

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Adolf and Isidor Fuchs

Claim Number: 753913/KG¹

Award Amount: 15,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to an account of [REDACTED], née [REDACTED].² This Award is to the published account of Adolf Fuchs (“Account Owner Adolf Fuchs”) and Isidor Fuchs (“Account Owner Isidor Fuchs”) (together the “Account Owners”) at the Basel 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 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 an ATAG Ernst & Young claim form identifying Account Owner Adolf Fuchs as her late father-in-law, Adolf Fuchs, who was born in 1884 and was married to [REDACTED]. The Claimant stated that her father-in-law, who was Jewish, had three children,

¹ [REDACTED] did not submit a Claim Form to the CRT. However, in 1997 she submitted a claim numbered C-T2V-A-71-215-181-445, to ATAG Ernst & Young. Although this claim was not a Claim Form, the Court, in an Order signed on 30 December 2004, ordered that claims to ATAG Ernst & Young be treated as timely submitted Deposited Assets Class Claim Forms for the purposes of the Claims Resolution Process. Memorandum & Order concerning Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposit Assets (30 December 2004). The Claimant’s ATAG Ernst & Young claim form was forwarded to the CRT and has been assigned claim number 753913.

² The CRT did not locate an account belonging to the Claimant’s relative, [REDACTED], in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). The Claimant should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

³ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Adolf Fuchs and Isidor Fuchs are each indicated as having one account. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only one account, which was jointly owned by Adolf and Isidor Fuchs.

including the Claimant's husband, [REDACTED], who was born on 7 November 1919 in Wuppertal-Elberfeld, Germany. The Claimant stated that her parents-in-law fled Germany to Palestine in February 1939. According to the Claimant, Adolf and Agnes Fuchs' other son and their daughter disappeared without a trace while trying to flee Nazi Germany and her late husband, [REDACTED], was the only child of Adolph and [REDACTED] Fuchs to survive the Second World War. The Claimant stated that her father-in-law, Adolf Fuchs, died on 6 February 1948 in Tel Aviv, Israel, and that her mother-in-law, [REDACTED], passed away on 11 September 1959 in Wuppertal-Elberfeld, Germany.

In support of her claim, the Claimant submitted numerous documents including, Adolf Fuchs' identity card issued in Palestine, which states that he is Jewish; Adolf Fuchs' death certificate, certifying that he died on 6 February 1948; the Claimant's marriage certificate, stating that she married Arthur Fuchs, son of Adolf Fuchs and [REDACTED], née [REDACTED], on 26 October 1961; [REDACTED]'s death certificate dated 11 September 1959, which confirms that she was living in Wuppertal-Elberfeld at the time of her death; [REDACTED]'s passport noting his place of birth as "Elberfeld now known as Wuppertal"; [REDACTED]'s German driver's license, stating his place of birth and residence as Wuppertal; [REDACTED]'s certificate of naturalization issued by the government of Palestine, dated 11 September 1947, which notes his place of birth as Elberfeld, Germany; [REDACTED]'s death certificate; an announcement of Certificate of Inheritance ("*Verlautbarung eines Erbscheins*") dated 9 February 1960 which provides that [REDACTED]'s entire estate passed to her next of kin, namely her son, [REDACTED]; and [REDACTED]'s last will and testament dated 9 October 1991, according to which [REDACTED] bequeathed the whole of his estate to his wife, Priscilla Fuchs.

The Claimant stated that she was born on 24 December 1926 in London, England.

Information Available in the Bank's Records

The Bank's records consist of a list of account owners who had been registered with the Swiss Clearing Office pursuant to the 1945 Swiss freeze of assets held in Switzerland by citizens of Germany and the territories incorporated into the Third Reich (the "1945 Freeze") and related documents. According to these records, the Account Owners were Adolf Fuchs and Isidor Fuchs who resided in Elberfeld, Germany. The Bank's records indicate that the Account Owners held a safe deposit box, numbered 475, which was opened and into which a deposit was made on 1 February 1930. According to the Bank's records, the safe deposit box was forcibly opened on 7 March 1946, whereupon it was found to be empty and therefore closed .

There is no evidence in the Bank's records that the Account Owners or their heirs opened the safe deposit box and received the contents themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified one of the Account Owners, Account Owner Adolf Fuchs. The Claimant's father-in-law's name and country of residence match the published name and country of residence of Account Owner Adolf Fuchs. The Claimant identified her father-in-law's city of residence as Elberfeld, which matches unpublished information about Account Owner Adolf Fuchs contained in the Bank's records. In support of her claim, the Claimant submitted documents, including Adolf Fuchs' identity card; Adolf Fuchs' death certificate, certifying that he died on 6 February 1948; Account Owner Adolph Fuchs' son, [REDACTED]'s passport, showing that he was born in Elberfeld; and her marriage certificate, showing that the Claimant married [REDACTED], son of Adolf Fuchs and [REDACTED], née [REDACTED], on 26 October 1961. These documents provide independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner.

The CRT notes that the Claimant filed an ATAG Ernst & Young claim form in 1997, asserting her entitlement to a Swiss bank account owned by Adolf Fuchs' wife, [REDACTED], prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her 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 her relative, but indicates that the Claimant had reason to believe that her relatives owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

The CRT notes that the Claimant did not identify Account Owner Isidor Fuchs. However, given that Account Owner Isidor Fuchs appears to be related to the Claimant's husband, [REDACTED], as they share the same surname; that the Claimant was only married to [REDACTED] in 1961, and may therefore not have full knowledge about all her husband's family members in Germany; and that the Claimant identified unpublished information about Account Owner Adolf Fuchs, the CRT finds that this does not materially affect the Claimant's identification of Account Owner Adolf Fuchs.

The CRT notes that the other claims to this account were disconfirmed because those 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 Claimant has made a plausible showing that Account Owner Adolph Fuchs was a Victim of Nazi Persecution. The Claimant stated that Account Owner Fuchs was Jewish and that he fled from Germany to Palestine in 1939.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to Account Owner Adolf Fuchs by submitting specific information and documents, demonstrating that the Account Owner was her father-in-law. These documents include her marriage certificate, stating that the Claimant was married to [REDACTED], and that Arthur Fuchs was the son of Adolf Fuchs and [REDACTED], née [REDACTED].

The Issue of Who Received the Proceeds

Given that Account Owner Adolf Fuchs fled Germany to Palestine; that there is no record of the payment of the Account Owners' account to them ; that the Account Owners and their heirs would not have been able to obtain information about their account after the Second World War from the Bank 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 Governing the Claims Resolution Process, as amended (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 the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner Adolf Fuchs was her father-in-law, 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 account.

Amount of the Award

In this case, the Account Owners held one safe deposit box. The CRT notes that the Bank's records indicate that the safe deposit box was forcibly opened on 7 March 1946, at which time it was found to be empty and therefore closed. The CRT considers it unlikely that the Account Owners would have held a safe deposit box, and paid fees for the box, without having used it to deposit valuables. Accordingly, the CRT considers the value of the account to be unknown. Pursuant to Article 29 of the Rules, when the value of an account or safe deposit box 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 or safe deposit box being awarded. Based on the investigation carried out pursuant to the instructions of ICEP in 1945 the average value of a safe deposit box was 1,240.00 Swiss Francs ("SF"). 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 a total award amount of SF 15,500.00.

Division of the Award

According to Article 25(2) of the Rules, if a 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 accounts owners whose shares of the account have been claimed. The CRT notes that no other claimant has plausibly identified Account Owner Isidor Fuchs as his or her relative. Accordingly, the CRT presumes that the account was owned as a whole by Adolf Fuchs. The Claimant is therefore entitled to the entire award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT 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 CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
9 March 2005