

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Hedviga Weiss, Claimant Stela Budu
and Claimant Veronica Ben-Tal¹

in re Accounts of Iosif Auscher and Iuliana Auscher

Claim Numbers: 001276/ES; 001831/ES; 214771/ES²

Award Amount: 1,201,440.00 Swiss Francs

This Certified Award is based upon the claim of Hedviga Weiss, née Auscher, (“Claimant Weiss”) to the account of Iosif Auscher (“Account Owner Iosif Auscher”) and the claims of Veronica Ben-Tal, née Mayer, (“Claimant Ben-Tal”) and Stela Budu, née Calin, (“Claimant Budu”) (together the “Claimants”) to the account of Iuliana Auscher (“Account Owner Iuliana Auscher”) at the Bern branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case none of the Claimants have, only the name of the bank has been redacted.

Information Provided by the Claimants

Claimant Weiss submitted a Claim Form identifying Account Owner Iosif Auscher as her father, who was born on 16 October 1887 in Lugos, Romania, the second out of six brothers and sisters, and was married to Roza Weinberger on 21 March 1920 in Timisoara, Romania. Claimant Weiss stated that her father, who was Jewish, was a co-owner of the family textile factory business called *Ehrlich & Auscher*. According to Claimant Weiss, between 1933 and 1941, Iosif Auscher and his brother Ernst Auscher left the family business and together founded an import firm to represent textile factories from Germany and Czechoslovakia. Claimant Weiss stated that, in 1941, her father had to close down the company he founded with his brother due to racist restrictions. The Claimant stated that her father was sent to a labor camp, and all his assets were confiscated by the Nazis. Claimant Weiss stated that her father resided at Vokrasko in Timisoara

¹ Aliza Mayer, née Auscher, originally filed a claim to the account of her mother, Iuliana Auscher. Aliza Mayer passed away in 5 July 2001 in Israel, so her daughter, Veronica Ben Tal, née Mayer, has assumed the claim.

² The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 214771 and 221903. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 214771.

until 1943 and at Vladika Badesko in Timisoara until 1960. Claimant Weiss stated that her father immigrated to Israel on 7 February 1960 and that he died on 21 August 1970 in Beer-Sheva, Israel. In support of her claim, Claimant Weiss submitted her parent's marriage certificate, the certificate issued by the Communist Romanian government granting them permission to travel to Israel, her father's death certificate, and her own birth certificate, which indicates that Iosif Auscher was her father. Claimant Weiss indicated that she was born on 28 February 1920 in Timisoara, and that she is Iosif Auscher's only descendant.

Claimant Ben-Tal and Claimant Budu, who are cousins, submitted Claim Forms identifying Account Owner Iuliana Auscher as their maternal grandmother, Iuliana Auscher, née Berdach, who was born on 4 February 1899, in Lugos, Romania. Claimant Ben-Tal and Claimant Budu stated that Iuliana Auscher, who was Jewish, was married to Victor Auscher (one of Iosif Auscher's brothers) on 16 June 1918 in Lugos. Claimant Ben-Tal stated that Iuliana Auscher was a housewife and was active in Zionist women's organizations. Claimant Ben-Tal and Claimant Budu asserted that Iuliana Auscher resided at 5 Iosif Gall in Timisoara between 1942 and 1962. Iuliana Auscher immigrated to Israel on March 1962, resided in Kiron and in Tel-Aviv at 17 Idelson St., and died on 29 February 1988 in Tel-Aviv. Claimant Ben-Tal was born on 5 June 1947 in Romania. Claimant Budu was born on 13 June 1939 in Timisoara.

The Claimants stated that Auscher is a unique name in Romania. In a telephone conversation with the CRT, Claimant Weiss's daughter, Erika Segal, asserted that the family originates from Ostek, Czechoslovakia, and that, about 200 years ago, there was a pogrom in which the entire family was killed. The only survivors were two children, who were adopted by the town's Rabbi, who gave them the name Auscher, which means happiness in Hebrew. All three Claimants stated that they knew of an account in Switzerland a long time ago. Erika Segal mentioned that in the 1960s her parents contacted the Swiss authorities in an attempt to locate the account, and they were told that the account was empty. Claimant Ben-Tal stated that, after the War, the family contacted an employee of the Swiss Embassy in Romania who was supposed to take care of their affairs relating to the bank account in Switzerland because they could not leave Romania, but that they were not able to locate an account. In a telephone conversation with the CRT, Claimant Weiss's daughter asserted that Claimant Weiss's husband was tortured during the Communist regime in Romania because the government knew that his wife's father had an account in Switzerland.

Information Available in the Bank Records

The bank records consist of a list of Swiss bank accounts that were registered by Romanian citizens who were compelled by the Romanian Communist Regime to report their foreign assets, or by the Regime itself when it determined that its citizens owned assets held in Swiss banks. According to the records, the Account Owners were Iosif Auscher and Iuliana Auscher of Romania, who each held an account of unknown type. The bank records indicate that each account had a balance of 50,000.00 Swiss Francs on 20 August 1948, a date recognized by the CRT as that of the Swiss Government's Freeze of Romanian Assets. While there is no recorded closing date, the auditors who investigated this account concluded the account was closed

sometime after 20 August 1948. There is no evidence in the bank records that the Account Owners 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 Claimant Weiss, Claimant Ben-Tal, and Claimant Budu in one proceeding.

Identification of the Account Owner

Claimant Weiss has plausibly identified Account Owner Iosif Auscher. Her father's name matches the published name of Account Owner Iosif Auscher. Claimant Ben-Tal and Claimant Budu have plausibly identified Account Owner Iuliana Auscher. Their grandmother's name matches the published name of Account Owner Iuliana Auscher. The Claimants have stated that their family name is unique in Romania, and that it derives from the Hebrew word for happiness. Moreover, the information provided by Claimant Weiss about Account Owner Iosif Auscher and his family, including his date and place of birth and family relationships, corresponds to the information about Account Owner Iuliana Auscher and her family provided independently by Claimant Ben-Tal and Claimant Budu.

In support of their claim, the Claimants submitted documents, including death certificates of both Iosif Auscher and Iuliana Auscher, Iuliana Auscher's birth certificate, and Iosif Auscher's certificate granting permission to travel to Israel.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant Weiss has made a plausible showing that Account Owner Iosif Auscher was a Victim of Nazi Persecution. Claimant Weiss stated that Account Owner Iosif Auscher was Jewish and that, in 1941, he was sent to a labor camp and all his assets were confiscated by the Nazis.

Claimant Ben-Tal and Claimant Budu have made a plausible showing that Account Owner Iuliana Auscher was a Victim of Nazi Persecution. Claimant Ben-Tal and Claimant Budu stated that Account Owner Iuliana Auscher was Jewish and lived in Romania during the Second World War.

The Claimant's Relationship to the Account Owner

Claimant Weiss has plausibly demonstrated that she is related to Account Owner Iosif by submitting her birth certificate and Iosif Auscher's marriage certificate, demonstrating that Account Owner Iosif Auscher is her father.

Claimant Ben-Tal and Claimant Budu have plausibly demonstrated that they are related to Account Owner Iuliana Auscher by submitting documents, including Account Owner Iuliana Auscher's birth and death certificates, Aliza Mayer's (Claimant Ben-Tal's mother) summary of registry in the Ministry of Internal Affairs in Israel, and Elena Auscher's (Claimant Budu's mother) birth certificate, that demonstrate that Account Owner Iuliana Auscher is their maternal grandmother.

The Issue of Who Received the Proceeds

Given the application of Presumptions (e), (h), (i) and (j) contained in Appendix A³, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners 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.

Additionally, for Account Owners who were citizens of Romania, it is possible that the proceeds of their Swiss accounts were paid by Switzerland to Romania, as part of an arrangement between the two countries concluded in 1951. The Swiss banks froze Romanian assets in 1948 pursuant to a Decree of the Swiss Federal Council. Romanian accounts were unfrozen in October 1950 and approximately one year later, in August 1951, Switzerland and Romania entered into an arrangement whereby unclaimed assets held by Romanian citizens in Swiss banks were to be transferred to the Romanian government in return for compensation for Swiss property that had been nationalized by Romania's communist regime. Dormant accounts were subject to transfer to the Romanian Government under this arrangement. Where, as here, the CRT has concluded that there is a substantial likelihood that the Swiss government, which is a Releasee under the Settlement of the Holocaust Victim Assets Litigation, seized an account to use it to obtain compensation for Swiss citizens, and the CRT has determined accordingly that neither the Account Owners nor their heirs received the proceeds of the account. It is fully consistent with the Settlement to pay the Claimants the proceeds of the accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, Claimant Weiss has plausibly demonstrated that Account Owner Iosif Auscher was her father, and Claimant Ben-Tal and Claimant Budu have plausibly demonstrated that Account Owner Iuliana Auscher was their grandmother. These relationships justify an Award. Finally, the CRT

³ An expanded version of Appendix A appears on the CRT II website – www.crt-ii.org

has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

The bank records indicate that the value of each account as of 20 August 1948 was 50,000.00 Swiss Francs. In accordance with Article 37(1) of the Rules, this amount is increased by an adjustment of 60.00 Swiss Francs, which reflects standardized bank fees charged to the accounts between 1945 and 20 August 1948. Consequently, the adjusted balance of each account at issue is 50,060.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an award amount of 600,720.00 Swiss Francs for each account and a total award of 1,201,440.00 Swiss Francs.

Division of the Award

Article 29(c) 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. Accordingly, as for the account owned by Account Owner Iosif Auscher, Claimant Weiss, as the daughter and direct descendant of Account Owner Iosif Auscher, is entitled to the full amount of his account, or 600,720.00 Swiss Francs. As for the account owned by Account Owner Iuliana Auscher, Claimant Ben-Tal and Claimant Budu, as the grandchildren and direct descendants of Owner Iuliana Auscher, are each entitled to one-half of her account, or 300,360.00 Swiss Francs each.

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
October 24, 2002

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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. 2d 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).