

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1], [REDACTED 2], [REDACTED 3],
[REDACTED 4], and [REDACTED 5]
also acting on behalf of [REDACTED], [REDACTED], and [REDACTED] ¹

in re Account of Rachamin N. Aron

Claim Numbers: 208066/ES; 601150/ES;² 206289/ES; 211181/ES; 216692/ES; 003338/ES

Award Amount: 52,032.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 4] (“Claimant [REDACTED 4]”) to an account jointly held by Rachamin Aron and [REDACTED] ³ and upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”), [REDACTED 3] (“Claimant [REDACTED 3]”), and [REDACTED 5] (“Claimant [REDACTED 5]”) (together the “Claimants”) to the account of Rachamin N. Aron (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 to the Holocaust Claims Processing Office (“HCPO”), a claim to the Claims Resolution Tribunal (“CRT”) and an Initial Questionnaire to the Court, and Claimant [REDACTED 2] submitted a Claim Form and an Initial Questionnaire identifying the Account Owner as their father, Rachamin Nisim Aron, who was born on 23 October 1904 in Belgrade, Yugoslavia and was married to Marijana [REDACTED] on 16 June

¹ Claimant [REDACTED 5] provided her name and some of her relatives’ names only in Hebrew characters in the Claim Form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the Claim Form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

² Claimant [REDACTED 1] submitted a claim, numbered B-00237 on 20 October 1997 to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601150.

³ The CRT will treat the claim to this account in a separate decision.

1935 in Belgrade. Claimant [REDACTED 1] and Claimant [REDACTED 2] stated that Rachamin Nisim Aron was one of the proprietors of a wholesale textile import business named *Nisim Aron & Sons PTY LTD* at 48 Knez Mihailova Street, Belgrade. Claimant [REDACTED 1] and Claimant [REDACTED 2] stated that their father was imprisoned by the Nazis shortly after Germany occupied Belgrade in April 1941. Claimant [REDACTED 1] and Claimant [REDACTED 2] stated that while their father was in prison, he told his wife that he had deposited money in a Swiss bank account, but that he could not disclose to her the account or bank information from prison. Claimant [REDACTED 1] and Claimant [REDACTED 2] further stated that their father was executed by the Nazis while in prison. Claimant [REDACTED 1] and Claimant [REDACTED 2] stated that their mother tried to locate their father's Swiss bank account in 1955, but was unsuccessful, because she did not possess the information required by the Swiss banks. Claimant [REDACTED 1] and Claimant [REDACTED 2] stated that their mother was remarried on 6 July 1948 to [REDACTED], who officially adopted them on 2 March 1952.

In support of their claims, Claimant [REDACTED 1] submitted his birth certificate indicating that Rachamin N. Aron was his father, his mother's birth certificate, the adoption certificate, and an excerpt from the marriage registry of his mother and [REDACTED], and Claimant [REDACTED 2] submitted his birth certificate indicating that Rachamin N. Aron was his father. Claimant [REDACTED 1] indicated that he was born on 1 March 1938 in Belgrade. Claimant [REDACTED 2] indicated that he was born on 9 August 1936 in Belgrade.

Claimant [REDACTED 3] submitted a Claim Form and an Initial Questionnaire identifying the Account Owner as his mother's first husband. Claimant [REDACTED 3] indicated that he was born on 11 July 1957 in Harris Park, Australia. In support of his claim, Claimant [REDACTED 3] submitted documents, including his birth certificate affirming that Marijana [REDACTED], née [REDACTED], was his mother.

Claimant [REDACTED 4] submitted a Claim Form and an Initial Questionnaire identifying the Account Owner as her paternal uncle. Claimant [REDACTED 4] stated that the Swiss bank account was opened on behalf of *Nissim B. Aron & Sons* and was jointly owned by her father [REDACTED] and his brother Rachamin Aron. Claimant [REDACTED 4] stated that in 1969 she submitted a claim regarding the account to the Swiss consulate in Milan, Italy but never received an answer. In support of her claim, Claimant [REDACTED 4] submitted documents including her father's death declaration and an inventory list of *Nissim B. Aron & Sons* completed on 20 January 1942 by the Nazis before they closed the store. Claimant [REDACTED 4] indicated that she was born on 28 November 1925 in Belgrade.

Claimant [REDACTED 5] submitted a Claim Form and an Initial Questionnaire identifying the Account Owner as her maternal great-uncle, Rachamin N. Aron. The Claimant [REDACTED 5] indicated that her grandmother, [REDACTED], née [REDACTED], was the sister of Rachamin N. Aron. Claimant [REDACTED 5] indicated that she was born on 8 January 1940 in Israel. Claimant [REDACTED 5] is representing her three sisters: [REDACTED], who was born on 3 April 1946; [REDACTED], who was born on 29 January 1949; and [REDACTED], who was born on 6 April 1943.

The Claimants previously submitted Initial Questionnaires with the Court in 1999 and 2000, asserting their entitlement to a Swiss bank account owned by Rachamin Nisim Aron.

Information Available in the Bank Records

The bank records consist of a central registry card from 27 January 1938 and an extract from a suspense account ledger dated 4 March 1953. According to these records, the Account Owner was Rachamin N. Aron and the Power of Attorney Holder was Frau Marijana Aron, the Account Owner's wife. The records indicate that both the Account Owner and the Power of Attorney Holder resided in Belgrade, Yugoslavia. The bank records indicate that the Account Owner held a numbered account of unknown type, under the number 80579 and that the bank was instructed to hold all correspondence to the Account Owner.

The records indicate that the account was transferred to a suspense account and remained dormant between 1945 and 1955. The amount in the account on 4 March 1953 was 3,526.00 Swiss Francs. The bank records do not show when the account at issue was closed, or to whom it was paid. 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 records 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 six claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their relatives' names match the published names of the Account Owner and the Power of Attorney Holder. The Claimants identified their relatives' city of residence as Belgrade, Yugoslavia, which matches published information about the Account Owner contained in the bank records. In support of their claims, Claimant [REDACTED 1] and Claimant [REDACTED 2] submitted documents, including their own birth certificates, indicating that Rachamin N. Aron was their father and that Marijana Aron was their mother. The Claimants provided identical information regarding the Account Owner and the Power of Attorney Holder.

The CRT notes that the Claimants filed Initial Questionnaires with the Court in 1999 and 2000, and that Claimant [REDACTED 1] filed an HCPO claim on 20 October 1997, asserting their entitlement to a Swiss bank account owned by Rachamin Nisim Aron, 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 the Claimants have based their 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 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 the Claimant 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 the Claimants.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and that he was killed by the Nazis in Belgrade, Yugoslavia.

The Claimants’ Relationship to the Account Owner

Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly demonstrated that they are the Account Owner’s relatives by submitting documents, including their birth certificates, which indicate that Rachamin Aron was their father. Similarly, Claimants [REDACTED 3], [REDACTED 4], and [REDACTED 5] have plausibly demonstrated that they are related to the Account Owner by submitting documents indicating that they are the son of the Account Owner’s wife, the Account Owner’s niece, and the Account Owner’s great-niece, respectively. However, according to the principles of distribution set forth in Article 29 of the Rules and as explained below, Claimant [REDACTED 1] and Claimant [REDACTED 2], who are the children of the Account Owner, have a better entitlement to the account than Claimants [REDACTED 3], [REDACTED 4], and [REDACTED 5]. The CRT notes that this account was a privately held account and was not held under the name of *Nissim B. Aron & Sons*, nor is there any indication in the bank records that the account was owned jointly with [REDACTED], Claimant [REDACTED 4]’s father.

The Issue of Who Received the Proceeds

Given the application of Presumptions (b), (h), and (j) contained in Appendix A,⁴ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, 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.

⁴ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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 claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, Claimants [REDACTED 1] and [REDACTED 2] have plausibly demonstrated that the Account Owner was their father, and that relationship justifies 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.

Amount of the Award

The bank records indicate that the value of the numbered account of an unknown type as of 4 March 1953 was 3,526.00 Swiss Francs. In accordance with Article 37(1) of the Rules, this amount is increased by an adjustment of 810.00 Swiss Francs, which reflects numbered account fees, hold mail fees and standardized bank fees charged to the account of unknown type between 1945 and 4 March 1953. Consequently, the adjusted balance of the account at issue is 4,336.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 52,032.00 Swiss Francs.

Division of the Award

Article 29 of the Rules provides that 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 have submitted a claim, in equal shares by representation. Because Claimants [REDACTED 1] and [REDACTED 2] are the children and direct descendants of the Account Owner, they have better entitlement to the account than do Claimants [REDACTED 3], [REDACTED 4], and [REDACTED 5], who are the son of the Account Owner's wife, the Account Owner's niece, and the Account Owner's great-niece, respectively. Accordingly, Claimant [REDACTED 1] is entitled to 26,016.00 Swiss Francs (representing 50% of the total amount of the award) and Claimant [REDACTED 2] is entitled to 26,016.00 Swiss Francs (representing 50% of the total amount of the award).

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on their claim 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, 2002

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).