

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Henry Helmut Baum

in re Account of Ludwig Baum and Jacob Baum

Claim Number: 212103/ES

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Henry Helmut Baum (the “Claimant”) to the account of Ludwig Baum (“Account Owner Ludwig Baum”) and Jacob Baum (“Account Owner Jacob Baum”) (together the “Account Owners”) 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.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owners as his father, Ludwig Baum, and his paternal uncle, Jacob Baum. The Claimant stated that his father was born on 13 September 1869 in Alzey, Germany and was married to Minna Eichelberg in March 1902 in Alzey. The Claimant stated that his father resided at Nibelungenstrasse 2, Alzey until 1935, and then moved to Berlin, Germany, where he lived until 1937, at which time he fled to Nice, France. The Claimant stated that his father resided at Blvd. Victor Hugo in Nice until 1944, when he was deported to Auschwitz, where he perished. The Claimant stated that Jacob Baum was married to Fanny Baum and they fled to California, the United States in the late 1930s. The Claimant stated that Ludwig Baum and Jacob Baum, who were Jewish, were the co-owners of an iron company called *L. Baum und Sohn* at Antoniterstrasse 48 in Alzey, and that the company had been owned by his family for 100 years. The Claimant stated that he himself lived in Switzerland from 1934 to 1947, during which time he studied at the *Ecole International* in Geneva and then pursued his doctorate degree at the University of Zurich. The Claimant submitted his own birth certificate, identifying his father as Ludwig Baum. The Claimant indicated that he was born on 8 September 1917 in Mainz, Germany.

Information Available in the Bank Record

The bank record consists of a printout from the Bank's database. According to this record, the Account Owners were Jacob Baum and Ludwig Baum who resided in Alzey, Germany. The bank record indicates that the Account Owners held a joint account of unknown type, numbered 37894, which was opened on 10 December 1932.

The bank record does not show 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 Owners or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. His father's and uncle's names match the published names of the Account Owners. The Claimant identified his father's city of residence as Alzey, Germany, which matches published information about the Account Owners contained in the bank record. The CRT also notes that the names of the Account Owners were published separately on the list of bank accounts published by the ICEP Investigation on 5 February 2001 and the Claimant identified the connection between them. The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided different names or different countries of residence than those of the Account Owners, or were only able to identify one of the two Account Owners.

Status of the Account Owners as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that Account Owner Ludwig Baum was deported to Auschwitz in 1944, where he perished, and that Account Owner Jacob Baum fled to the United States in the late 1930s.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to Account Owner Ludwig Baum by submitting his birth certificate demonstrating that his father was Ludwig Baum.

The Issue of Who Received the Proceeds

Given that the Account Owner Ludwig Baum perished in the Holocaust and the Account Owner Jacob Baum fled to the United States in the late 1930s, that the Account Owners were Germans with a German address recorded in the bank documents, the Nazi campaign to confiscate the domestic and foreign assets of its Jewish nationals through enforcement of confiscatory legislation, and the application of Presumptions (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners. Based on its precedent and the Rules Governing the Claims Resolution Process (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, though the Claimant, who is the son of one of the Account Owners and the nephew of the other Account Owner, resided in Switzerland from 1934 to 1947, the CRT concludes that it is plausible that he did not receive the proceeds of the Account Owners' account after the War given the probability that the Account Owners' heir would not have been able to obtain information about the account from the Bank due to the Swiss banks' practice of withholding or misstating account information in response to inquiries by account owners or their heirs, and given the application of Presumption (h).

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 the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner Ludwig Baum was his father and Account Owner Jacob Baum was his uncle, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

The bank records indicate that the Account Owners held a joint account of unknown type. 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.

Initial Payment

In this case, the Claimant is over 75 and is therefore entitled to receive 100% of the total award amount.

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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 his claim to determine whether there are additional Swiss bank accounts to which he 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).