

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1],¹

to Claimant [REDACTED 2],

to Claimant [REDACTED 3],

and to Claimant [REDACTED 4]

in re Account of Viktor Fischer

Claim Numbers: 201573/RS; 713631/RS; 732369/RS; 732372/RS²

Original Award Amount: 47,400.00 Swiss Francs

Award Amendment Amount: 32,916.63 Swiss Francs

This Certified Award Amendment is based upon the claims of Dr. [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”), Dr. [REDACTED 3] (“Claimant [REDACTED 3]”), and [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”) to the published account of Viktor Fischer (the “Account Owner”) at the Biel branch of the [REDACTED] (the “Bank”).

¹ On 26 November 2002, the Court approved an award to [REDACTED 1] (“Claimant [REDACTED 1]”) for the account of Viktor Fischer (the “November 2002 Award”), which is the subject of this Award Amendment. Claimant [REDACTED 1] submitted two Claim Forms, which were registered under the Claim Numbers 201573 and 210905. The CRT has determined that these claims are duplicate claims, and is treating them under the consolidated Claim Number 201573.

² [REDACTED 2] (“Claimant [REDACTED 2]”), [REDACTED 3] (“Claimant [REDACTED 3]”), and [REDACTED 4] (“Claimant [REDACTED 4]”) did not submit Claim Forms to the CRT. However, in 1999 they submitted Initial Questionnaires (“IQs”), numbered HEB-0070-168 (Claimant [REDACTED 2]), HUN-0123-017 and HUN-0123-018 (Claimant [REDACTED 3]), and HUN-0123-020 and HUN-0123-019 (Claimant [REDACTED 4]), to the Court in the United States. Although these IQs were not Claim Forms, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQs were forwarded to the CRT and have been assigned claim number 713631, 732369, 732370, 732372, and 732371, respectively. In decisions dated 5 February 2008, the CRT treated Claimant [REDACTED 3]’s claim number 732370 to the accounts of Sámuelné Kuttner and [REDACTED 3], and Claimant [REDACTED 4]’s claim number 732371 to the accounts of Sámuelné Kuttner and [REDACTED 4].

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

Procedural History

On 26 November 2002, the Court approved an Award to Claimant [REDACTED 1] for the Account Owner's account (the "November 2002 Award"). In this Award Amendment, the CRT adopts and amends its findings to address the entitlement of Claimant [REDACTED 2], Claimant [REDACTED 3], and Claimant [REDACTED 4]. The CRT notes that although Claimant [REDACTED 2], Claimant [REDACTED 3], and Claimant [REDACTED 4] had each filed timely claims to the awarded account, their claims were not available for consideration in the November 2002 Award. Subsequent review of their claims indicates that they are entitled to share in the original award amount, as detailed below.

The November 2002 Award

In the November 2002 Award, the CRT determined that the Account Owner owned one account of unknown type. The CRT further determined that Claimant [REDACTED 1] plausibly identified the Account Owner, that he plausibly demonstrated that he is related to the Account Owner, and that he made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Additionally, the CRT determined that the account remained open and dormant. The CRT noted that the Bank's records indicated that the value of the account was below the average value for an account of unknown type, as determined by the Independent Committee of Eminent Persons ("ICEP"), and thus determined that the value of the account was 3,950.00 Swiss Francs ("SF"), and that the November 2002 Award amount was SF 47,400.00. Finally, the CRT determined that Claimant [REDACTED 1] was entitled to the entire award amount.

Information Provided by Claimant [REDACTED 2] and Claimants [REDACTED 3] and [REDACTED 4]

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted an IQ identifying the Account Owner as his father, Viktor (Vigdor) Fischer, who was born in 1904, and who resided in Braila, Romania. Claimant [REDACTED 2] stated that his father owned a wholesale perfumery store in Braila. Claimant [REDACTED 2] explained that his father, who was Jewish, was deported to a slave labor camp in Romania, where he perished.

Claimant [REDACTED 2] indicated that he was born in 1933.

Claimants [REDACTED 3] and [REDACTED 4]

Claimant [REDACTED 3] and Claimant [REDACTED 4], who are related, identified the Account Owner as their great-uncle, Viktor Fischer.³ Claimant [REDACTED 3] and Claimant [REDACTED 4] stated that their relative was Jewish, was born in 1896, and resided in Koprivnica, Yugoslavia (today Croatia). According to Claimant [REDACTED 3] and Claimant [REDACTED 4], their great-uncle owned a liquor factory, which was seized by Nazi officials. Claimant [REDACTED 3] and Claimant [REDACTED 4] stated that their great-uncle was deported to a concentration camp, where he perished.

Claimant [REDACTED 3] indicated that he was born in 1943, and Claimant [REDACTED 4] indicated that he was born in 1930.

Information Available in the Bank's Records

As detailed in the November 2002 Award, the Bank's records indicate the name of the Account Owner. The records indicate that the Account Owner held one account, the type of which is not indicated, which was transferred to the Bank's suspense account on 28 February 1977, on which date the balance of the account was SF 99.00. The records indicate that the account remains open and dormant.

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 four claims of the Claimants in one proceeding.

Identification of the Account Owner by Claimant [REDACTED 2] and Claimants [REDACTED 3] and [REDACTED 4]

Claimant [REDACTED 2]'s father's name matches the published name of the Account Owner, and Claimants [REDACTED 3]'s and [REDACTED 4]'s great-uncle's name matches the published name of the Account Owner. The CRT notes that the Bank's records do not contain any specific information about the Account Owner other than his name.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Viktor Fischer, and indicates that his date of birth was 1904, and that his place of residence was Braila, Romania, which matches the information about the Account

³ The CRT notes that, in their IQs, Claimant [REDACTED 3] and Claimant [REDACTED 4] did not specify how they are related to each other.

Owner provided by Claimant [REDACTED 2]. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the name Viktor Fischer 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 CRT notes that Claimant [REDACTED 2], Claimant [REDACTED 3], and Claimant [REDACTED 4] each filed an IQ with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Viktor Fischer, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that these Claimants have based their present claims not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as their relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that these Claimants had reason to believe that their 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 2], and Claimant [REDACTED 3] and Claimant [REDACTED 4].

The CRT notes that Claimant [REDACTED 2]'s relative and Claimant [REDACTED 3]'s and Claimant [REDACTED 4]'s relatives are not the same person. However, given that the Claimants have identified all published information about the Account Owner that is available in the Bank's records; that the information provided by each claimant supports and in no way contradicts any information available in the Bank's records; and that there is no additional information in the Bank's records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner, the CRT finds that Claimant [REDACTED 2] and Claimant [REDACTED 3] and Claimant [REDACTED 4] have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 2] and Claimant [REDACTED 3] and Claimant [REDACTED 4] have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 2] stated that the Account Owner was Jewish, and that he was deported to a labor camp in Romania, where he perished; and Claimants [REDACTED 3] and [REDACTED 4] indicated that the Account Owner was Jewish, and that he perished during the Holocaust.

As noted above, a person named Viktor Fischer was included in the CRT's database of victims.

The Relationships of [REDACTED 2] and Claimants [REDACTED 3] and [REDACTED 4] to the Account Owner

Claimant [REDACTED 2] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information demonstrating that the Account Owner was his father; and Claimants [REDACTED 3] and [REDACTED 4] have plausibly demonstrated that they are related to the Account Owner by submitting specific biographical information demonstrating that the Account Owner was their great-uncle.

The CRT further notes that Claimant [REDACTED 2] and Claimants [REDACTED 3] and [REDACTED 4] each filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and themselves, prior to the publication in February 2001 of the ICEP List; and that Claimant [REDACTED 2] also identified information which matches information contained in the Yad Vashem records. 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 these claimants as a family member, and all of this information supports the plausibility that the claimants are related to the Account Owner, as they have asserted in their IQ's.

The Issue of Who Received the Proceeds

As detailed in the November 2002 Award, the CRT has concluded that the account remains open and dormant.

Amount of the November 2002 Award

As detailed in the November 2002 Award, the Account Owner held one account of unknown type. Pursuant to Article 29 of the Rules, when the value of an account is less than the average value of the same or similar type of account, 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 upon the investigation conducted by ICEP (the "ICEP Investigation"), in 1945 the average value of an account of unknown type was SF 3,950.00.

According to Article 31 of the Rules, account values are multiplied by an adjustment factor to bring award amounts up to current value. At the time of the November 2002 Award, the adjustment factor was 12, and the resulting award amount was SF 47,400.00. Since the November 2002 Award, the adjustment factor has been raised to 12.5.

Basis for the Award Amendment

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 2], and Claimants [REDACTED 3] and [REDACTED 4]. First, Claimant [REDACTED 2]'s claim, and Claimants [REDACTED 3]'s and [REDACTED 4]'s claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 2] has plausibly demonstrated that he is the Account Owner's son, and Claimants [REDACTED 3] and [REDACTED 4] have plausibly demonstrated that they are the Account Owner's great-nephews, and those relationships justify an Award. Third, the CRT determined in the November 2002 Award that the account remains open and dormant.

New 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, each Claimant or group of Claimants has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1] and Claimant [REDACTED 2] are each entitled to one-third of the Award amount, and relatives Claimant [REDACTED 3] and [REDACTED 4] are jointly entitled to one-third of the Award amount.

With respect to Claimant [REDACTED 3]'s and Claimant [REDACTED 4]'s joint share of the award amount, 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. Accordingly, Claimant [REDACTED 3] and Claimant [REDACTED 4] are each entitled to one-half of their share of the award, or one-sixth of the total award amount each.

The CRT notes that in the November 2002 Award, Claimant [REDACTED 1] was awarded the full award amount, and that he is now determined to be entitled to only one-third of the award amount. Recognizing that more than seven years have passed since the November 2002 Award, and that there is no indication that Claimant K. Fishcher was aware that other equally entitled persons had filed a claim, the CRT does not seek outright repayment of the overpayment from Claimant [REDACTED 1]. However, the amount of overpayment shall be deducted from any award adjustment that may be forthcoming to Claimant [REDACTED 1].

Amount and Division of the Award Amendment

As detailed above and in the November 2002 Award, the 1945 value of the account at issue was determined to be SF 3,950.00. Claimant [REDACTED 2] and Claimants [REDACTED 3] and [REDACTED 4] (jointly) are entitled to two-thirds of the Award amount, or SF 2,633.33. 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 Amendment amount of SF 32,916.63.

As detailed above, Claimant [REDACTED 2] is entitled to one-half of this amount, or SF 16,458.31, and Claimants [REDACTED 3] and [REDACTED 4] are entitled to share equally the other half of this amount, or SF 8,229.16 each.

Certification of the Award Amendment

The CRT certifies this Award Amendment for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
16 April 2010