

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant Hanan Fliess
also acting on behalf of Uri Fliess

in re Account of Vera Schwab

Claim Number: 002417/MBC; 150066/MBC¹

Original Award Amount: 203,400.00 Swiss Francs

Award Amendment Amount: 113,125.00 Swiss Francs

This Certified Award Amendment is based upon the claim of Hanan Fliess (the “Claimant”) to the accounts of Vera Schwab (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Procedural History

On 25 October 2002 the Court approved an Award to the Claimant for the Account Owner’s custody account and for an account of unknown type at the Bank (the “October 2002 Award”). At the time of that award, the bank records available to the CRT did not contain information regarding the value of the awarded accounts. However, the Bank subsequently made available to the CRT additional information about the awarded account of unknown type, which shows that it was, in fact, a custody account. In this Award Amendment, the CRT adopts and amends its findings set out in the October 2002 Award based upon this additional information.

The October 2002 Award

In the October 2002 Award, the CRT determined that the Claimant plausibly identified the Account Owner, that he plausibly demonstrated that the Account Owner was his maternal great-aunt, and that he made a plausible showing that the Account Owner was a Victim of Nazi

¹ During the course of the claims resolution process, the CRT has identified an additional claim filed by Hanan Fliess (the “Claimant”) that contains the name of the claimed account owner, Vera Schwab. This claim has since been joined pursuant to Article 37 of the Rules Governing the Claims Resolution Process and is accordingly listed above.

Persecution. Based on information contained in the Bank's records, the CRT also determined that the Account Owner held a custody account numbered 30721 and an account of unknown type numbered 30608. Additionally, the CRT determined that it was plausible that the Account Owner did not receive the proceeds of these accounts. Finally, in the October 2002 Award, the CRT determined that the total award amount was 203,400.00 Swiss Francs ("SF") and that the Claimant and his brother, Uri Fliess, were each entitled to one-half of each of the accounts at issue.

Information Available in the Bank's Records

The Bank's records submitted by 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") consist of a receipt of general terms and conditions applying to custody accounts, dated 1 May 1925, a withhold mail request signed in Nuremberg on 2 May 1932, a power of attorney form signed in Basel on 29 August 1933, and a printout from the Bank's database. Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about this account/these accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of an account opening contract signed on 12 March 1913 in Basel, two power of attorney forms signed in 1924 in Nuremberg, Germany, the death certificate of Friedrich Hess, a probate order to the Estate of Ella Hess, and an excerpt from the Bank's register of account owners.

According to these records, the Account Owner was Vera Schwab, née Hess, who had previously been referred to as Vera Joerger, née Hess. The Bank's records indicate that the Account Owner was a daughter and heir of Dr. Friedrich Hess, a pharmacist in Nuremberg, and Ella Hess. The Account Owner inherited Ella Hess' assets deposited at the Bank. According to the Bank's records, the Account Owner originally resided at Tiergartenstrasse 46 in Regensburg, Germany, and later in Nuremberg.

The Bank's records indicate that the Account Owner held two custody accounts, numbered 30721 and 30608. The Power of Attorney Holder to those accounts was Dr. Max Schwab, who resided in Nuremberg. 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 value of these accounts. 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 Owner, the Power of Attorney Holder or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

As indicated in the October 2002 Award, the Claimant has plausibly identified the Account Owners.

Status of the Account Owner as a Victim of Nazi Persecution

As indicated in the October 2002 Award, the Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was married to a Jewish man who held power of attorney over the accounts, that her husband fled Germany due to Nazi persecution, and that she remained in Germany with her daughter, who survived the War in hiding.

The Claimant's Relationship to the Account Owner

As indicated in the October 2002 Award, the Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that the Account Owner was his great aunt, that the Power of Attorney Holder was his great-uncle. There is no information to indicate that the Account Owner has other surviving heirs other than the Claimant and his brother.

The Issue of Who Received the Proceeds

As noted above, the Bank's records do not show when the accounts at issue were closed, or to whom they were paid.

Given that there is no record of the payment of the Account Owner's accounts to her, nor any record of a date of closure of the accounts; that the Account Owner and her heirs would not have been able to obtain information about her 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 (a), (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 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 Amendment

The CRT has determined that an Award Amendment 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 Owner was his great-aunt, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that the Account Owner or her heirs did not receive the proceeds of their claimed accounts.

Amount of the October 2002 Award

As detailed in the October 2002 Award, the CRT determined that the Account Owner held a custody account and an account of unknown type.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for the accounts in the October 2002 award, 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 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 custody account was SF 13,000.00 and the average value of an account of unknown type was SF 3,950.00. This amount was multiplied by an adjustment factor to bring it to current value. At the time of the October 2002 Award, the adjustment factor was 12, and the resulting award amount for two accounts was SF 203,400.00.

Amount of the Award Amendment

As noted above, upon review of the additional bank records made available by the Bank, the CRT has determined that the account numbered 30608, which was awarded in October 2002 as an account of unknown type, was actually a custody account. The award amendment amount is therefore the difference in value between an account of unknown type and a custody account.

As noted above, based on the ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00 and the average value of an account of unknown type was 3,950.00 Swiss Francs. The difference between these two values is SF 9,050.00. 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 an award amendment amount of SF 113,125.00.

Division of the Award Amendment

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) has 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. In this case, the Claimant is representing his brother, Uri Fliess, and they are both the great-nephews of the Account Owner’s husband. Accordingly, the Claimant is entitled to one-half of the total award amendment amount and Uri Fliess is entitled to one-half of the total award amendment amount.

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
29 September 2009