

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1]
and [REDACTED 2]

in re Accounts of Johanna Bienes and Hermann Bienes

Claim Numbers: 216517/AA; 217508/AA; 601245/AA¹

Award Amount: 337,680.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Hermann Bienes (“Account Owner Hermann Bienes”) and Johanna Bienes (“Account Owner Johanna Bienes”) (together the “Account Owners”) at the [REDACTED] (“Bank I”) and the Basel branch of the [REDACTED] (“Bank II”).

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 Form to the CRT and Claimant [REDACTED 2] submitted a claim to the Holocaust Claims Processing Office (“HCPO”) and a Claim Form to the CRT identifying the Account Owners as their paternal grandmother, Johanna Helene Bienes, and their father, Hermann Bienes. The Claimants, who are siblings, indicated that their grandmother was born on 21 September 1859 in Mainz am Rhein, Germany and was married to [REDACTED] on 7 April 1877 in Frankfurt am Main, Germany. The Claimants stated that their grandparents, who were Jewish, had three children, [REDACTED] [REDACTED] [REDACTED], who was born on 17 March 1888, [REDACTED], who was born on 26 July 1889, and the Claimants’ father, [REDACTED], who was born on 24 April 1891. According to the Claimants, all three of Johanna Bienes’ children were born in Frankfurt am Main. The Claimants stated that [REDACTED] died in Frankfurt-am-Main in 1921. The Claimants stated that their father, Hermann Bienes, who was Jewish, was married to [REDACTED], on 11 May 1931 in Germany.

¹ Claimant [REDACTED 2] submitted a claim, numbered B-01116, on 28 July 1998 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 601245.

According to the Claimants, their grandmother and father operated a fine leather goods company and leather factory called *Firma [REDACTED] Lederwaren Fabrik* located at 36 Mainzerlandstrasse in Frankfurt. The Claimants explained further that their father had a business representative in Zurich, Switzerland to whom he often sent money during the Second World War. The Claimants submitted information showing that their father was held at a camp in St. Cyprieu, France in May 1940 and was transferred to Savoie, France in 1941 and to Venissieux camp in France in 1941. The Claimants stated that their grandmother was deported to Sobibor, where she was killed on 23 April 1943, and that their father was deported from Venissieux camp to Auschwitz, where he was killed sometime in 1942.

In support of their claims, the Claimants submitted their birth certificates, their father's birth certificate, their grandmother's marriage certificate, and their father's 1941 pocket calendar, which lists bank accounts and other personal information. On the first page of the calendar, Hermann Bienes wrote his name "Hermann Armand Bienes."

The Claimants indicated that [REDACTED] was killed at Sobibor on 23 April 1943 and that the date and circumstances of [REDACTED]' death are unknown. The Claimants, who are twins, indicated that they were born on 22 February 1927 in Frankfurt am Main.

Information Available in the Bank Records

Account Owner Johanna Bienes

The bank records consist of an account registry card and printouts from the database of Bank I. According to these records, the Account Owner was Johanna Bienes of Frankfurt am Main. The bank records indicate that Account Owner Johanna Bienes held two accounts: a custody account and a demand deposit account. The records do not indicate when either account was opened, but there is an indication that the custody account was closed on 5 September 1933, and that the demand deposit account was closed on 6 September 1933. The bank records do not show to whom the accounts were paid, nor do these records indicate the value of these accounts. There is no evidence in the bank records that Account Owner Johanna Bienes or her heirs closed the accounts and received the proceeds themselves.

Account Owner Hermann Bienes

The bank records consist of a customer card and correspondence between Bank II and the HCPO. According to these records, the Account Owner was Hermann Armand Bienes. The Bank informed the HCPO in a letter of 6 October 1999 that Account Owner Hermann Bienes held a custody account at the Bank which was opened when he was present in Marseilles, France. The opening date and balance of the account is unknown. There is an indication in the records that the account was transformed to a retained mail account on 25 February 1946 and was closed on 3 March 1947. In addition, the Bank's letter acknowledges that Account Owner Herman Bienes is Claimant [REDACTED 2]'s father. In a letter from the HCPO to Bank II dated 1 November 1999, the HCPO noted that on 3 March 1947, the date on which the account was closed, and for three days thereafter, Claimant [REDACTED 2], along with her mother and

brother, were interned at Ellis Island after a lengthy journey from Europe to the United States, and therefore would have been unable to close the account at that time. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 claims of the Claimant [REDACTED 1] and Claimant [REDACTED 2] in one proceeding.

Identification of the Account Owners

Account Owner Johanna Bienes

The Claimants have plausibly identified Account Owner Johanna Bienes. Their grandmother's name matches the published name of the Account Owner. In addition, the Claimants identified their grandmother's city of residence, which matches unpublished information about the Account Owner contained in the bank records.

Account Owner Hermann Bienes

The Claimants have plausibly identified Account Owner Hermann Bienes. Their father's name matches the unpublished name of the Account Owner. In a letter to the HCPO dated 6 October 1999, Bank II acknowledged that Claimant [REDACTED 2]'s father was the Account Owner. Finally, the Claimants indicated that their relative was imprisoned in at least three different camps in France, which matches unpublished information regarding the country of the Account Owner's residence contained in the bank records. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Johanna Bienes. In addition, the database contains the name of a person named Hermann Bienes and indicates that his date of birth was 24 April 1891 and his place of birth was Frankfurt am Main, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that both Account Owners were Jewish and that Account Owner Johanna Bienes was killed at Sobibor and Account Owner Hermann Bienes was killed at Auschwitz. As noted above, a person named Hermann Bienes was included in the CRT's database of Nazi victims.

The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting documents demonstrating that Johanna Bienes was their grandmother and that Hermann Bienes was their father. The CRT notes that Claimant [REDACTED 1] indicated in his claim form that his cousin, [REDACTED], who is the son of the Claimants' late brother [REDACTED], submitted a claim to the account of Johanna Bienes. However, as of the date of this award, the CRT has not received a claim from [REDACTED] to Johanna Bienes' account.

The Issue of Who Received the Proceeds

Given the application of Presumptions (e), (h) and (j) as provided in Article 28 (see Appendix A), 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.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that Account Owner Hermann Bienes was their father and Account Owner Johanna Bienes was their grandmother, and that these 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

In this case, the Account Owners held two custody accounts and one demand deposit account. Pursuant to Article 29 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 a custody account was 13,000.00 Swiss Francs. In 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs. The total value of Johanna Bienes's custody account and demand deposit account and of Hermann Armand Bienes's custody account was 28,140.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 337,680.00 Swiss Francs.

Division of the Award

Pursuant to Article 23 of the Rules, each of the Claimants is entitled to one-half of the award.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 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
March 5, 2003

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).