

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED 1]¹

and the Estate of Claimant [REDACTED 2]²

in re Account of Malvine Fischl and Martha Reichmann

Claim Numbers: 222699/AX; 780452/AX³

Award Amount: 34,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together, “the Claimants”) to the published account of Malvine Fischl. This Award is to the published account of Malvine Fischl (“Account Owner Fischl”) and Martha Reichmann (“Account Owner Reichmann”) at the Vevey 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 Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying Account Owner Fischl as her aunt, Malvine Fischl, née Czaban, who was born in 1886 in Prague, Austria-Hungary (today, the Czech Republic), and was married to [REDACTED]. Claimant [REDACTED 1] indicated that her aunt lived in Prague at Podebradova Strasse 22 before the Second World War. In a telephone conversation with the CRT on 18 November 2002, Claimant [REDACTED 1] indicated that

¹ The CRT notes that [REDACTED 1] passed away in November 2005.

² The CRT notes that Claimant [REDACTED 2] passed away in November 1999.

³ Claimant [REDACTED 2] did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered 407068, to the Court in the United States. Although this IQ was not a Claim Form, 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 IQ was forwarded to the CRT and has been assigned claim number 780452.

[REDACTED] owned a pharmaceutical factory in Prague, and often traveled to Switzerland for business and pleasure. Claimant [REDACTED 1] further indicated that her aunt was deported to Lodz, Poland on 31 October 1941. The Claimant indicated that she believed her aunt died in Lodz, but does not know the exact date. In support of her claim, Claimant [REDACTED 1] submitted her birth certificate and the deportation cards for her aunt and uncle, indicating that their names were Malvine Fischl and [REDACTED]. Claimant [REDACTED 1] indicated that she was born on 8 December 1927 in Prague.

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted an Initial Questionnaire (“IQ”) to the Court in 1999, identifying Account Owner Fischl as her aunt, Malvine Fischel, who was born in 1886 in Prague, and was married to [REDACTED]. Claimant [REDACTED 2] indicated that her aunt resided at Podebradska in Prague before the Second World War. Claimant [REDACTED 2] further indicated that she was given a key to a safe deposit box in Vevey, Switzerland before she fled to England in 1939. Claimant [REDACTED 2] indicated that her aunt died in Lodz, Poland between 1942 and 1944. In a telephone conversation with the CRT on 29 June 2005, Claimant [REDACTED 2]’s daughter, [REDACTED], indicated that her mother was Malvine Fischel’s favorite niece. Mrs. Grant further indicated that Malvine Fischl had seven siblings, including Claimant [REDACTED 2]’s mother, [REDACTED], who also perished in a concentration camp during the Holocaust. Claimant [REDACTED 2] indicated that she was born on 12 March 1915.

Information Available in the Bank’s Records

The Bank’s records consist of account opening cards, lists of account owners, a list of contents of a safe deposit box, and printouts from the Bank’s database. According to these records, the Account Owners were Martha Reichmann and Malvine Fischl. The Bank’s records indicate that the Account Owners provided a care of address of M. Lehmann, who resided at Avenue de la Gare 10 in Vevey, Switzerland. The Bank’s records indicate that the Account Owners held a safe deposit box. According to the Bank’s records, the safe deposit box was forced opened by the Bank on 8 February 1973, and contained the following items:

1. Platinum Niton watch;
2. Pearl necklace (with clasp encrusted with 1 emerald and 2 diamonds);
3. Broach encrusted with small diamonds;
4. Solitaire with platinum rings;
5. Solitaire with gold rings; and
6. 14 carat gold bracelet with four square black motifs (solitaire in centre) with three bands (small diamond on each)

The Bank’s records indicate that there had been no customer contact with the Bank since 1940, and therefore, in February 1973, the Bank sold the broach for 2,500.00 Swiss Francs (“SF”) in order to cover outstanding and future rent costs. The safe was then opened again on 10 October 1996 and the contents of the safe were placed in a sealed envelope in a closed custody (depot) account in Lausanne. The contents of the safe were appraised by a jeweler and given an

estimated value of SF 5,000.00. The contents of the safe deposit box remain in the custody of the Bank.

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 Claimants in one proceeding.

Identification of the Account Owners

The CRT notes that the information provided by Claimant [REDACTED 1] and Claimant [REDACTED 2], including the date of birth, spousal information, and place of death, indicate that Claimant [REDACTED 1] and Claimant [REDACTED 2] are related and are claiming the account of the same individual.

The Claimants have plausibly identified the Account Owners. Claimant [REDACTED 1]'s aunt's name and Claimant [REDACTED 2]'s aunt's name matches the published name of Account Owner Fischl. Claimant [REDACTED 2]'s mother's name matches the published name of Account Owner Reichmann. Claimant [REDACTED 2] indicated that she was given a key to a safe deposit box owned by her aunt at the Vevey branch of the Bank, which matches published information about the city of residence of the Account Owners, and unpublished information about the type of account held by the Account Owners.⁴ In support of her claim, Claimant [REDACTED 1] submitted the deportation cards for her aunt and uncle, indicating that their names were Malvine Fischl and [REDACTED], providing independent verification that the person who is claimed to be Account Owner Fischl had the same name recorded in the Bank's records as the name of Account Owner Fischl.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Malwine Fischel, and indicates that her date of birth was 1886, that her place of residence was Prague, and that she was deported to the Lodz Ghetto, which matches the information about Account Owner Fischl provided by Claimant [REDACTED 1] and 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 other claim to this account was disconfirmed because that claimant failed to provide the names of both joint account owners and did not identify unpublished information identified by the Claimants.

⁴ The CRT notes that, on the February 2001 published list of accounts determined by the ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List") the names Malvine Fischl and Martha Reichmann appear, but no city or country of residence is indicated. The CRT further notes that the 1997 List of Accounts of Swiss Customers includes the names Malvine Fischl and Martha Reichmann and indicates that they resided in Vevey, Switzerland.

Status of Account Owners as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. Claimant [REDACTED 1] and Claimant [REDACTED 2] stated that Account Owner Fischl was Jewish, and that she was transported to Lodz by the Nazis and killed shortly thereafter in Lodz. Claimant [REDACTED 2]'s daughter indicated that Account Owner Reichmann, was Jewish and was killed in a concentration camp during the Holocaust.

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

The Claimants' Relationship to the Account Owners

Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly demonstrated that they are related to the Account Owners by submitting specific biographical information, demonstrating that Account Owner Fischl was Claimant [REDACTED 1] and Claimant [REDACTED 2]'s aunt, and Account Owner Reichmann was Claimant [REDACTED 2]'s mother and Claimant [REDACTED 1]'s aunt. The CRT notes that Claimant [REDACTED 2] identified unpublished information about the Account Owners as contained in the Bank's records; and that Claimant [REDACTED 2] filed an IQ with the Court in 1999, identifying the relationship between Account Owner Fischl and Claimant [REDACTED 2], prior to the publication in February 2001 of the ICEP List. The CRT further notes that Claimant [REDACTED 1] submitted a copy of the deportation cards for her aunt, indicating that her name was Malvine Fischl. The CRT notes that it is plausible that this document is a document which most likely only a family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owners were well known to the Claimants as family member, and all this information supports the plausibility that Claimant [REDACTED 1] and Claimant [REDACTED 2] are related to the Account Owner, as they have asserted in their Claim Forms.

There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

The Bank's records indicate that the contents of the safe deposit box were placed in a sealed envelope in a closed custody (depot) account and remain in its custody.

The CRT notes that, although the Bank's financial obligations to the Claimants were fulfilled through payment of the Settlement amount, in this case, the Bank, upon learning that the CRT had received claim forms from claimants who definitely identified the Account Owners as their relatives, expressed its desire to return the contents of the safe deposit box to the Claimants as a gesture of good will. The CRT is prepared to facilitate arrangements between representatives of the Claimants' estates and the Bank, should the representatives so desire.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Estate of Claimant [REDACTED 1] and the Estate of Claimant [REDACTED 2]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly demonstrated that Account Owner Fischl was their aunt, and Claimant [REDACTED 2] has plausibly demonstrated that Account Owner Reichmann was her mother, and those relationships justify an Award. Third, the CRT has determined that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owners held one safe deposit box. The Bank's records indicate that in 1996, the value of the contents in the safe deposit box were SF 5,000.00. The Bank's records further indicate that in 1973, one of the items in the safe deposit box was sold for SF 2,500.00 in order to pay for unpaid past and future maintenance fees. The CRT notes, however, that it is impossible to determine whether the sale of the item in 1973 was conducted at arms' length, and whether the amount received for the item sold represented the fair value of that item. Further, it is not clear whether or not the safe originally contained additional items that may have been sold at some other time, but not so recorded. Accordingly, the CRT has concluded that it is not possible to determine the 1945 value of the contents of the safe deposit box. Accordingly, the CRT will award the presumptive value for a safe deposit box, plus the standardized bank fees for the safe deposit box from 1945 to 1990, at which time, according to the Bank's records, fees were no longer charged to the account. Based on the investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a safe deposit box was SF 1,240.00. The standardized bank fees charged to a safe deposit box between 1945 and 1990 are SF 1,480.00. Thus the total historical value of the safe deposit box was SF 2,720.00. The current value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 34,000.00.

The CRT notes that, in other cases, restitution previously received by the Account Owner or his or her heirs has been deducted from the award amount, and that, in this case, the Bank has expressed its intent to return the remaining contents of the safe. This case differs from those cases, however, in that the Claimants did not receive restitution from the Bank prior to the conclusion of the Settlement Agreement. The Settlement Agreement, which provides that payments to members of the Deposited Assets class are to be made from the Settlement Fund, essentially rids the Bank of any obligation to make restitution to class members going forward. The Bank's intention to return the contents of the safe to the heirs of the Account Owners constitutes a gesture of goodwill, not of legal obligation. In the past, the CRT has only deducted payments made to claimants prior to the conclusion of the Settlement Agreement, not those based on goodwill or upon services to the class.⁵ The CRT therefore concludes that it is not

⁵ See, e.g., *In re Account of Bernhard Deligdisch* (approved on 11 April 2005).

appropriate to deduct any amount from the award based upon any possible return of the safe's contents in the future.

Division of the Award

According to Article 25 (1)(a), if an Account is a Joint Account and Claimants related to each of the Account Owners have submitted claims to the Account, it shall be presumed that each Account Owner was the owner of an equal share of the Account.

With respect to Account Owner Fischl's half of the account, according to Article 23(1)(d), 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 share by representation. In this case, Claimant [REDACTED 1] and Claimant [REDACTED 2] are both nieces of Account Owner Fischl. Accordingly, Claimant [REDACTED 1] and Claimant [REDACTED 2] are each entitled to one-quarter of the total award amount for Account Owner Fischl's half of the account.

With respect to Account Owner Reichmann half of the account, according to Article 23(1)(c), 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 has submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 2], who is Account Owner Reichmann's daughter, has a better entitlement to Account Owner Reichmann's half of the account than does Claimant [REDACTED 1], who is Account Owner Reichmann's niece.

Accordingly, the Estate of Claimant [REDACTED 1] is entitled to one-quarter of the total award amount and the Estate of Claimant [REDACTED 2] is entitled to three-quarters 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
14 December 2005