

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]

to Claimant [REDACTED 3]
also acting on behalf of [REDACTED 4]

and to Claimant [REDACTED 5]

in re Accounts of Otto Fischer

Claim Numbers: 004028/UM, 220444/UM, 300261/UM¹

Award Amount: 59,750.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 3] (“Claimant [REDACTED 3]”) and [REDACTED 5] (“Claimant [REDACTED 5]”) (together the “Claimants”) to the published accounts of Otto Fischer (the “Account Owner”) at the Schaffhausen branch of the [REDACTED] (“Bank I”), and the Geneva branch of the [REDACTED] (“Bank II”) (together the “Banks”).²

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as his father, Ernst Otto Fischer, who was born in Vienna, Austria, on 8 July 1918, and was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 1] stated that his father, who was

¹ Claimant [REDACTED 3] submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 220653. In a decision dated 9 August 2002, the Court approved an Award to Claimant [REDACTED 3] for an account held by [REDACTED]. See *In re Account of [REDACTED]*.

² The CRT has determined that, for purposes of this Award, these accounts shall be treated as having been held by the same person, although the information in the Banks’ records is so limited that a definite determination is impossible.

Jewish, resided in Vienna, Austria, where he was a medical student. Claimant [REDACTED 1] further stated that his father was unable to continue his studies after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”). In addition, Claimant [REDACTED 1] stated that in approximately 1938, his father fled to Palestine, where he and his wife had two children, both born in Haifa: [REDACTED 2], who was born on 16 November 1950, and Claimant [REDACTED 1], who was born on 5 February 1958. Finally, Claimant [REDACTED 1] stated that his mother died in Haifa on 9 May 1991, and that his father passed away, also in Haifa, on 5 September 1992.

Claimant [REDACTED 1] submitted his father’s birth certificate and certificate of right of residence (“*Heimatschein*”), both of which identify him as Ernst Otto Fischer, and an Israeli court decision regarding the estate of Ernst Fischer and his wife, dated 3 February 1993, identifying Claimant [REDACTED 1] and [REDACTED 2] as their children and that they were entitled to equal shares of that estate. Claimant [REDACTED 1] is representing his sister, [REDACTED 2].

Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted a Claim Form identifying the Account Owner as his uncle by marriage, Otto Fischer, who was born on 3 June 1901 in Lysa nad Labem, Czechoslovakia (today the Czech Republic), and was married to [REDACTED], née [REDACTED], in Prague, Czechoslovakia. Claimant [REDACTED 3] explained that [REDACTED] was the sister of [REDACTED], née [REDACTED], Claimant [REDACTED 3]’s mother. Claimant [REDACTED 3] stated that his uncle and aunt had one child, [REDACTED], who was born on 28 February 1937, in Prague. Claimant [REDACTED 3] further stated that his uncle, who was Jewish, managed the *Federer-Piesen Corset Company*, a family-owned business. In addition, Claimant [REDACTED 3] provided several of his uncle’s addresses in Prague, specifying that he first resided at Ovinecka, then at Truhlaarska, and finally at Schillerova. Moreover, Claimant [REDACTED 3] stated that his uncle was deported to Terezin with his wife and son on 13 July 1943, and that they were subsequently deported to Auschwitz, where they all perished.

Claimant [REDACTED 3] submitted his own birth certificate, identifying his parents as [REDACTED] and [REDACTED], née [REDACTED]; his father’s petition for United States naturalization, identifying him as [REDACTED], and specifying that he was formerly called [REDACTED]; his mother’s petition for United States naturalization, identifying his mother as [REDACTED], and indicating that she was formerly called [REDACTED]; his mother’s birth certificate, identifying her parents as [REDACTED] and [REDACTED]; and his uncle and aunt’s marriage certificate, identifying them as Otto Fischer and [REDACTED], née [REDACTED], and his aunt’s parents as [REDACTED] and [REDACTED]. In addition, Claimant [REDACTED 3] submitted a letter from Otto and [REDACTED], dated 14 May 1934, which is addressed to Claimant [REDACTED 3], his sister, and their parents, and contains references indicating that Claimant [REDACTED 3]’s mother was the sister of [REDACTED]; and an undated letter from his uncle to Claimant [REDACTED 3]’s father and other unidentified relatives.

Claimant [REDACTED 3] indicated that he was born on 8 February 1934 in Prague. Claimant [REDACTED 3] is representing his sister, [REDACTED 4], née [REDACTED], who was born on 5 March 1938 in Prague.

Claimant [REDACTED 3] previously submitted two Initial Questionnaires (“IQs”) with the Court in 1999, asserting his entitlement to Swiss bank accounts owned by Otto and [REDACTED], and by [REDACTED] and [REDACTED].³

Claimant [REDACTED 5]

Claimant [REDACTED 5] submitted a Claim Form identifying the Account Owner as his paternal uncle, Otto Karel Fischer, who was born on 31 March 1903 in Brno, Czechoslovakia (today the Czech Republic), as one of three children of [REDACTED] and [REDACTED], née [REDACTED]. Claimant [REDACTED 5] identified [REDACTED] and [REDACTED], his father, as the other two children. Claimant [REDACTED 5] stated that his uncle, who was Jewish, was a banker. Moreover, Claimant [REDACTED 5] stated that his uncle was deported to Auschwitz, where he perished on 6 September 1943.

Claimant [REDACTED 5] submitted a copy of his French identity card and of his passport, both of which identify him as [REDACTED 5]. Claimant [REDACTED 5] indicated that he was born on 7 March 1945 in Grenoble, France.

Information Available in the Bank’s Records

Bank I

Bank I’s record consists of printouts from Bank I’s database. According to this record, the Account Owner was Otto Fischer. The records do not contain any information about the Account Owner’s residence. Bank I’s record indicates that the Account Owner held an account, numbered 10667, the type of which is not indicated. Bank I’s record further indicates that the account was considered dormant and was transferred to a suspense account for dormant assets on 17 November 1987. The amount in the account on the date of its transfer was 6.60 Swiss Francs (“SF”). The account remains in Bank I’s suspense account.

Bank II

Bank II’s records consist of a suspense account ledger and several lists of accounts. According to these records, the Account Owner was Otto Fischer. The records do not contain information about the Account Owner’s residence. Bank II’s records indicate that the Account Owner held one savings/passbook account, numbered 1567. Bank II’s records further indicate that the

³ The CRT did not locate an account belonging to Claimant Forman’s relatives, [REDACTED] and [REDACTED], in the Account History Database prepared pursuant to the ICEP Investigation, which identified accounts probably belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the Rules). Claimant [REDACTED 3] should be aware that the CRT will carry out further research on his claim to determine whether an award may be made based upon the information provided by Claimant Forman or upon information from other sources.

account was transferred to a suspense account on or before 5 November 1948. The amount in the account on the date of its transfer was SF 8.80. The auditors who carried out the investigation of this bank pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) did not find this account in Bank II’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, and that the last known date of the account’s existence is 28 February 1950. There is no evidence in Bank II’s records that the Account Owner or his heirs closed the account and received the proceeds themselves.

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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant [REDACTED 1]

Claimant [REDACTED 1]’s father’s name matches the published name of the Account Owner. In support of his claim, Claimant [REDACTED 1] submitted documents, including his father’s birth certificate and certificate of right of residence (“*Heimatschein*”), both of which identify him as Ernst Otto Fischer, providing independent verification that the person who is claimed to be the Account Owner by Claimant [REDACTED 1] had the same middle and last names as the Account Owner’s first and last names as recorded in Bank I and Bank II’s records. The CRT notes that it is plausible that Claimant [REDACTED 1]’s father opened the accounts under his middle name Otto, since Claimant [REDACTED 1] submitted letters written by his father in which his father signed his name as Otto.

Claimant [REDACTED 3]

Claimant [REDACTED 3]’s uncle’s name matches the published name of the Account Owner. Claimant [REDACTED 3] submitted his uncle and aunt’s marriage certificate, identifying his uncle as Otto Fischer, providing independent verification that the person who is claimed to be the Account Owner by Claimant [REDACTED 3] had the same name recorded in Bank I and Bank II’s records as the name of the Account Owner.

The CRT notes that a database containing the names of victims of Nazi persecution includes a person named Otto Fischer, and indicates that his date of birth was 3 June 1901, which matches the information about the Account Owner provided by Claimant [REDACTED 3]. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Moreover, the CRT notes that Claimant [REDACTED 3] filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by the Account Owner, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED 3] has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that Claimant [REDACTED 3] had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 3].

Claimant [REDACTED 5]

Claimant [REDACTED 5]'s uncle's name matches the published name of the Account Owner. The CRT notes that the CRT's database of victims includes another person named Otto Fischer, and indicates that his date of birth was 31 March 1903, which matches the information about the Account Owner provided by Claimant [REDACTED 5].

The CRT further notes that Claimant [REDACTED 1]'s relative, Claimant [REDACTED 3]'s relative and Claimant [REDACTED 5]'s relative are not the same person. However, given that the Claimants have identified all published information about the Account Owner that is available in the Banks' records; that there is no additional information in the Banks' records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that there are no other claims to this account, the CRT finds that Claimant [REDACTED 1], Claimant [REDACTED 3] and Claimant [REDACTED 5] have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Each of the Claimants has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish, that he was unable to continue his medical studies in Austria after the *Anschluss*, and that he subsequently fled to Israel. Claimant [REDACTED 3] stated that the Account Owner was Jewish, that he was deported to Auschwitz with his wife and son, and that they all perished there. Finally, Claimant [REDACTED 5] stated that the Account Owner was Jewish, and that he was deported to Auschwitz, where he perished in September 1943.

As noted above, persons named Otto Fischer, whose birth dates match the birth dates of the individuals identified as the Account Owner by Claimant [REDACTED 3] and Claimant [REDACTED 5], were included in the CRT's database of victims.

The Claimants' Relationships to the Account Owner

Claimant [REDACTED 1]

Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant [REDACTED 1]'s father. These documents include an Israeli court decision regarding the estate of Ernst Fischer and his wife, which identifies Claimant [REDACTED 1] and his sister, [REDACTED], as their children.

Claimant [REDACTED 3]

Claimant [REDACTED 3] has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant [REDACTED 3]'s uncle by marriage. These documents include his own birth certificate, identifying his parents as [REDACTED] and [REDACTED], née [REDACTED]; his mother's birth certificate, identifying her parents as [REDACTED] and [REDACTED]; his uncle and aunt's marriage certificate, identifying them as Otto Fischer and [REDACTED], née [REDACTED], and his aunt's parents as [REDACTED] and [REDACTED]; and a letter from Otto and [REDACTED], addressed to Claimant [REDACTED 3], his sister, and their parents, which contains references indicating that Claimant [REDACTED 3]'s mother was the sister of [REDACTED].

Claimant [REDACTED 5]

Claimant [REDACTED 5] has also plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information demonstrating that the Account Owner was Claimant [REDACTED 5]'s paternal uncle. The CRT notes that Claimant [REDACTED 5] identified information which matches information contained in the Yad Vashem records. The CRT further notes that Claimant [REDACTED 1] submitted a copy of his French identity card and passport, both identifying him as [REDACTED 5], which provides independent verification that Claimant [REDACTED 1] bears 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 Claimant [REDACTED 5] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 5] is related to the Account Owner, as he has asserted in his Claim Form.

The Issue of Who Received the Proceeds

Regarding the account of unknown type held at Bank I, Bank I's record indicates that the account was transferred to a suspense account on 17 November 1987, and that it remains in Bank I's suspense account.

Regarding the savings/passbook account held at Bank II, given that the account was transferred to a suspense account on or before 5 November 1948, and was presumed closed after 28 February 1950; that, according to Claimant [REDACTED 3] and Claimant [REDACTED 5], the

Account Owner perished at Auschwitz in 1943; that there is no record of the payment of the Account Owner's account to him, nor any record of a specific date of closure of the account; 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 (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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was his father, Claimant [REDACTED 3] has plausibly demonstrated that the Account Owner was his uncle by marriage, and Claimant [REDACTED 5] has plausibly demonstrated that the Account Owner was his paternal uncle, and those relationships justify an Award. Third, the CRT has determined that with respect to the account at Bank I, that neither the Account Owner nor his heirs received the proceeds of this account, and that with respect to the account at Bank II, that it is plausible that neither the Account Owner nor his heirs received the proceeds of this account.

Amount of the Award

In this case, the Account Owner held one account of unknown type at Bank I, and one savings/passbook account at Bank II. Bank I's record indicates that the amount in the account of unknown type was SF 6.60 on 17 November 1987. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 685.00, which reflects standardized bank fees charged to the account of unknown type between 1945 and 17 November 1987. Consequently, the adjusted balance of the account at issue is SF 691.60. 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.

Bank II's records indicate that the value of the savings/passbook account held at that bank was SF 8.80 on 5 November 1948. That amount is increased by an adjustment of SF 60.00, which reflects standardized bank fees charged to the savings/passbook account between 1945 and 5 November 1948. Consequently, the adjusted balance of the second account at issue is SF 68.80. According to Article 29 of the Rules, if the amount in a savings/passbook account was less than SF 830.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 830.00.

Therefore, the total 1945 average value of the two accounts is SF 4,780.00. 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 59,750.00.

Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules.

In this case, all of the Claimants have established a plausible relationship to a person with the same name as the Account Owner. More specifically, Claimant [REDACTED 1] has identified the Account Owner as his father, Claimant [REDACTED 3] has identified the Account Owner as his uncle by marriage, and Claimant [REDACTED 5] has identified the Account Owner as his paternal uncle. Accordingly, Claimant [REDACTED 1] and his sister, [REDACTED 2], whom he represents, are collectively entitled to one-third of the total award amount; Claimant [REDACTED 3] and his sister, [REDACTED 4], whom he represents, are likewise collectively entitled to one-third of the total award amount; and Claimant [REDACTED 5] is entitled to one-third of the total award amount.

As indicated above, Claimant [REDACTED 1] is representing his sister, [REDACTED 2], and has submitted a court document identifying them as heirs in equal shares of their parents' estate. According to Article 23(2)(a) of the Rules, if a claimant has submitted the account owner's will or other inheritance documents pertaining to the account owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. Accordingly, Claimant [REDACTED 1] and [REDACTED 2] are each entitled to one-sixth of the total award amount.

Claimant [REDACTED 3] is also representing his sister, [REDACTED 4]. According to Article 23(1)(g) of the Rules, if none of the persons entitled to an award pursuant to Article 23(1)(a-f) have submitted a claim, 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. The CRT deems it fair and equitable that Claimant [REDACTED 3] and his sister should each receive one-sixth of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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 March 2005