

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 Account of Berthe Frey and Berthe Tschanz

Claim Numbers: 213973/HB; 783073/HB; 771613/HB¹

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to an account of Bertha Frey and the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together “the Claimants”) to an account of Henryk (Heinrich) Frey.² This Award is to the unpublished account of Berthe Frey (“Account Owner Frey”) and Berthe Tschanz (“Account Owner Tschanz”) (together the “Account Owners”) at the Biel branch of the [REDACTED] (the “Bank”).³

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 owner, and the bank have been redacted.

¹ Claimant [REDACTED 2] (“Claimant [REDACTED 2]”) did not submit a Claim Form to the CRT. However, in 1999 he submitted two Initial Questionnaires (“IQs”), numbered ENG-0059-168 and ENG-0513-102, 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 771613 and 783073, respectively.

² The CRT will treat the claim to this account in a separate determination.

³ The CRT notes that the auditors who carried out the investigation of the Bank to identify accounts of Victims of Nazi Persecution pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) reported that the account was held jointly by two persons: Berthe Frey and Berthe Tschanz. The records submitted by these auditors to the CRT do not clearly indicate if the account was held jointly by two different persons or by one account owner, Berthe Frey, also known as Berthe Tschanz. Given that the Bank’s records do not clearly indicate if the account was owned by one person or two persons, and that this determination does not materially affect the outcome of this decision, the CRT has not changed the auditors’ original determination, and therefore refers to Berthe Frey and Berthe Tschanz as two persons throughout this Award.

Information Provided by Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying Account Owner Frey as his maternal grandmother, Bertha Frey, née Katz, who was born on 1 August 1873 in Tichau, Germany, and was married to [REDACTED] on 19 August 1900 in Tichau or Neudorf, Germany. Claimant [REDACTED 1] stated that his grandmother, who was Jewish, died on 29 July 1940, at which time she was living at 50 Zollstrasse in Neisse, Germany (now Nysa, Poland), but Claimant [REDACTED 1] did not describe the circumstances of his grandmother's death. According to Claimant [REDACTED 1], his grandfather, [REDACTED], had predeceased his wife on 7 April 1940. Claimant [REDACTED 1] indicated that his mother, [REDACTED], née [REDACTED], the daughter of Bertha Frey, died on 2 June 1962 in Portland, Oregon, United States.

In support of his claim, Claimant [REDACTED 1] submitted documents, including a letter from the Chinese Consulate in Amsterdam, the Netherlands, dated 19 November 1938, advising that Claimant [REDACTED 1]'s parents, [REDACTED] and [REDACTED], and their four children, [REDACTED], Claimant [REDACTED 1], [REDACTED] and [REDACTED], were provisionally entitled to a visa for China; a certified copy of part of Claimant [REDACTED 1]'s grandparents' will, dated 11 July 1938; and a sworn affidavit relating to a testamentary hearing concerning the joint will of Bertha Frey and her husband, dated 13 November 1961, and signed by Claimant [REDACTED 1]'s mother. In this affidavit, Claimant [REDACTED 1]'s mother wrote that her parents, [REDACTED] and Bertha Frey, had three children: [REDACTED], née [REDACTED] (Claimant [REDACTED 1]'s mother), [REDACTED], who died on 16 February 1920, and [REDACTED], who died in the Shanghai Ghetto on 7 April 1942. According to this affidavit, this left [REDACTED] as the only heir to her parents' assets. [REDACTED] explained that the joint testament of [REDACTED] and Bertha Frey had been drawn on the advice of *Rechtsanwalt* (attorney) Lewinsky in Neisse and that its sole objective had been to protect the couple's assets from the reach of the Nazis. According to the affidavit, as this objective was never met, [REDACTED] termed the testament to be null and void ("*bezeichne ich das Testament als null und nichtig*"). She further stated that other persons who might limit her sole rights to her parent's estate did not and do not exist.

Claimant [REDACTED 1] stated that he was born on 6 December 1927 in Neisse.

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted two Initial Questionnaires ("IQs") identifying Account Owner Frey as his maternal aunt by marriage, Berta (Bertha) Frey, née Scharf, who was married to [REDACTED]. According to Claimant [REDACTED 2], his aunt, who was Jewish, resided with her husband at Krasinskigo 29 in Bielsko, Poland, from 1934 until September 1939, at which time they moved to Tarnow, Poland, where they remained until 1942 or 1943. Claimant [REDACTED 2] stated that his aunt and uncle visited his family in 1938 or 1939, after returning from Switzerland, at which time they told Claimant [REDACTED 2]'s mother that they deposited money and jewelry in a safe deposit box at a bank in Switzerland. Claimant

[REDACTED 2] indicated that his aunt's husband was shot to death in Tarnow in approximately January 1943.

Claimant [REDACTED 2] stated that he was born on 9 February 1919.

Information Available in the Bank's Records

The Bank's records consist of printouts from the Bank's database and reports prepared 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"). According to these records, the Account Owners were Berthe Frey and Berthe Tschanz. The Bank's records do not contain information about the Account Owners' domicile. According to the Bank's records, the Account Owners held an account, numbered 37056, the type of which is not indicated. The Bank's records indicate that the account was considered dormant by the Bank and was transferred to a suspense account for dormant assets. The date of the transfer is not recorded. The Bank's records further indicate that the account had a value of 9.05 Swiss Francs ("SF") but do not indicate the date this value was recorded. The account remains in the Bank's suspense account.

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 three claims of the Claimants in one proceeding.

Identification of the Account Owners

Claimant [REDACTED 1]'s maternal grandmother's name and Claimant [REDACTED 2] aunt's name match the unpublished name of Account Owner Frey.⁴ The CRT notes that the Bank's records do not contain any specific information about the Account Owners other than their names.

In support of his claim, Claimant [REDACTED 1] submitted documents, including a copy of part of Claimant [REDACTED 1]'s grandparents' will and a sworn affidavit regarding the provisions of this will signed by Claimant [REDACTED 1]'s mother, [REDACTED], née [REDACTED], on 13 November 1961. According to this affidavit, [REDACTED] was the daughter of Bertha Frey and [REDACTED] and their only surviving heir, despite implications to

⁴ The CRT notes that the Bank's records indicate that Account Owner Frey's name was spelled Berthe Frey, while Claimant [REDACTED 1] indicated that his grandmother's name was spelled Bertha Frey, and Claimant [REDACTED 2] indicated that his aunt's name was spelled Bertha and Berta Frey. The CRT finds that these are minor discrepancies which do not materially affect the Claimants' identification of Account Owner Frey.

the contrary that appear to have been contained in the part of her parent's testament that was not submitted to the CRT. As noted above, Claimant [REDACTED 1] explained that the will was created solely (and unsuccessfully) to protect her parents' assets from the Nazis. This provides independent verification that the person who is claimed to be Account Owner Frey had the same name recorded in the Bank's records as the name of Account Owner Frey.

The CRT notes that Claimant [REDACTED 2] filed two Initial Questionnaires with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Berta Frey, 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 Claimant [REDACTED 2] has based his present claim not simply on the fact that an ICEP was published, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that Claimant [REDACTED 2] 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 Claimant [REDACTED 2].

The CRT notes that there are no other claims to this account. Taking all these factors into account, the CRT concludes that the Claimants have plausibly identified Account Owner Frey.

The CRT further notes that Claimant [REDACTED 1]'s relative and Claimant [REDACTED 2]'s relative are not the same person. However, given that the Claimants have identified all unpublished information about Account Owner Frey that is available in the Bank's records; that the information provided by each claimant supports and in no way contradicts any information available in the Bank's records; that there is no additional information in the Bank's records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owners, the CRT finds that Claimant [REDACTED 1] and Claimant [REDACTED 2] have each plausibly identified Account Owner Frey.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 1] has made a plausible showing that Account Owner Frey was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that Account Owner Frey was Jewish and lived in Nazi Germany until her death in 1940.

Claimant [REDACTED 2] has made a plausible showing that Account Owner Frey was a Victim of Nazi Persecution. Claimant [REDACTED 2] stated that Account Owner Frey was Jewish, that she resided in Nazi-occupied Poland, and that her husband was shot to death in Tarnow in approximately January 1943.

The Claimants' Relationships to the Account Owners

Claimant [REDACTED 1] has plausibly demonstrated that he is related to Account Owner Frey by submitting specific information and documents, demonstrating that Account Owner Frey was Claimant [REDACTED 1]'s grandmother. These documents include a letter from the Chinese consulate in Amsterdam, the Netherlands, indicating that [REDACTED], née Frey (the daughter of Bertha Frey), had a son named [REDACTED 1] (Claimant [REDACTED 1]), and a copy of

Claimant [REDACTED 1]'s mother's sworn affidavit asserting her status as the sole heir to her parents' estate, dated 13 November 1961 and confirming that she was the daughter of Bertha Frey.

Claimant [REDACTED 2] has plausibly demonstrated that he is related to Account Owner Frey by identifying specific biographical information, demonstrating that Account Owner Frey was [REDACTED 2]'s aunt. The CRT notes that Claimant [REDACTED 2] filed two IQs with the Court in 1999, identifying the relationship between Account Owner Frey and Claimant [REDACTED 2], prior to the publication in 2001 of the ICEP list; and that the Claimant [REDACTED 2] identified information which matches information contained in the Yad Vashem records. The CRT further notes that the forgoing information is of the type that family members would possess and indicates that Account Owner Frey was well known to Claimant [REDACTED 2] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 2] is related to Account Owner Frey, as he has asserted in his Claim Forms.

There is no information to indicate that Account Owner Frey has other surviving heirs who have submitted claims.

The Issue of Who Received the Proceeds

The Bank's records indicate that the account remains in the Bank's suspense account.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that Account Owner Frey was his maternal grandmother, and Claimant [REDACTED 2] has plausibly demonstrated that Account Owner Frey was his aunt, and those relationships justify an Award. Third, the CRT considers that the sworn affidavit regarding the testamentary provisions made by Account Owner Frey to provide plausible evidence that Claimant [REDACTED 1]'s mother was the sole heir to Account Owner Frey's estate, despite implications that Account Owner Frey's testament, drawn while Account Owner Frey resided in the Reich, and which included certain clauses intended to protect assets from the Reich, contained provisions to the contrary. Finally, the CRT has determined that neither the Account Owners nor their heirs received the proceeds of the claimed account.

According to Article 25(2) of the Rules, in cases where the Joint Account is claimed by relatives of only one or some of the Joint Account Owners, it shall be presumed that the Account was owned as a whole in equal shares by the Account Owners whose shares have been claimed. Accordingly, because the CRT has not received any claims to the share of the account owned by Account Owner Tschanz, the CRT presumes that the account was owned as a whole by Account Owner Frey, and determines that the Claimants are entitled to an award for the whole account.

Amount of the Award

In this case, the Account Owners held one account of unknown type. The Bank's records indicate that the value of the account at issue was SF 9.05. According to Article 29 of the Rules, if the amount in an unknown type of account was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. The current value of this amount is calculated 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 49,375.00.

Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant who would be otherwise entitled under these Rules. In this case, each Claimant has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1] is entitled to one-half of the Award amount, and Claimant [REDACTED 2] is entitled to one-half of the 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).

Certification of the Award

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

Claims Resolution Tribunal
28 June 2006