

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Gustav and Gertrude Bondy

Claim Number: 600513/AA¹

Award Amount: 312,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Gustav and Gertrude Bondy (the “Account Owners”) 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 to the Holocaust Claims Processing Office (“HCPO”) in April 1998 identifying the Account Owners as his uncle, Gustav Bondy, who was born on 31 October 1888 in Prague, Austro-Hungary (present day Czech Republic), and his aunt, Gertrude Bondy (née [REDACTED]), who was born on 26 March 1902. According to the Claimant, his uncle and aunt, who were Jewish, lived at Rakovnicka 1 and Prokopova 8 in Prague. The Claimant submitted information showing that his uncle and aunt were deported to Poland in 1941 and that his uncle died in the Lodz Ghetto in 1944. The Claimant’s aunt was never heard from after the Second World War. The Claimant indicated that he was born on 9 July 1924 in Prague, the son of [REDACTED] and [REDACTED], née [REDACTED], the sister of Gustav Bondy. In support of his claim, the Claimant submitted documents from the Federation of Jewish Communities in Czechoslovakia.

¹ The Claimant submitted a claim, numbered B-00907, on 2 April 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 600513/AA.

Information Available in the Bank Records

The bank records consist of excerpts of custody account ledgers and correspondence between the Bank and the “HCPO”. According to these records, the Account Owner was Gustav Bondy of Prokopova 8, Prague. The records show that the Account Owner held two custody accounts, numbered 9871 and 10510. According to these records, custody account number 9871 was opened on 7 August 1930 and was closed on 20 October 1938. Custody account number 10510 was opened on 23 December 1930 and was closed on 24 April 1939. The bank records also show that both accounts were included on a list of accounts that had been closed by 31 December 1941. The bank records do not indicate to whom the proceeds of the accounts were paid, nor do these records indicate the value of these accounts. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

In addition, the bank records indicate that Gustav Bondy and his wife, Gertrude, held a customer number, 1353, and both had authority to individually dispose of the account under this customer number. The bank records indicate that customer 1353 held a custody account, numbered 21690 and that the account was closed on 5 May 1939. There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

The CRT’s Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His uncle’s and aunt’s names match the unpublished names of the Account Owners. The Claimant identified his uncle’s and aunt’s street address in Prague, which matches unpublished information about the Account Owners contained in the bank records.

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 that his uncle died in the Lodz ghetto in 1944 and that his aunt was never heard from after her deportation to Poland.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Gustav Bondy and indicates that his date of birth was 31 October 1888 and place of birth was Czechoslovakia, 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 he is related to the Account Owners by submitting documents demonstrating that he is the nephew 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

Based on its precedent and 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 with regard to the custody account closed 24 April 1939 and the custody account closed 5 May 1939 that Presumptions (a) and (j) apply and it is therefore plausible that the account proceeds were not paid to the Account Owners or their heirs.

With regard to the custody account closed 20 October 1938, the CRT has decided not to reach a decision at this time pending further consideration as to whether or not the Account Owners or their heirs received the proceeds of this account.

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 Governing the Claims Resolution Process (the "Rules"). Second, the Claimant has plausibly demonstrated that the Account Owners were his uncle and aunt, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner 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 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. According to the bank records, Gustav Bondy held one custody account closed 24 April 1939, and Gustav and Gertrude Bondy held one custody account closed 5 May 1939. The total value of those two accounts equals 26,000.00 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 312,000.00 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 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

23 January 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).