

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of David Israel Frischer

Claim Number: 600001/HM¹

Award Amount: 35,346.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of David Israel Frischer (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 to the Holocaust Claims Processing Office (HCPO) and an Initial Questionnaire with the Court in 1999 identifying the Account Owner as David Israel Frischer, her father, who was born on 27 March 1876 in Poland, and was married to [REDACTED]. The Claimant stated that she was born on 8 February 1919 in Vienna. The Claimant explained that her father, who was Jewish, lived at St. Veitgasse 9 in Vienna XIII, Austria, and owned a company called *David Frischer Papiergrosshandlung* at Linke Wienzeile 118, Vienna VI. The Claimant further stated that her father went to Zurich in 1936 to deposit assets in a Swiss bank. The Claimant indicated that her father died in January 1940 in Vienna and that her mother was deported to Theresienstadt and later to Auschwitz, where she perished in April 1945. The Claimant submitted her birth certificate, her father’s Austrian census form, and a receipt for payment of taxes imposed by the Nazi authorities on Jews who wanted to leave Austria (“*Reichsfluchtsteuerbescheid*”).

Information Available in the Bank Records

No bank records belonging to the account of David Frischer were found 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.

¹ This decision is based on the Swiss Bank Claim Form, numbered B-00203, submitted by the Claimant to the Holocaust Claims Processing Office (“HCPO”). The Tribunal has registered this claim form under the Claim Number 600001.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of David Israel Frischer, who was Jewish, was born on 22 March 1876, resided at St. Veitgasse 9 in Vienna XIII, Austria, and was married to [REDACTED]. The Austrian census records show that David Frischer owned *David Frischer Papiergrosshandlung*, which was valued at 101,481.43 RM in 1938. A letter written by David Frischer, dated 18 July 1938, is attached to the Austrian Census form. In the letter, he disclosed to the Nazi authorities that he had inadvertently forgotten to declare in the initial census form a deposit of 2,945.50 Swiss Francs he made into his account at [REDACTED] in Zurich.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her parents' names match the unpublished names of the Account Owner and his spouse contained in the Austrian census records. The Claimant identified her father's date of birth, place of residence, company name, and company address, which matches unpublished information about the Account Owner contained in the Austrian census records. In support of her claim, the Claimant submitted documents, including her birth certificate, her father's Austrian census form, and a receipt for payment of taxes imposed by the Nazi authorities on Jews who wanted to leave Austria ("*Reichsfluchtsteuerbescheid*").

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 resided in Austria until his death in 1940. Moreover, the Tribunal notes that a database containing the names of victims of Nazi persecution includes a person named [REDACTED] and indicates that her maiden name was [REDACTED], that her date of birth was 14 October 1877, that her place of residence was Vienna, and that she was a widow, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is the daughter of David Frischer. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Based on its precedent and the Rules, the Tribunal has developed presumptions for determining whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A to this Award.² The Tribunal concludes in this case that it is plausible that one or more of these presumptions apply and that the account proceeds were not paid to the Account Owner or his heirs. The information available in the Austrian census records establishes that the account proceeds were paid to Nazi authorities.

Basis for the Award

The Tribunal 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 her father, and that relationship justifies an Award. Finally, the Tribunal has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

The Austrian State Archives records indicate that the value of the account as of 18 July 1938 was 2,945.50 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case is 35,346.00 Swiss Francs.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she 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 Tribunal certifies this Award for approval by the Court and payment by the Special Masters.

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² An expanded version of Appendix A appears on the CRT II website – www.crt-ii.org.

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. "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 does not exist 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).