

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Michael Holzinger
also acting on behalf of Edna Solomon

in re Account of Fanny Holzinger-Waibel

Claim Number: 004963/AC

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of Michael Holzinger (the “Claimant”) to the published account of Fanny Holzinger-Waibel (the “Account Owner”) at the Basel 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 paternal aunt, Fanny Holzinger, who was born to Izidor Holzinger and Jakobine Holzinger, née Minshuk, in approximately 1912 in Windsbach, Germany. The Claimant stated that his aunt used “Waibel” as an alternate name or nickname. The Claimant stated that his aunt was not married and lived with her parents in Windsbach, and that, in 1936, she moved near Munich, Germany, where she contracted polio. The Claimant stated that his aunt and her parents, who were Jewish, were deported to the Dachau concentration camp on an unknown date, where they were murdered. The Claimant submitted documents in support of his application, including a copy of his father’s German passport, issued in September 1933, which indicates that Lothar Holzinger resided in Windsbach.

The Claimant indicated that he was born on 17 January 1945 in Tel Aviv, Palestine (now Israel). The Claimant is representing Edna Solomon, née Holzinger, his sister, who was born on 16 January 1938, also in Tel Aviv.

Information Available in the Bank’s Records

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") did not submit any original documents from the Bank pertaining to the account of Fanny Holzinger-Waibel. The records submitted by the auditors consist of lists of accounts from the 1945 freeze of assets held in Switzerland by citizens of Germany and the territories incorporated into the Third Reich (the "1945 Freeze"), which are available at the Swiss Federal Archive. According to these records, the Account Owner was *Frau* (Mrs.) Fanny Holzinger-Waibel, who resided in Kempten im Allgäu, Germany. These records indicate that the Account Owner held an account, the type of which is not indicated. According to these records, the account held a balance of 469.00 Swiss Francs ("SF") on 16 February 1945, on which date it was frozen in the 1945 Freeze. These records further indicate that the account was released from the 1945 Freeze on 19 April 1949.

The records do not show when the account at issue was closed. The auditors who carried out the ICEP Investigation did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the historical records that the Account Owner or her heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant's aunt's name and country of residence match the published name and country of residence of the Account Owner. The CRT notes that the Claimant indicated that his aunt resided in Windsbach and in Munich, while the records submitted by the auditors who carried out the ICEP Investigation indicate that the Account Owner resided in Kempten im Allgäu. However, the CRT further notes that Munich is approximately only 120 kilometers from Kempten, the Account Owner's unpublished city of residence. The CRT also notes that the Claimant stated that "Waibel" was his aunt's alternate name or nickname, and that she was not married, while the records from the 1945 Freeze suggest that "Waibel" may have been the Account Owner's married name. However, the ICEP auditors did not provide the CRT with any original documents from the Bank, only records pertaining to the 1945 Freeze. The information in these records, including the Account Owner's name, was not available to the CRT and may contain transcription errors. The CRT thus finds that the Claimant's identification of a city in close proximity to the Account Owner's unpublished city of residence and his documented relationship to the Holzinger family makes his identification of the Account Owner sufficiently plausible.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Fanny Holzinger, and indicates that she was born in 1913 and resided in Munich, 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 CRT also notes that the name Fanny Holzinger-Waibel appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the “ICEP List”).

The CRT notes that there are no other claims to this account. Taking all 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 that she was deported to Dachau, where she perished. As noted above, a person named Fanny Holzinger 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 the Claimant’s aunt. The CRT notes that the Claimant identified information which matches information contained in the Yad Vashem records. The CRT further notes that the Claimant submitted a copy of his father’s German passport, which provides independent verification that the Claimant’s relatives bore the same family name as the Account Owner. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all this information 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 surviving heirs other than the party whom the Claimant is representing.

The Issue of Who Received the Proceeds

Given that the Account Owner resided in Nazi Germany before being deported to a concentration camp, where she perished; that the account was frozen in the 1945 Freeze and continued to exist after the Account Owner’s death; that there is no record of the payment of the Account Owner’s account to her nor any record of a date of closure of the account; that the Account Owner and her heirs would not have been able to obtain information about her 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 her 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 aunt, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one account of unknown type. The Bank's records indicate that the value of the account as of 16 February 1945 was SF 469.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 15.00, which reflects standardized bank fees charged to the account in 1945. Consequently, the adjusted balance of the account at issue is SF 484.00. According to Article 29 of the Rules, if the amount in an account of unknown type 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 the amount of the award is determined 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 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have 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. In this case, the Claimant is representing his sister, Edna Solomon. Accordingly, the Claimant and Edna Solomon are each entitled to 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
14 December 2005