

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1], [REDACTED 2] and [REDACTED 3]

in re Account of Dr. D. Abramowitz

Claim Numbers: 214985/MO, 215250/MO, 219655/MO

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2], née [REDACTED 2] (“Claimant [REDACTED 2]”), and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the account of Dr. D. Abramowitz (the “Account Owner”) 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 Claimants

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her father, Dr. David Abramowitsch, and Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as her father-in-law.¹ Claimants [REDACTED 1] and [REDACTED 2] indicated that Dr. David Abramowitsch was born on 4 April 1892 in Riga, Russia (now Latvia), and was married to Roza (Rosa) Ženi Abramowitsch, née [REDACTED], on 2 July 1916 in St. Petersburg, Russia. They further stated that he was the son of [REDACTED] and [REDACTED], née [REDACTED]. Claimants [REDACTED 1] and [REDACTED 2] identified their relative as a doctor of medicine who resided and maintained a private practice at 70 Marijas iela, Riga, from 1923 to 1932, and at 13 Lâèplçúa iela, Riga, from 1932 to 1940. Claimant [REDACTED 1] was born on 16 November 1920 in Uglitsch, Russia (Claimant [REDACTED 1] submitted a copy of an extract from an archive in Riga indicating the aforementioned), and that her only sibling, [REDACTED], was born on 27 March 1932 in Riga. They also indicated that Dr. David Abramowitsch and his spouse traveled to Switzerland on vacation several times during the 1930s. Furthermore, according to Claimants [REDACTED 1] and [REDACTED 2], Dr. David Abramowitsch, who was Jewish, fled Riga with his family in June 1941 in fear of Nazi persecution and found refuge in Saratov, Russia, where he worked as a medical doctor until

¹ Claimants [REDACTED 1] and [REDACTED 2] mentioned the following alternative spellings of their relative’s family name: [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

1945. They further indicated that in 1945 he returned to Riga, where he resided until his death on 28 March 1975. Claimants [REDACTED 1] and [REDACTED 2] stated that Rosa Abramowitsch died on 28 October 1963 in Riga and that [REDACTED], who was Claimant [REDACTED 2]'s spouse, died in Holon, Israel, on 20 December 2000. Claimant [REDACTED 2] stated that she was born on 20 December 1932. In support of their claims, Claimants [REDACTED 1] and [REDACTED 2] submitted various documents, including copies of David and Rosa Abramowitsch's death certificates and a list of Dr. David Abramowitsch's medical publications. Claimant [REDACTED 2] submitted copies of her marriage certificate, [REDACTED]'s death certificate and will, in which he bequeathed all his possessions to Claimant [REDACTED 2].

Claimant [REDACTED 3] submitted a Claim Form identifying the Account Owner as his maternal great-uncle, David Abramowitz, who was married to Rosa Abramowitz and had one sister, [REDACTED], née [REDACTED], Claimant [REDACTED 3]'s maternal grandmother. Claimant [REDACTED 3] indicated that David Abramowitz, who was Jewish, was a doctor of internal medicine and that he resided at Lacpleša iela 13, Riga. According to Claimant [REDACTED 3] his great-uncle, and his family perished in 1941. Furthermore, Claimant [REDACTED 3] stated that his grandmother died in 1960 and that his mother, [REDACTED], née [REDACTED], died in 1974. He further stated that he was born on 19 November 1950 in Odessa, Ukraine.

Information Available in the Bank Record

The bank record consists of a printout from the Bank's database. According to this record, the Account Owner was Dr. D. Abramowitz, who resided in Riga, Latvia, and the Power of Attorney Holder was Rosa Abramowitz. The bank record indicates that the Account Owner held an account of unknown type. The bank record does not show if or when the account at issue was closed, or to whom it was paid, nor does this record indicate the value of this account. 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 record that the Account Owner, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (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

The Claimants have plausibly identified the Account Owner. The names of their relatives match the published names of the Account Owner and the Power of Attorney Holder. The Claimants identified their relatives' city of residence, which matches published information about the Account Owner and the Power of Attorney Holder contained in the bank record. The Claimants also identified David Abramowitz's title, which matches unpublished information about the Account Owner contained in the bank record.

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. Claimants [REDACTED 1] and [REDACTED 2] stated that the Account Owner was Jewish, and that he was forced to flee Riga in the fear of Nazi persecution.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner. Claimant [REDACTED 1] submitted documents demonstrating that she is the daughter of the Account Owner, Claimant [REDACTED 2] submitted documents demonstrating that she is the widow of the Account Owner's son, and Claimant [REDACTED 3] submitted a family tree demonstrating that he is the grandson of the Account Owner's sister, [REDACTED], née [REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given the Account Owner's flight from the Nazis, the persecution of Jews in Latvia and the Nazis campaign to confiscate Jewish assets and the applicability of Presumptions (h), (i) and (j) contained in Appendix A,² 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

The CRT has determined that an Award may be made in favor of Claimants [REDACTED 1] and [REDACTED 2]. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was her father and Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was her father in law, and these relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed account.

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Amount of the Award

Pursuant to Article 35 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 present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

Division of the Award

According to Article 29(c) and (f) of the Rules, the award shall be in favor of any descendants of the account owner who have submitted a claim, in equal shares by representation, and if a child of the account owner is deceased and that child's spouse but none of that child's descendants have submitted a claim, that child's spouse shall be considered a child of the account owner for the purposes of this Article. Consequently, Claimant [REDACTED 1], who is the daughter of the Account Owner, and Claimant [REDACTED 2], who is the wife of the deceased son of the account owner, are entitled to share the award amount. Claimant [REDACTED 3], however, who is not a descendant of the Account Owner, is not entitled to share in the award amount.

Thus, in accordance with Article 29 of the Rules, Claimant [REDACTED 1] is entitled to one-half of the award amount, and Claimant [REDACTED 2] is entitled to one-half of the award amount, while Claimant [REDACTED 3] is not entitled to share in the award amount.

Initial Payment

Article 37(3)(a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, Claimant [REDACTED 1] is age 75 or older and she is entitled to receive payment of 100% of her portion of the total award amount. Accordingly, the initial amount is 39,105.00 Swiss Francs, which is comprised of 100% of Claimant [REDACTED 1]'s portion of the award (23,700.00 Swiss Francs) and 65% of Claimant [REDACTED 2]'s portion of the award (15,405.00 Swiss Francs).

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 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

December 27, 2003

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:¹

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.³

¹ See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); *see also*

Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

² See Bergier Final Report at 443-44, 446-49; *see also* ICEP Report at 81-83.

³ As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, *see* Albers v. Credit Suisse, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, *see* Bergier Final Report at 450-51, and possibly Romania as well, *see* Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. *See* Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." *Id.* at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. *See* In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).