

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1], also acting on behalf of [REDACTED],
represented by [REDACTED]

and

to Claimant [REDACTED 2],
also acting on behalf of [REDACTED], [REDACTED], [REDACTED],
and [REDACTED]

in re Account of Wilhelm Blüh and Olga Blüh

Claim Numbers: 211139/NF, 211768/NF, 222831/NF, 222832/NF

Award Amount: 47,400.00 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 Wilhelm and Olga Blüh (the “Account Owners”) at the [REDACTED] (the “Bank”)

All awards are published, but where a claimant has requested confidentiality, as in this case [REDACTED] has, the names of the claimants, any relatives of the claimants other than the account owners, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1] submitted Claim Forms identifying the Account Owners as her father and stepmother, Wilhelm and Olga Blüh. Claimant [REDACTED 2] submitted Claim Forms identifying the Account Owners as her grandfather and step-grandmother. The Claimants stated that Wilhelm Blüh was born on 4 November 1880 in Visoko, Croatia, and was married to his first wife, [REDACTED], neé [REDACTED], in Graz, Austria. Wilhelm and [REDACTED] had three children: Claimant [REDACTED 1], [REDACTED] and [REDACTED], Claimant’s [REDACTED 2]’s father. The Claimants stated that Wilhelm Blüh married his second wife, Olga Blüh, neé [REDACTED], on 11 October 1925 in Teplice, Czechoslovakia, and that they resided at Annenstrasse 31 in Graz until 1938. Olga Blüh was born on 11 November 1889 in Teplice.

Claimant [REDACTED 2] submitted a letter from Olga Blüh to her step-son [REDACTED], dated 1 August 1943, which set out the plight of the Account Owners from 1939 to 1943. Until

1938, Wilhelm and Olga Blüh owned and operated a leather business located at Annenstrasse 31 in Graz, Austria. In 1939 after the *Anschluss*, Wilhelm and Olga Blüh fled to Zagreb, Croatia until 1940, when the Croatian Police forced them to move to Jastrebarsko, Croatia, a collection place for foreign Jews. The German army invaded Croatia on 6 April 1941, and Wilhelm and Olga Blüh were forced to flee and hide until October 1941, when they took up temporary residence in Ljubljana, Slovenia. Wilhelm Blüh died on 7 December 1941 in Ljubljana. As the situation in Ljubljana worsened, Olga Blüh fled to Aprica, Italy (20 kilometers from the Swiss border). Olga Blüh was able to obtain a refugee passport in Italy, which enabled her to travel to Santiago, Chile, where she lived until her death on 30 April 1974.

Claimant [REDACTED 1] stated that she is the daughter and stepdaughter of Wilhelm and Olga Blüh, and that she was born in Graz on 14 December 1914. Claimant [REDACTED 2] stated that she is the granddaughter of Wilhelm and Olga Blüh, and that she was born in New York, New York, the United States, on 21 December 1947.

Information Available in the Bank Records

The bank records consist of a bank ledger sheet. According to these records, the Account Owners were Wilhelm Blüh and Frau Olga Blüh who held an account of unknown type numbered 61908. The account was closed on 9 April 1938, unknown by whom. The amount in the account on the date of its closure is unknown. There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Wilhelm Blüh, numbered 44114, and of Olga Blüh, numbered 43707.

The records of Wilhelm and Olga Blüh indicate that they lived at Annenstrasse 31 in Graz, Styria, Austria. These records also demonstrate that the assets disclosed by Wilhelm and Olga Blüh were transferred to the Austrian authorities.

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 four claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. Their relatives' names match the published names and address of the Account Owners, as well as the information contained in the Austrian State Archives' records. The CRT notes that the Claimants identified Wilhelm Blüh and Olga Blüh as related even though they were published separately on the list of Swiss bank accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"), which was published on 5 February 2001. In support of their claims, the Claimants submitted documents, including official documents, family trees and personal correspondence. The CRT also notes that there are no other claimants to this account.

Status of the Account Owners as a Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and were forced to flee their home in Austria after the *Anschluss*.

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 they are the stepdaughter and granddaughter of the Account Owners. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and the application of Presumptions (a) and (j) as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds in this case were not paid to the Account Owner or her heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in determining 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 the Account Owners were their parents (in the case of [REDACTED 1]) and grandparents (in the case of [REDACTED 2]), and 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 one account of unknown type. 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 investigation carried out pursuant to the instructions of ICEP (the "ICEP Investigation"), the value given to an unknown account is 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 31(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

Division of the Award

Claimant [REDACTED 1] is representing her brother, [REDACTED], in these proceedings. Claimant [REDACTED 2] is also representing her uncle, [REDACTED], as well as her cousins [REDACTED] and [REDACTED], who are the children of Claimant [REDACTED 1], and her cousins [REDACTED] and [REDACTED], who are the children of [REDACTED].

According to Article 23 of the Rules, children of Account Owners who have submitted a claim are entitled to equal shares of the award. Where a child of the Account Owner is deceased, but that child's descendants are living and have submitted a claim or claims, those descendants are entitled to equal portions of the deceased child's share of the award.

Accordingly, each of the three children of the Account Owners are entitled to an equal share of the award. Claimant [REDACTED 1] is the biological child of Wilhelm Blüh and the adopted child of Olga Blüh and as such is entitled to one-third of the award. [REDACTED] is the biological son of Wilhelm Blüh and the adopted son of Olga Blüh and is entitled to one-third of the award. [REDACTED] is deceased, and in accordance with his will, Claimant [REDACTED 2] is entitled to receive her one-third of the award. [REDACTED] is the biological son of Wilhelm Blüh and the adopted son of Olga Blüh, and is therefore entitled to one-third 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
April 4, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).