

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Max Frank,
also acting on behalf of Katharina Faibusch

in re Account of Franz Guthmann

Claim Number: 209540/AX

Award Amount: 15,500.00 Swiss Francs

This Certified Award is based upon the claim of Max Frank (the “Claimant”) to the published account of Franz Guthmann (the “Account Owner”) at the Zurich branch of 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 identifying the Account Owner as his maternal uncle, Franz Guthmann, who was born in 1896 in Chemnitz, Germany, and was married to Grete Guthmann, née Sommerfeld, in 1933 in Berlin, Germany. According to the Claimant, his uncle, who was Jewish, worked for two meat wholesale companies, *Hartog Frank & Co. GmbH* and *Guthmann & Co. GmbH*, which were both located in Berlin. The Claimant stated that Franz Guthmann’s sister, Kate Frank, née Guthmann, and her husband, Hartog Frank, were the Claimant’s parents. The Claimant further stated that his parents lived in Zurich, Switzerland. The Claimant indicated that his uncle, Franz Guthmann, often visited the Claimant’s parents in Zurich. The Claimant stated that in 1938 his uncle with his wife and daughter, Reni Guthmann, fled to the Netherlands in order to escape Nazi persecution. The Claimant explained that after the occupation of the Netherlands Franz Guthmann and his wife and daughter went into hiding. But the family was subsequently discovered by the Nazis and deported to Auschwitz, where they perished in 1943.

In support of his claim, the Claimant submitted his own birth certificate, indicating that he was born on 11 January 1914 in Berlin, and that his mother was Käthe Frank, née Guthmann, and his mother’s death certificate, indicating that her father was Max Guthmann, in Berlin. The Claimant is representing his sister, Katharina Faibusch, née Frank, who was born on 31 August 1919 in The Hague, the Netherlands.

Information Available in the Bank's Records

The Bank's records consist of lists of accounts reported in the 1945 Swiss Freeze of assets held in Switzerland by citizens of Germany and territories incorporated into the Third Reich (the "1945 Freeze") and a printout from the Bank's database. According to these records, the Account Owner was Franz Guthmann, whose place of residence is not recorded. The Bank's records indicate that the Account Owner held a safe deposit box, numbered II/681, which was forcibly opened on 21 March 1946. According to the Bank's records, the safe deposit box was found to be empty when it was forced open. There is no evidence in the Bank's records to indicate that the Account Owner or his heirs accessed the safe deposit box.

The CRT's Analysis

Identification of the Account Owner

The Claimant's uncle's name matches the published name of the Account Owner. The Claimant indicated that his uncle resided in Berlin, which is consistent with unpublished information that the account was reported in the 1945 Freeze. The Claimant indicated that his parents resided in Zurich, Switzerland, prior to the Second World War, and that Franz Guthmann often visited the Claimant's parents in Zurich. This information is consistent with the location of the branch where the safe deposit box was located.

The CRT notes that the name Franz Guthmann appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons to be probably those of victims of Nazi persecution (the "ICEP List"). Furthermore, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Franz Guthmann, and indicates that he was born in Chemnitz, which matches 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 CRT notes that the other claims to this account were disconfirmed due to inconsistent spelling of the Account Owner's name, and because the other claimants failed to provide a connection to Zurich, where the account was held. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

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 was deported to Auschwitz where he perished. As noted above, a person named Franz Guthmann was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information demonstrating that the Account Owner was his uncle. The CRT notes that

the Claimant submitted his own birth certificate, indicating that his mother was Käthe Frank, née Guthmann, and his mother's death certificate, indicating that her father was Max Guthmann, which provide independent verification that the Claimant's relatives bore the same family name as the Account Owner, which supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his Claim Form. There is no information to indicate that the Account Owner has other surviving heirs other than the Claimant's sister, whom he is representing.

The Issue of Who Received the Proceeds

Given that there is no evidence that the Account Owner or his heirs accessed the safe deposit box and received its contents; that the Account Owner and his heirs would not have been able to obtain information about his 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 Owner 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.

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 the Account Owner was his uncle, and that relationship 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 account.

Amount of the Award

In this case, the Account Owner held one safe deposit box. The Bank's records indicate that the safe deposit box was found to be empty on 21 March 1946, when it was forcibly opened. Given that the Account Owner was a Victim of Nazi Persecution and as such did not have an opportunity to adjust his assets in light of the wartime conditions, given that the safe was not opened until 1946, and given the unlikelihood that the Account Owner would have opened and maintained a safe deposit box without placing anything of value in it, the CRT concludes that the value of the safe deposit account before and during the Second World War cannot be determined. Taking these factors into account, the CRT concludes that in this case, the average value of a safe deposit account is the appropriate amount to award for the Account Owner's account. Based on the ICEP Investigation, in 1945, the average value of a safe deposit account was SF 1,240.00. 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 a total award amount of SF 15,500.00.

Division of the Award

The Claimant is representing his sister, Katharina Faibusch, in these proceedings. According to Article 23(1)(d) 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's parents who have submitted a claim, in equal shares by representation. Accordingly, the Claimant and his sister are each entitled to receive one-half of the total 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 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
8 August 2004