

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by [REDACTED]

in re Account of Mina Beresteanu-Goldstein

Claim Number: 214538/EZ

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Mina Beresteanu-Goldstein (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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her maternal aunt, Mina Beresteanu-Goldstein, née [REDACTED], who was born in 1883 in Yasi, Romania. The Claimant stated that her aunt's first husband was named [REDACTED], and she and [REDACTED] had a son named Mircea and a daughter named [REDACTED]. The Claimant stated that her aunt and her husband, who were Jewish, were wealthy and owned several apartments in Bucharest, Romania, as well as a jewelry store, and the Claimant provided her aunt's home and business street addresses. The Claimant further stated that [REDACTED] died before the Second World War as a result of kidney disease. Their son Mircea Beresteanu died at the age of 49, in the 1960s, from the same kidney disease. During the Second World War, Mina Beresteanu married her second husband, [REDACTED], and they immigrated to Israel in approximately 1950. According to the Claimant, [REDACTED] died in Israel in the 1950s, and Mina Beresteanu-Goldstein lived in Givataim, Israel until 1978. She later emigrated to France, where she died on 20 July 1978. The Claimant indicated that she was born on 3 February 1911 in Bacau, Romania.

Information Available in the Bank Records

The bank records consist of a customer card and printouts from the Bank's database. According to these records, the Account Owner was Mina Beresteanu-Goldstein, and the Power of Attorney Holder was Mircea Beresteanu,¹ both of whom resided in Romania, had Romanian nationality, and had instructed the Bank to hold all correspondence. The bank records indicate that the Account Owner held an account of unknown type, which was numbered 80138. The account was opened on 9 April 1942 and was later closed on 18 March 1957. The bank records do not show who closed the account, nor do these records indicate the value of this account. 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

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her aunt's and cousin's names match the published names of the Account Owner and the Power of Attorney Holder, respectively. The Claimant stated that her aunt took the names Beresteanu and Goldstein from her first and second husbands, which explains why the Account Owner had two family names. Moreover, the Claimant stated that her aunt and cousin resided in Romania, which matches published information about the Account Owner and the Power of Attorney Holder contained in the bank records. Finally, the Claimant identified Mircea Beresteanu as the son of the Account Owner although the name was published on the 5 February 2001 list as that of a woman. The CRT notes that there was one additional claim to this account that was disconfirmed because the claimant did not provide a connection to the name "Beresteanu" or to the Power of Attorney Holder Mircea Beresteanu.

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. The Claimant stated that the Account Owner was Jewish, and lived in Nazi-controlled Romania.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner. She submitted documents, including her family tree, a copy of her own birth certificate, and photographs of her aunt. The Claimant provides no information regarding her aunt's daughter

¹ The CRT notes that Mircea Beresteanu was mispublished on the 5 February 2001 list as *Mme.* Mircea Beresteanu, while the bank records show that it was in fact Mina Beresteanu-Goldstein who used the title *Mme.*

[REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The CRT notes that since the account was not closed until 1957, it is possible that it could have been transferred to the Romanian government pursuant to an agreement between Switzerland and Romania 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. Given this possibility, the persecution of Jews in Romania and the confiscation of Jewish assets during the War, the Communist dictatorial regime after the War, and the application of Presumptions (b) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, the Power of Attorney Holders, or their heirs. 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.

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 the Account Owner was her aunt, 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

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 age 75 or older and is therefore entitled to receive payment of 100% of the total award amount.

² 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 her claim to determine whether there are additional Swiss bank accounts to which she 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

31 December 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).