

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
acting on behalf of herself and of [REDACTED]

in re Accounts of Hermann and Malvina Blank

Claim Number: 201329/EZ¹

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the "Claimant") to the account of Hermann Blank. The Award is to the account of Hermann and Malvina Blank (the "Account Owners") at [REDACTED] ("Bank I") and to the account Hermann Blank at [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 Claimant

The Claimant submitted a Claim Form and Initial Questionnaire asserting that the Account Owners were her uncle and aunt. The Claimant could not provide her uncle's date and place of birth, but stated that her aunt, the sister of the Claimant's father, [REDACTED], was born in Galati, Romania. The Claimant also submitted pictures of Malvina Blank. The Claimant stated that her uncle was a watch manufacturer who resided at Ilicia Br. 8 Dovrist, Zagreb, Yugoslavia, and traveled many times to Switzerland, having business connections with the [REDACTED BANK 2]. The Claimant stated that Hermann and Malvina Blank perished in the Holocaust. The Claimant stated that she was born on 16 February 1928.

The Claimant provided information and documents, which were given to the Claimant by the HCPO in 2000, about a safe deposit box numbered 1136 and a demand deposit account numbered 62049, both deposited in Bank I.

¹ The Claimant submitted an additional claim form to the State of New York Banking Department, Holocaust Claims Processing Office ("HCPO Claim"), which was registered under Claim Number 601609. The CRT has determined that this is a duplicate claim and is treating it under the consolidated Claim Number 201329/EZ.

Information Available in the Bank Records

Bank I

The bank records consist of a customer card, Power of Attorney forms and bank correspondence. According to these records, the Account Owners were Hermann and Malvina Blank of Zagreb, Yugoslavia who held an account of an unknown type, numbered 62049, and a safe deposit box. The bank records indicate that account 62049 was also used as a security deposit for a safe deposit box, which was opened on 16 December 1938, and was closed in July 1939 with the authorization of the Power of Attorney Holder, Hermann Blank. On 16 December 1938, the safe deposit box rental fees of 27.00 Swiss Francs were paid out of account 62049.

According to the bank records, account 62049 was closed on 12 September 1963. However, these records do not show who closed the account or its balance on the closure date. There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

Bank II

Bank documents consisting of bank correspondence and printouts of the database of Bank II indicate that Hermann Blank from Zagreb, Yugoslavia held a numbered demand deposit account. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves. These records show that this account had a balance of 7.00 Swiss Francs between 1932 and 1935. The bank documents indicate that on 29 November 1952 the account at issue was transferred to a suspense account, which is a grouping of dormant and open accounts. The CRT notes that this account was the subject of previous proceedings during CRT I, which will be explained in the following section.

Previous Proceedings Regarding the Demand Deposit Account at Bank II

On 20 August 1997, the Claimant submitted a claim to the Account of Hermann Blank to the Claims Resolution Tribunal For Dormant Accounts in Switzerland. Bank II and the Claimant (together, “the Parties”) each signed a Claims Resolution Agreement, agreeing that the claim would be resolved by the Tribunal in accordance with the Rules of Procedure for the Claims Resolution Process (“Rules of Procedure”). A Sole Arbitrator, [REDACTED], was subsequently appointed to resolve the claim. By letter dated 9 November 2000, the Claimant was invited to settle her claim for the amount of 70.00 Swiss Francs. Since the Claimant did not accept the Settlement Agreement proposal, her claim was referred to the Sole Arbitrator for a decision, which was set forth in a Final Award dated 15 March 2001 (the “Final Award”). In the Final Award, the Sole Arbitrator determined that the Claimant was entitled to the amount of 70.00 Swiss Francs, and ordered Bank II to pay this amount to the Claimant.

In a subsequent decision dated 9 May 2001, prompted by a request of the Claimant, the Sole Arbitrator determined that the Final Award did not contain any clerical, typographical, or computational errors that could be corrected by the Tribunal.

By a letter dated 3 August 2001, Special Master Michael Bradfield, appointed by the Court to supervise the Claims Resolution Process, determined that since the Demand Deposit Account was published on the February 2001 ICEP List of probable or possible Nazi victim accounts, the Claimant's claim could again be considered by the CRT (the "Special Master's Determination").

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her uncle's name and city and country of residence match the published information about the Account Owner contained in the bank documents. The CRT notes that only the Claimant's uncle's information was published on the List in 1997, while the name of the Claimant's aunt, who is also named as an Account Owner in the bank records, was not published. The Claimant submitted an Ernst & Young Information Form on 19 November 1997 indicating that Malvina Blank of Zagreb, Yugoslavia, was the wife of Hermann Blank, which matches unpublished information about the Account Owner listed in the bank documents.

Status of the Account Owners as Victims 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 died in the Holocaust. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Malvina Blank, and indicates that she resided in Zagreb, Yugoslavia, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents, including her family tree, demonstrating that Malvina Blank was a sister of the Claimant's father, [REDACTED].

The Issue of Who Received the Proceeds

Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.² The CRT concludes in this case that Presumptions (b), (h), and (j) apply and it is therefore plausible that the account proceeds of account number 62049 held at Bank I were not paid to the Account Owners or their heirs.

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

With respect to the safe deposit box held at Bank I, the CRT notes that it was closed by the authorization of Hermann Blank in July 1939. Thus, the Account Owners received the contents of the safe deposit box.

As stated previously, Special Master Michael Bradfield determined that the demand deposit account held at Bank II could again be considered by the CRT. The CRT has determined that the balance of 7.00 Swiss Francs between 1932 and 1935 as indicated by the bank records is correct. The CRT notes that the Account Owner was living in Yugoslavia during this time, and it is not likely that he was targeted directly by the Nazis at that time. Accordingly, the decision in the previous proceeding to award the Claimant a total of 70.00 Swiss Francs for the demand deposit account held at Bank II is affirmed. The Claimant's appeal of the decision of CRT I was premised on the Claimant's belief that her aunt and uncle must have held accounts at Swiss banks with a value greater than 7.00 Swiss Francs. While the 1932-1935 date of the account value of the account awarded in CRT I lends credibility to the low balance level of the Bank II account, the CRT has indeed discovered that the Account Owners held other assets of greater value, totaling 47,400.00 Swiss Francs, at another Swiss bank, and these are now being awarded. These bank assets may have been those that the Claimant was referring to in her appeal of the CRT I decision.

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 Owners were her uncle and aunt, and that relationship justifies 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 accounts.

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case for account number 62049, 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.

Article 37(3)(a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 35% of the Certified Award, and the claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the accounts value and 35% of the total award amount is 16,590.00 Swiss Francs.

Division of the Award

The Claimant is representing her sister, [REDACTED], in these proceedings. According to Article 29 of the Rules, her sister is entitled to receive one-half (1/2) of any payment made to the Claimant.

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

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. 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).