

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2] and [REDACTED 3]

in re Accounts of Fanny Margulies and Serafine Margulies

Claim Number: 500304/LK

Award Amount: 211,875.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the account of Serafine Margulies.¹ This Award is to the account of Fanny Margulies (“Account Owner Fanny Margulies”) and the account of Serafine Margulies (“Account Owner Serafine Margulies”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case,² 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 Form and an Initial Questionnaire identifying Account Owner Serafine Margulies as his mother and as the daughter of Friedrich Margulies. In a telephone conversation with the CRT on 9 July 2003, the Claimant stated that Serafine Margulies, who was born on 6 June 1912 in Tarnopol, Austria-Hungary,³ was married to [REDACTED] on 31 July 1938 in Vienna, Austria. In the same telephone conversation, the Claimant further stated that his parents, who were Jewish, attempted to flee Nazi persecution in Vienna in 1938 but were stopped at the Swiss border and turned away.

¹ The CRT will treat the claims to the accounts of [REDACTED], [REDACTED], [REDACTED], [REDACTED], Friedrich Margulies, and [REDACTED] in separate decisions.

² The CRT notes that the Claimant did not indicate whether or not he preferred confidential treatment. The CRT affords confidential treatment in such cases as a matter of policy.

³ The CRT notes that the Initial Questionnaire submitted by the Claimant indicates that his mother was born in Vienna, Austria. In an email to the CRT on 10 July 2003, the Claimant stated that this statement regarding his mother’s place of birth was an error and that his mother and her siblings were born in Tarnopol. The CRT notes that Tarnopol was part of Austria-Hungary until 1919, when it became part of Poland, and subsequently part of the Ukraine in 1939.

The Claimant indicated that his father was successful in entering Switzerland in 1939 and was then interned at a Swiss labor camp. According to the Claimant, his mother successfully crossed the Swiss border around 1939, on her third attempt, and was reunited with her husband upon his release in approximately 1942. The Claimant explained that his parents resided in Lucerne, Switzerland, and in Lugano, Switzerland, from 1942 to 1943, until they moved to the United States in 1947. The Claimant explained that his mother died on 28 April 1977 in Palm Beach, Florida, the United States. In support of his claim, the Claimant submitted his mother's certificate of death which indicates that she was born on 6 June 1912 in Poland and that [REDACTED 1] was the informant of her death.

In a telephone conversation with the CRT on 9 July 2003, the Claimant identified one of the Account Owners as his maternal aunt, Fanny Margulies, who was born on 20 May 1913 in Vienna and was married to [REDACTED] on 10 September 1938 in Vienna. The Claimant stated that his aunt was Jewish and that she fled to Hungary during the Second World War because of Nazi persecution. In a telephone conversation with the CRT on 20 April 2004, [REDACTED 2], the Claimant's cousin whom he is representing in these proceedings, stated that her mother, Fanny Ivanyi, née Margulies, died on 25 July 1994 in Boca Raton, Florida, the United States. [REDACTED 2] submitted her birth certificate which identifies her mother as Fanny Ivanyi, née Margulies.

The Claimant indicated that he was born in Lugano on 1 June 1947. The Claimant is representing [REDACTED 3], his brother, who was born in Lugano on 23 October 1943 and his cousin, [REDACTED 2], née [REDACTED], was born on 14 October 1946 in Bremen, Germany.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Serafine Margulies.

Information Available in the Bank's Records

The Bank's records consist of two Power of Attorney forms that were signed on 2 July 1931 in Vienna, Austria, and printouts from the Bank's database. According to these records, Account Owner Fanny Margulies was *Fräulein* (Miss) Fanny Margulies, Account Owner Serafine Margulies was *Fräulein* (Miss) Serafine Margulies, and the Power of Attorney Holder was Friedrich Margulies, who all resided at Glasergasse 18 in Vienna. The Bank's records indicate that Account Owner Fanny Margulies held one account, the type of which is not indicated, and that Account Owner Serafine Margulies held one custody account.⁴

According to the Bank's records, the Account Owners' accounts were opened no later than 2 July 1931. The Bank's records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the values of these accounts.

⁴ The Bank's records contain a power of attorney form that references a "*Titeldepot*," a type of custody account.

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 find these accounts in the Bank’s system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the Bank’s records that the Account Owners, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

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 Ms. Fanny Margulies, numbered 43833, and of Ms. Serafine Margulies, numbered 43834. These records indicate that Fanny Margulies was born on 20 May 1913 and that Serafine Margulies was born on 6 June 1912. These records also indicate that the two lived at 18/21 Glasergasse in Vienna, and that they were both unmarried. These records make no mention of assets held in a Swiss bank account.

The CRT’s Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant’s mother’s and aunt’s names and city of residence match the Account Owners’ published names and city of residences, and the Claimant’s grandfather’s name matches the published name of the Power of Attorney Holder. The Claimant identified his mother’s marital status which matches unpublished information contained in the Bank’s records. Additionally, the Claimant identified his mother’s and aunt’s dates of birth and respective marital status, which match information available in the Austrian Census records. The Claimant’s relatives’ Austrian Census records identify the street address that is identical to unpublished information about the Account Owners contained in the Bank’s records. In support of his claim, the Claimant submitted his mother’s certificate of death which indicates her date of birth, which matches information contained in the Austrian Census records. The CRT further notes that [REDACTED 2] submitted her birth certificate which identifies her mother’s name.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided different countries of residence and maiden names than the country of residence and maiden name of the Account Owners. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owners.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi

Persecution. The Claimant stated that the Account Owners were Jewish and lived in Vienna under the Nazi regime until they managed to flee.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific information demonstrating that the Account Owners were the Claimant's mother and aunt. There is no information to indicate that the Account Owners have other surviving heirs other than the parties which the Claimant is representing. The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, identifying his relationship to Account Owner Serafine Margulies prior to the publication in February 2001 of the ICEP List. The CRT further notes that the Claimant submitted his mother's certificate of death which identifies him as the informant.

The Issue of Who Received the Proceeds

Given that there is no record of payment of the Account Owners' accounts to them nor any records of the dates of closure of the accounts; that the Account Owners and their heirs would not have been able to obtain information about their accounts 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 Bank's 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, the Power of Attorney Holder, 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 the Account Owners were his mother and aunt, and that those relationships justify an Award. Third, the CRT has determined that it is plausible that the Account Owners, the Power of Attorney Holder, and their heirs did not receive the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner Fanny Margulies held one account of unknown type and Account Owner Serafine Margulies held one custody account. Pursuant to Article 29 of the

Rules, when the value of an account 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 present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs. Thus, the total 1945 average value of the accounts at issue is 16,950.00 Swiss Francs. 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 211,875.00 Swiss Francs.

Division of the Award

According to Articles 23(1)(c) 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 who have submitted a claim, in equal shares by representation. In this case, the Claimant and his brother, [REDACTED 3], whom the Claimant is representing, are the sons of Account Owner Serafine Margulies and [REDACTED 2], whom the Claimant is representing, is the daughter of Account Owner Fanny Margulies. Accordingly, the Claimant and his brother are each entitled to one-half of the total award amount of the account belonging to Account Owner Serafine Margulies; [REDACTED 2] is entitled to the total award amount of the account belonging to Account Owner Fanny Margulies.

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
28 May 2004