

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Michael Kenneth Rawack,
acting on behalf of himself and Ingeborg Rawack,
Stephen Beermann, Hildegard Brandt, Eleanor Greenwood and Keith Rawack

in re Account of Lina Brandt

Claim Number: 218929/MBC

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Michael Kenneth Rawack (the “Claimant”) to the Account of Lina Brandt (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his great-grandmother, Lina Brandt, née Goldstein, who was born on 11 April 1866 in Posen, Germany, and was married to Salomon Brandt on 8 December 1889, in Posen. According to the Claimant, his great-grandmother, who was Jewish, lived in Berlin until November 1938. At that time, she fled Germany via Switzerland and Holland, arriving in Australia in December 1938, where she died on 15 February 1950. The Claimant stated that he represents his great-aunt, Hildegard Brandt, who is the daughter-in-law of Lina Brandt; his mother, Ingeborg Rawack; his cousin, Eleanor Greenwood; and his uncle, Stephen Beermann; who are all the grandchildren of Lina Brandt; and his brother, Keith Rawack, who is a great-grandson of Lina Brandt. The Claimant stated that he and the individuals whom he represents are the only heirs of his great-grandmother. The Claimant stated that he was born on 16 August 1945.

Information Available in the Bank Records

The bank records consist of a printout from the Bank’s database. According to these records, the Account Owner was Lina Brandt, née Goldstein, who resided at Motzstrasse 54, Berlin, Germany, and the Power of Attorney Holder was Lothar Brandt. The bank records indicate that the Account Owner held an account of unknown type that was opened on 31 July 1930. The bank records do not show if or when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. The auditors who carried out the

investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) did not find this account in the Bank’s system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the bank records that the Account Owner or her 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. His great-grandmother’s name matches the published name of the Account Owner and his great-uncle’s name matches the published name of the Power of Attorney Holder. The Claimant provided his great-grandmother’s street address in Berlin before the Second World War, which is within one-half kilometer of the unpublished street address of the Account Owner contained in the bank documents. In support of his claim, the Claimant submitted documents, including copies of his great-grandmother’s passport, her marriage certificate, her death notice, and her death certificate. The Claimant has also provided copies of his great-uncle’s death certificate as well as documents on his own identity and family history.

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 that she lived in Germany during the Second World War. Further, the Claimant has stated that the Account Owner fled Berlin in order to escape further persecution.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents, including his great-grandmother’s passport, her marriage certificate, death notice, and death certificate, and his great-uncle’s death certificate, demonstrating that the Claimant is the great-grandson of the Account Owner. The Claimant has stated that his great-grandmother had no surviving heirs other than himself and the individuals he represents.

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.¹ The CRT concludes in this case that presumption (j) applies, and it is therefore plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder or their heirs.

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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 his great-grandmother, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her 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.

Article 37(3)(a) of the Rules provides that where the value of an award is calculated using 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 account value and 35% of the total award amount is 16,590.00 Swiss Francs.

Division of the Award

The Claimant is representing his mother, Ingeborg Rawack; his uncle, Stephen Beermann; his great-aunt, Hildegard Brandt; his cousin, Eleanor Greenwood; and his brother, Keith Rawack, in these proceedings. According to Article 29(1)(c) of the Rules, Ingeborg Rawack, Stephen Beermann, and Eleanor Greenwood are each entitled to one-third of the award. According to Article 29(1)(c) and (f) of the Rules, because Hildegard Brandt is the spouse of one of the Account Owner's children, and a child of that Account Owner's child has submitted a claim to the account, she is not entitled to any share in the award, and because the mother of Michael and Keith Rawack is represented in the claim, they are not entitled to any share in the award.

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

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).