

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], [REDACTED 3] and [REDACTED 4]¹
represented by [REDACTED 2]

in re Accounts of Felix Turner

Claim Numbers: 204900/AC; 203999/AC²

Award Amount: 211,875.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (the “Claimant”) to the accounts of [REDACTED] and [REDACTED].³ This Award is to the published accounts of Felix Turner (the “Account Owner”), over which Anna Turner (the “Power of Attorney Holder”) held power of attorney, 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 two Claim Forms identifying the Account Owner as his late spouse’s paternal relative, Felix Turner, who was born on 26 February 1899 in Vienna, Austria, to [REDACTED] and [REDACTED], née [REDACTED], who were married in 1893. The Claimant further indicated that his late wife’s grandfather, [REDACTED], and Felix Turner’s grandfather, [REDACTED], were brothers. The Claimant indicated that Felix Turner, who was Jewish, was an oral surgeon, and that he fled Austria around the time of the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”). According to the Claimant, Felix Turner eventually emigrated to the United States, and he died in New York, the United States in the 1970s. The Claimant indicated that his late wife, [REDACTED], née [REDACTED], was born on 28 September 1925 in Marianske Lanze, Czechoslovakia (now the Czech Republic).

¹ Represented parties [REDACTED 3] and [REDACTED 4] each submitted two additional Initial Questionnaires (“IQs”) to the account of [REDACTED], which are registered under Claim Numbers 709456 and 709507, and 709455 and 709506, respectively. The CRT will treat the claims to this account in a separate determination.

² Claimant [REDACTED 1] (the “Claimant”) submitted an IQ to the account [REDACTED], which is registered under the Claim Number 709454. The CRT will treat the claim to this account in a separate determination.

³ The CRT will treat the claims to these accounts in separate determinations.

In support of his claim, the Claimant submitted documents, including: (1) a family history, indicating that Felix Turner was the grandson of his late wife's grandfather's brother; (2) a copy of his late wife's birth certificate, indicating her name as [REDACTED] and her parents' names as [REDACTED] and [REDACTED]; (3) a copy of his marriage certificate, indicating that he was married to [REDACTED]; (4) a copy of his late wife's parents' marriage certificate, identifying them as [REDACTED] and [REDACTED], née [REDACTED], and indicating that [REDACTED] was the son of [REDACTED]; (5) a copy of his late wife's death certificate; and (6) a copy of an inheritance document from the rabbinical court in Haifa, Israel, indicating that the Claimant inherited all of his late wife's effects.

The Claimant indicated that he was born on 12 September 1923 in Most, Czechoslovakia (now the Czech Republic). The Claimant is representing his three children: [REDACTED 2], who was born on 6 May 1947, in Kraslice, Czech Republic; [REDACTED 3], née [REDACTED], who was born on 30 May 1948, also in Kraslice; and [REDACTED 4], née [REDACTED], who was born on 1 December 1962 in Haifa.

The Claimant previously submitted two Initial Questionnaires with the Court in 1999 asserting his entitlement to Swiss bank accounts owned by [REDACTED], [REDACTED], and [REDACTED], née [REDACTED]. The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by [REDACTED] or [REDACTED].⁴

Information Available in the Bank's Records

The Bank's records consists of a list of numbered accounts, a customer card, printouts from the Bank's database, a power of attorney form, and a custody account opening contract. According to these records, the Account Owner was *Dr. med.* (medical doctor) Felix Turner and the Power of Attorney Holder was *Frau* (Mrs.) [REDACTED], the Account Owner's mother, who both resided at Riglergasse 5 in Vienna, Austria. According to these records, the Power of Attorney Holder was born in 1868. These records also include a signature sample of the Account Owner. The Bank's records indicate that the Account Owner held a custody account, numbered 37059, and a numbered account, the type of which is not indicated, held under the designation 61142.

The Bank's records indicate that custody account 37059 was opened in November 1933. The Bank's records further indicate that the Account Owner deposited eight shares of the Bank's stock, each with a nominal value of 500.00 Swiss Francs ("SF") in that account. The Bank's records do not show when the account at issue was closed, or to whom it was paid. 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 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 Bank's records that the Account

⁴ The CRT will treat the claims to these accounts in separate determinations.

Owner, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

The Bank's records further indicate that account 61142 was closed through a withdrawal made at the Bank (*Kassabezug*) on 23 August 1938. The amount in the account on the date of its closure is unknown. There is no evidence that the Account Owner or his heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Dr. Felix Turner, numbered 16523. According to these records, Felix Turner was born on 26 February 1899, was unmarried, resided at Riglergasse 5, Vienna 18, and was a dentist.

Furthermore, these records indicate that as of 27 April 1938, Felix Turner held eight shares of the Bank's stock, in the Bank's Zurich branch, each with a market value of SF 608.00 for a total equivalent to 2,781.76 Reichsmark ("RM"). The records further indicate that on 5 August 1938, Felix Turner was ordered to offer these securities for sale to the *Reichsbank*. Correspondence between the relevant Nazi authorities indicates that Felix Turner, who had fled Austria in August 1938, did not comply with this order and that he, in an undated letter to the Property Control Office (*Vermögensverkehrsstelle*), had advised them that he could not deliver the securities in question as he did not possess them because he had needed to cover his living costs.⁵ Consequently, on 25 February 1939, the head of the legal office of the Property Control Office wrote that, rather than initiating a lengthy prosecution, all of Turner's assets within the Reich were to be sold in favor of the Reich, and that, generally, all such cases should be handled in the same manner.⁶ This correspondence further indicates that on 31 July 1939, Karl Brunner, who had been appointed trustee to dispose of these assets, reported that the sale had been concluded and that RM 1,000.00 had been deposited in a special account called *Abteilung C "Konto*

⁵ The German text reads: "*Ich bin nicht in der Lage Ihrer Aufforderung nach zu kommen, da ich die Stücke nicht besitze, da ich meinen Lebensunterhalt bestreiten mußte.*"

⁶ The German text reads at length: "*Statt im Wege eines langwierigen Strafverfahrens die fallweise Einziehung von Vermögensteilen zu erwirken, habe ich vor, auf Grund des § 6 der Verordnung über den Einsatz des jüdischen Vermögens von 3.12.1938, Obl.f.d. [illegible] [illegible] Nr. 633 durch einen Treuhänder die Veräußerung von vorhandenen Vermögensobjekten zu erwirken und den Verkaufserlös dem Deutschen Reich zuzuführen. ... Ich habe vor, künftig in allen Fällen in denen auf Grund eines Verstosses der Juden gegen die Anmeldeverordnung ein Strafverfahren gegen den Juden einzuleiten wäre, die vom Gericht etwa zu verfügende Vermögenseinziehung ganz oder teilweise durch die Vermögensverkehrsstelle mit der durch die Einsatzverordnung gegebenen Möglichkeit durchzuführen. Dieser Verfahrensweg erleichtert die Arbeit der Gerichte und häuft die Arbeit der Abteilungen Vermögensanmeldung und Rechtsamt keineswegs, da diese Abteilungen bis heute die gesamten Vorarbeiten zur Anzeige, wie auch Hilfsarbeiten in gerichtlichen Verfahren leisten müssen.*"

Einsatz” at the *Kontrollbank*.⁷ The correspondence finally indicates that Felix Turner’s mother was still residing in Vienna in 1939 and that the authorities were aware of her address. Finally, the file also contains a confiscation order issued by the Gestapo on 8 April 1941 for all assets held by Felix Turner.

The CRT’s Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), claims to the same or related accounts may be joined in one proceeding at the CRT’s discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant’s late spouse’s relative’s name, city and country of residence match the published name, city and country of residence of the Account Owner. The Claimant also identified the Account Owner’s title and profession, which matches unpublished information contained in the Bank’s records. Furthermore, the Claimant identified name of the Power of Attorney Holder, as well as the relationship between the Account Owner and the Power of Attorney Holder, which also matches unpublished information contained in the Bank’s records.

Additionally, the CRT notes that the 1938 Census records indicate that Dr. Felix Turner was born on 26 February 1899, that he resided in Vienna, and that he was a dentist, which matches the information about the Account Owner contained in the Bank’s records as well as the information provided by the Claimant. The CRT further notes that there are no other claims to these accounts.

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 indicated that the Account Owner was Jewish, and that he fled Austria around the time of the *Anschluss*. Furthermore, the 1938 Census records indicate that the Account Owner fled Austria in August 1938, that the Nazi authorities sold his domestically held assets in July 1939, and that the Gestapo issued a confiscation order for the Account Owner’s assets on 8 April 1941.

⁷ The CRT notes that the “*Konto Einsatz*” account was to hold the proceeds of asset sales under the Ordinance regarding the Utilization of Jewish-owned Assets of 3 December 1938 (*Verordnung über den Einsatz des jüdischen Vermögens*).

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 and documents, demonstrating that the Account Owner was the Claimant's late spouse's relative. The CRT notes that the Claimant submitted a detailed family history tree, indicating that Felix Turner was his late spouse's relative; a copy of his late spouse's birth certificate, indicating her name as [REDACTED]; his marriage certificate, indicating that he was married to [REDACTED]; and his late spouse's parents' marriage certificate, identifying his late spouse's parents as [REDACTED] and [REDACTED], née [REDACTED]. The CRT notes that it is plausible that these documents are documents which most likely only a family member would possess, and which provide independent verification that the Claimant's relatives bore the same family name as the Account Owner. This information supports the plausibility that the Claimant is related to the Account Owner, as he asserted in his Claim Form. There is no information to indicate that the Account Owner has surviving heirs, other than the parties whom the Claimant is representing.

The Issue of Who Received the Proceeds

The Bank's records indicate that account 61142 was closed on 23 August 1938. The auditors who conducted the ICEP Investigation indicated that custody account 37059 was closed on an unknown date.

With respect to account 61142, the CRT notes that the Bank's records indicate that the account was closed through a withdrawal made on 23 August 1938, at which time the Account Owner may have been outside Nazi-dominated territory. Given that there is no information in the Bank's records regarding the circumstances under which the withdrawal was made; that the Account Owner fled his country of origin due to Nazi persecution; that the Account Owner had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety; with respect to custody account 37059, given that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; and with respect to both accounts, given that the Account Owner and his heirs would not have been able to obtain information about the 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 banks' concern regarding double liability; and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the accounts were not paid to the Account Owner, 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 and his three children. First, the claims are 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

late spouse's relative. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Award is for custody account 37059 and account 61142 of unknown type. According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, equities shall be awarded at their market value as of the date on which the account owner is deemed to have lost control over the account. According to the 1938 Census records, the market value of the eight shares held in the custody account was SF 608.00 per share, for a combined market value of SF 4,864.00. However, pursuant to Article 29 of the Rules, if the amount in a custody account is less than SF 13,000.00 and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00. The CRT determines that it is unable to rely on the balance amounts declared in the 1938 Census records, as it has no evidence regarding the circumstances of the Account Owner's declaration. The CRT notes that, as evidenced in a number of cases, the Account Owner may not have declared all of his assets, or understated their value in the belief that this might help him safeguard some of them. In this case, the CRT does not find that the value of the account indicated in the Account Owner's 1938 Census declaration constitutes plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the value of the account at issue shall be determined to be SF 13,000.00.

With respect to numbered account 61142, which was an account of unknown type, 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 current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of an account of unknown type was SF 3,950.00, resulting in a combined 1945 value of SF 16,950.00 for the two accounts.

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 211,875.00.

Division of the Award

According to Article 23(1)(g) of the Rules, the CRT may make an award to any relative of the Account Owner, whether by blood or by marriage, who has submitted a claim, consistent with principles of fairness and equity. According to Article 23(2)(c), if a claimant bases a claim of entitlement on a chain of inheritance but has not submitted an unbroken chain of wills or other inheritance documents, the CRT may use the general principles of distribution established in Article 23(1) to make allowance for any missing links in the chain, consistent with principles of fairness and equity. In this case, the Account Owner is the great-uncle of the Claimant's late wife, [REDACTED]. The CRT notes that the Claimant submitted an inheritance document from the rabbinical court in Haifa, indicating that the Claimant inherited all of his late wife's effects. However, the Claimant did not submit an unbroken chain of wills linking himself to the Account Owner. The CRT further notes that the Claimant is representing his children, [REDACTED 2],

[REDACTED 3], and [REDACTED 4], who are descendants of the Account Owner's parents. Consistent with Article 23(1)(b), which provides that if the account owner's spouse and descendants have submitted a claim, the spouse shall receive one-half of the account and any descendants who have submitted a claim shall receive the other half in equal shares by representation, and in accordance with the principles of fairness and equity, the Claimant, who is the spouse of the Account Owner's parents' late descendant, is entitled to one-half of the total Award amount, and his children, [REDACTED 2], [REDACTED 3], and [REDACTED 4], who are descendants of the Account Owner's parents, are each entitled to one-sixth 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 claims 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
31 December 2005