosler. The bank records indicate that the Account Owners held a demand deposit account, a safe deposit box (Numbered S 992), and a custody account (Numbered 36009). According to the bank records, the Account Owners resided in Berlin-Friedenau, Germany, and in Abbazia, Italy.

According to the records, the demand deposit account was opened on 31 October 1929, the safe deposit box was opened on 12 December 1931, and the custody account was opened on 15 October 1929. The records indicate that the demand deposit account was closed on 20 June 1941, the safe deposit box was closed on 11 February 1939, and the custody account was closed on 4 June 1941. The bank records do not indicate to whom the proceeds and contents of these accounts were paid, nor do these records indicate the value of these accounts. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves. 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") determined that the amounts in the custody account and the demand deposit account that were closed in 1941 had been paid to the Nazi authorities.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His grandfather's name matches the published name of one of the joint Account Owners and his grandmother's name matches the unpublished name of the other joint Account Owner. The Claimant identified both Berlin-Friedenau, Germany, and Abbazia, Italy, as cities in which his grandparents resided during the period between 1933 and 1945, which exactly matches the unpublished cities of residence of the joint Account Owners. The Claimant identified Else Elisabeth Freund, née Mosler, as the wife of Siegfried Freund, which exactly matches unpublished information in bank records. Finally, the records from the Bank include a copy of a letter from the lawyer of the Claimant's mother inquiring about the Account Owner's accounts.

Status of Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were German Jews who fled to Italy in 1937, and subsequently took their own lives in 1943 after being arrested in Abbazia by the Nazis.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that the Account Owners were his grandparents by submitting evidence demonstrating that the Account Owners were his mother's parents.

The Issue of Who Received the Proceeds

With respect to the demand deposit account closed on 20 June 1941 and the custody account closed on 4 June 1941, the auditors determined that the amounts in these accounts had been paid to the Nazi authorities. It is therefore plausible that the Account Owners or their heirs did not receive the proceeds of the accounts.

With respect to the safe deposit box closed on 11 February 1939, the CRT has decided not to reach a decision at this time.

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 Governing the Claims Resolution Process (the "Rules"). Second, the Claimant has plausibly demonstrated that the Account Owners were his grandparents, and that relationship that 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 accounts.

Amount of the Award

Pursuant to Article 35 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 present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value for a custody account was 13,000.00 Swiss Francs, producing a total of 15,140.00 Swiss Francs for both accounts. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 181,680.00 Swiss Francs.

Article 37(3)(a) of the Rules provides that when the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, 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. In this case, the CRT has used the value presumptions of Article 35 to calculate the account value of the accounts and 35% of the award amount is 63,588.00 Swiss Francs.

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