

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award upon Remand

to Claimant [REDACTED]

in re Account of Mihail Atias

Claim Number: 213143/HS
Appeal Number: 3058

Award Amount: 62,500.00 Swiss Francs

This Certified Award upon Appeal is based upon the claim of Mihail Atias (the “Claimant”) to the unpublished account of Mihail Atias (the “Account Owner”) at the [REDACTED] (the “Custodian”) in Geneva, Switzerland.¹

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.

¹ The CRT notes that, as is further described below, the relevant records indicate that Mihail Atias’ assets were deposited with the [REDACTED] (the “Custodian”) and held by the Custodian on his behalf. In 1945 the Custodian was an international shipping inspection firm based in Geneva. During the Second World War, the Custodian’s founder, Jacques Salmanowitz, who was Jewish, reportedly helped to secure the personal safety as well as the assets of many Victims of Nazi Persecution. Gregg Rickman, *Conquest and Redemption: A History of Jewish Assets from the Holocaust* 33, 62 n. 180 (2007). The CRT further notes that it has jurisdiction over assets deposited with the Custodian under the Settlement Agreement reached by the parties to the Holocaust Victim Assets Litigation (the “Settlement Agreement”), even though the Custodian was not a bank and was not included in the investigation of Swiss banks carried out pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) in order to identify accounts of Victims of Nazi Persecution. According to the Settlement Agreement, “Deposited Assets means (1) any and all Assets actually or allegedly deposited . . . with *any custodian, including, without limitation, a bank, branch or agency of a bank, other banking organization or custodial institution or investment fund established or operated by a bank incorporated, headquartered or based in Switzerland at any time (including, without limitation, the affiliates, subsidiaries, branches, agencies, or offices of such banks, branches, agencies, custodial institutions, and investment funds that are or were located either inside or outside Switzerland at any time) in any kind of account* (including, without limitation, a safe deposit box or securities account) prior to May 9, 1945, that belonged to a Victim or Target of Nazi Persecution . . . and/or (2) *any and all Assets that the ICEP or the Claims Resolution Tribunal determines should be paid to a particular claimant or to the Settlement Fund because the Asset definitely or possibly belonged to an individual [or business entity] . . . actually persecuted by the Nazi Regime or targeted for persecution by the Nazi Regime for any reason.*” [Emphasis added.] In re Holocaust Victim Assets Litigation, 105 F. Supp. 2d 139 (E.D.N.Y. 2000), Exhibit I to Plan of Allocation, Class Action Settlement Agreement (26 January 1999), 2-3, text available at http://www.swissbankclaims.com/PDFs_Eng/exhibit1toPlanofAllocation.pdf.

Procedural History

In a decision approved by the Court on 2 December 2008 (the “December 2008 decision”), the Claimant was informed that the CRT was unable to locate any accounts belonging to Moscu Atias, Mihail Grivita Stefanescu, *Grivita*, Mihail Michel Atias, Menachem Atias, Elissa Atias, Moritz Atias, or Rachela Atias in the Account History Database (“AHD”) prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

In a letter dated 3 January 2009, the Claimant appealed the December 2008 decision, and submitted an extract from the United States’ *Congressional Record*, which contains “a list of balances held by [the Custodian] for nationals who are also residents of Romania, Hungary, Bulgaria, Croatia, Moravia, Slovakia, France, Holland, and Denmark.”² On this list, the name Mihail Atias of Bucharest, Romania, appears beside an account balance of 5,000.00 Swiss Francs (“SF”). This document is described in more detail below.

In an Appeal decision approved by the Court on 31 January 2011 (the “Appeal decision”), Special Master Helen B. Junz determined that the *Congressional Record* extract submitted by the Claimant constitutes facially reliable evidence of a Swiss account held during the Relevant Period, which is defined by Article 46(2) of the Rules as the period from 1 January 1933 to 31 December 1945.

Accordingly, Special Master Junz remanded the case to the CRT to issue a decision in light of the new evidence submitted by the Claimant.

Information Provided by the Claimant

Information Provided in the Claimant’s Claim Form and Initial Questionnaire

The Claimant submitted a Claim Form and an Initial Questionnaire indicating that his father deposited money in Switzerland in the period from 1943 to 1944. The Claimant stated that his father, [REDACTED], who was Jewish, was born on 2 June 1885 in Romania, and that he was married to the Claimant’s mother, [REDACTED], née [REDACTED], in approximately 1927 in Bucharest. The Claimant explained that his parents resided in Bucharest, where his father was a banker with *Banca de Credit Roman* (Romanian Credit Bank). According to the information submitted by the Claimant, his great-uncle, [REDACTED], was associate director at the same bank in Bucharest.

The Claimant stated that during the Second World War, a non-Jewish man named Mihail Stefanescu, who was his father’s friend and banking client, assisted his father in hiding his father’s assets from the Gestapo and Romanian authorities. According to the Claimant, in 1942, his father told him that he had deposited in Switzerland a sum equivalent to 500 gold *Napoleons*

² 104 CONG. REC. S3032 (daily ed. 27 March 1996).

(a former French gold coin of various denominations), in order to fund the Claimant's future studies in France. The Claimant also stated that he heard his parents discuss transferring money from the sale of their apartment to a Swiss bank account in 1943 or 1944, which was accomplished with the help of Mihail Stefanescu. The Claimant indicated that Mihail Stefanescu was associated with a firm named *Grivita*.

The Claimant stated that his parents emigrated to Israel in 1962. The Claimant stated that his father died on 30 September 1970 in Haifa, Israel, and that his mother died on 1 July 1987, also in Haifa.

In support of his claim, the Claimant submitted documents, including:

- (1) a certificate from the Romanian war department, dated 28 March 1939, indicating that [REDACTED] received a medal during the First World War, and containing a sample of Moscu Atias' signature;
- (2) an extract from a contract between unidentified parties to sell an apartment located at Str. Romulus 16 in Bucharest in December 1941;
- (3) a certificate, dated 30 June 1951, issued by *Banca de Credit Roman* indicating that [REDACTED] worked as principal cashier at the bank from 1912 to 1921; and from March 1937 until 19 August 1948, when the bank was liquidated by state decree;
- (4) the Claimant's father's death certificate, indicating that [REDACTED], who was born on 2 June 1885, and who was Jewish, died on 30 September 1970 in Haifa;
- (5) the Claimant's mother's death certificate, indicating that [REDACTED], who was born on 11 April 1903, and who was Jewish, died on 1 July 1987 in Haifa; and
- (6) the Claimant's own Canadian passport, indicating that [REDACTED] was born on 17 May 1931 in Bucharest.

Information Provided in the Claimant's Appeal

As noted above, the Claimant appealed the December 2008 decision and submitted an extract from the *Congressional Record* showing that the Custodian held SF 5,000.00 in the name of Mihail Atias, Bucharest, as of 12 July 1945. In his appeal, the Claimant indicated that he attempted to contact the Custodian, but that he was unsuccessful.

Information Available in the Banks' Records

The CRT notes that the auditors who carried out the ICEP Investigation did not investigate the Custodian, nor did they report an account belonging to Mihail Atias during their investigation of Swiss banks. As indicated above, the document evidencing an account belonging to Mihail Atias was obtained by the Claimant and forwarded to the CRT.

Information Available in the *Congressional Record*

The evidence of an account in this case is an extract from the *Congressional Record* containing a statement by former United States Senator Alfonse D'Amato and a report by the American Legation in Bern, Switzerland, originally filed on 12 July 1945 in the course of "Operation Safe Haven," which was an American investigation conducted immediately after the Second World War to locate and identify Nazi assets and looted assets in Europe (the "Safe Haven report").³ Senator D'Amato stated that his staff discovered the Safe Haven report among declassified US military intelligence documents in the course of "an inquiry into the return, by Swiss banks, of assets deposited by European Jews and others in the years preceding the Holocaust."⁴

The Safe Haven report, whose subject is "funds held for others by [the Custodian]," includes a list of 182 accounts owners and account balances held by the Custodian on their behalf, among which is an account, the type of which is not indicated, in the name of Mihail Atias, Bucharest, with a balance of SF 5,000.00.⁵

According to the Safe Haven report:

It is reliably reported that since 1941 [the Custodian] also acted in a banking or fiduciary capacity by holding funds representing profits realized by its Balkan customers on shipments of merchandise to neutrals and to enemy territory. The transactions which resulted in the accumulation of profits involved over invoicing consignees, shipment of merchandise against payment in Switzerland in Swiss francs, and withholding by [the Custodian] of the excess payments or balances.

...

It is stated that the aforementioned funds and other property are beneficially owned principally by Jewish persons who are nationals of and residents of the abovementioned countries and who were endeavoring (1) to profit from black market operations in local currencies of the Balkan countries; (2) to move funds out of their home countries; or (3) to insure that the funds would be safe from confiscation by their local authorities.⁶

The investigators who compiled the Safe Haven report indicated that they asked the Custodian whether the above factors also applied for balances held by nationals of other countries, to which the Custodian replied on 18 June 1945: "The only countries for which we hold financial accounts

³ 104 CONG. REC. S3030-33 (daily ed. 27 March 1996).

⁴ *Id.* at S3031.

⁵ *Id.* at S3031-32.

⁶ *Id.* at S3031.

are Romania and to a very limited extent Bulgaria. We have never transacted such business for people in other countries.”⁷

Additional Information Obtained by the CRT

In two books on Jewish assets, including assets held at Swiss banks, Gregg Rickman, Senator D’Amato’s former legislative director, briefly discusses the Safe Haven report and subsequent inquiries on the fate of the assets deposited with the Custodian.⁸

According to Rickman, following discovery of the Safe Haven report in 1996, Senator D’Amato wrote to the Custodian requesting information on the accounts.⁹ The Custodian then reportedly commissioned an audit by the accounting firm *Cooper & Lybrand* (now part of *PricewaterhouseCoopers LLP*), which concluded that all but four of the accounts on the Safe Haven list had already been claimed by their owners or heirs, and all but two of the account owners had survived the War.¹⁰ Rickman reported that, because of confidentiality requirements, the Custodian withheld the names of the owners of the four unclaimed accounts.¹¹ About fifteen of the total accounts with the Custodian were reportedly held as numbered accounts in Swiss banks.¹²

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified himself as the Account Owner. The CRT notes that the Claimant himself submitted the document evidencing the existence of the account. The Claimant’s name and his place of residence before the Second World War match the name and place of residence of the Account Owner recorded in the Safe Haven report. The CRT notes that the Claimant, who was born in 1931, would have been a child at the time that funds were deposited in his name with the Custodian. However, the CRT additionally notes that the Claimant stated that his father deposited funds in Switzerland to cover the costs of the Claimant’s education, making it plausible that such funds would be held in the Claimant’s name.

In support of his claim, the Claimant submitted his own passport, showing that his name and place of birth are the same as the name and place of residence of the Account Owner. The

⁷ *Id.* at 13031-32.

⁸ Gregg Rickman, *Swiss Banks and Jewish Souls* 48-49 (2001); and Gregg Rickman, *Conquest and Redemption: A History of Jewish Assets from the Holocaust* 32-33, 62-63 n. 181 (2007).

⁹ *Swiss Banks and Jewish Souls*, at 48.

¹⁰ *Conquest and Redemption*, at 62 n. 181. A copy of the *Coopers & Lybrand* report is not available to the CRT. According to a statement by the chairwoman of the Custodian in 1996, the four unclaimed accounts were worth a total of 6,430.00 US dollars (“US \$”) in 1945. Reuters, *Swiss Reacted Late on Holocaust Accounts-Banker*, 20 September 1996.

¹¹ *Swiss Banks and Jewish Souls*, at 48.

¹² *Conquest and Redemption*, at 62-63 n.181.

Claimant additionally submitted certificates from the Romanian war department and *Banca de Credit Roman*, together showing that [REDACTED], who had the same surname as the Account Owner, resided in the same city and country as the Account Owner before and during the Second World War. The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that he and members of his family, including his father, who opened the account in the Claimant's name, were Victims of Nazi Persecution. The Claimant stated that his family was Jewish and that they resided in Romania during the Second World War. Additionally, the Claimant submitted certificates from the Romanian war department and *Banca de Credit Roman*, showing that [REDACTED] resided in Romania during the Second World War and the death certificates of [REDACTED] and [REDACTED], showing that they were Jewish.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is the Account Owner. As indicated above, the Claimant submitted his own passport, showing that he has the same name and place of birth as the name and city of residence of the Account Owner. As also noted above, the Claimant additionally submitted certificates from the Romanian war department and *Banca de Credit Roman*, together showing that [REDACTED], who had the same surname as the Account Owner, resided in the same city and country as the Account Owner before and during the Second World War.

The Issue of Who Received the Proceeds

The Safe Haven report indicates that the SF 5,000.00 held by the Custodian for the Account Owner was unclaimed as of 12 July 1945. Additionally, the investigation by *Coopers & Lybrand* reportedly concluded that four accounts remained unclaimed in 1996 and that all but two of the account owners in the Safe Haven report survived the War, implying that contact was established with the remaining account owners or their heirs in order to verify the fate of the account owners. However, the CRT notes that the *Coopers & Lybrand* report was compiled in 1996, many years after the death of the Claimant's father (1970) and mother (1987). Moreover, in the time between the deaths of the Claimant's parents and the compilation of the report, the account could not have been claimed, because the Claimant himself was not aware that the account existed with the Custodian until he saw it referenced in the *Congressional Record* in 1996. Thus, it is possible that the account at issue was one of the four that remained unclaimed in 1996. In support of this likelihood, the CRT notes that, as detailed above, the Claimant stated that his attempts to contact the Custodian regarding this account were unsuccessful, even though the assets were held in his name. Based on these factors, the CRT is unable to rule out the possibility that the Claimant's account is among the four unclaimed accounts discovered in 1996. Accordingly, in the absence of contrary evidence, the CRT determines that it is plausible that neither the Claimant nor a member of his family received the proceeds of his account.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that he is the Account Owner. Third, the CRT has determined that it is plausible that neither the Claimant nor a member of his family received the proceeds of the claimed account.

Amount of the Award

In this case, the Claimant held an account of unknown type which had a balance of SF 5,000.00 as of 12 July 1945. The current value of the amount of the award is determined by multiplying the historical value by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 62,500.00.

Certification of the Award

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

Claims Resolution Tribunal
24 March 2011