

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Eric Breuer

in re Account of *Frau* Jenny Breuer

Claim Number: 204437/IG

Award Amount: 528,000.00 Swiss Francs

This Certified Award is based upon the claim of Eric Breuer (the “Claimant”) to the account of Jenny Breuer (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. 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 and Initial Questionnaire identifying the Account Owner as his aunt (the wife of his paternal uncle), Jenny Breuer, née Kohn, who was born on 30 June 1871 in Vienna, Austria, and was married to Samuel Heinrich Breuer, who was born on 30 June 1865 in Vienna and died in 1926.

The Claimant stated that his aunt, who was Jewish, resided at Kohlmessergasse 5, Vienna I, until 1940, when she was forced to flee with the Claimant’s parents to France. The Claimant further stated that his aunt was arrested in Nice, France, by the Nazis. On 29 April 1944, she was deported on convoy 72 via Drancy, France, to Auschwitz, where she perished. The Claimant indicated in his Initial Questionnaire that after the German annexation of Austria in March 1938 (the “*Anschluss*”), the Nazi authorities coerced his aunt to withdraw the balances in her Swiss account at the Zurich branch of the Bank and transfer the proceeds in the amount of 80,000.00 Swiss Francs. The Claimant further indicated that his family was deported and the family business, *Brüder Breuer*, a tie manufacturer located at Kohlmessergasse 6, Vienna I, with twenty-one agencies worldwide, was aryanized in 1938. The Claimant submitted his aunt’s birth certificate; a list of the people on convoy 72, showing his aunt’s name; the corporate letterhead of *Brüder Breuer*, indicating various correspondent bank accounts used by the company, including an account with the Zurich branch of the Bank; and a photograph of himself wearing a striped concentration camp uniform, taken by France Press agency in May 1945.

The Claimant indicated that he was born on 1 June 1911 in Vienna and resided at Kohlmessergasse 3, Vienna I, prior to the Nazi occupation. The Claimant also indicated that he

was interned in France but managed to escape. He crossed the Swiss border at St. Julien but was arrested by the Swiss police on his way to Geneva and kept in custody at the military prison in Geneva, where he was mistreated and intimidated. Eventually, he was sent back to France. The Claimant stated that his aunt did not have any children, and that he is the only surviving family member.

Information Available in the Bank Record

The bank record consists of an opening card. According to this record, the Account Owner was *Frau* Jenny Breuer of Vienna, Austria. The bank records indicate that the Account Owner held a demand deposit account, which was opened on 31 May 1931 and closed on 10 January 1939. The amount in the account on the date of its closure is unknown. The bank records do not show to whom it was paid. There is no evidence in the bank record that the Account Owner or her 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, numbered 30882, concerning the assets of Jenny Sara Breuer. According to these records, Jenny Breuer, who was Jewish, was born on 29 June 1871, resided at Kohlmessergasse 5/6, Vienna I, and was a widow. These records indicate that Jenny Breuer's total wealth was estimated at 281,500.00 Reichsmarks and she had to pay a "flight tax" (*Reichsfluchtsteuer*) in the amount of 70,350.00 Reichsmarks. In the section where assets held at foreign financial institutions are usually mentioned, there is a reported asset of 44,000.00 Swiss Francs in cash. Additionally, according to these records, Jenny Breuer owned several residential apartment buildings at Nestroygasse 8, Vienna II (owned in full); at Vorgartenstrasse 183, Vienna II; at Reichsbrüchenstrasse 25, Vienna II (owned one-half); at Gr. Stadtgutgasse 16, Vienna II (owned one-third); at Schottenfeldgasse 16, Vienna VII (owned one-half); and at Kohlmessergasse 6 (owned one-fifth). Jenny Breuer's property also included various bonds and stocks in Austrian and foreign companies, as well as jewelry and various luxury objects.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His aunt's name matches the published name of the Account Owner. The Claimant also provided his aunt's city of residence which matches unpublished information about the Account Owner contained in the bank documents.

The CRT notes that the Claimant submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account at the Zurich branch of the Bank owned by his aunt, Jenny Breuer, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimant has based his present claim not simply on the fact that an individual identified on the ICEP list as owing a Swiss bank account bears that same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP list. It also indicates that the Claimant had reason to believe his relative owned a Swiss bank account prior to the publication of the ICEP list. This supports the credibility of the information provided by the Claimant.

In support of his claim, the Claimant submitted documents, including his aunt’s birth certificate and a corporate letterhead of the family business showing that the company used a business correspondent account at the Zurich branch of the Bank. Additionally, the Claimant stated in the Initial Questionnaire that his aunt was forced to withdraw the balances in her Swiss account at the Zurich branch of the Bank and transfer the proceeds to the Nazi Regime, which matches information available in the Austrian State Archive records.

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 was deported to Auschwitz, where she perished in 1944. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Jenny Breuer Kohn, and indicates that she was deported in 1944 on the convoy 72, 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 Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that he is the Account Owner’s nephew. There is no information to indicate that the Account Owner has 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*, the Austrian citizens who are Jewish report their assets in the 1938 census, and their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. The CRT’s precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis. Further, given the application of Presumptions (a), (d) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”) (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her 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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his aunt, 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

In this case, the Account Owner held one demand deposit account. The bank record does not indicate the value of the demand deposit account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, the average value of the same or similar type account in 1945 is used to calculate the current value of the account, unless there is plausible evidence to the contrary. In this case, the CRT has concluded that there is plausible evidence of the value of the Account Owner's account at the Bank. The Account Owner made a declaration against interest to the Nazi Regime of an asset of 44,000.00 Swiss Francs which was reported in a section of the census form where bank assets were to be reported. The Account Owner clearly held a demand deposit in a Swiss bank, and the account was closed on 10 January 1939 after it had been reported in the census on 15 July 1938, and the Account Owner died in Auschwitz in April 1944. For these reasons, the present value of the amount of the award is determined by multiplying the historic value of 44,000.00 Swiss Francs by a factor of 12, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is 528,000.00 Swiss Francs.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 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
April 21, 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).