

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by [REDACTED]

in re Account of Dr. Hans Brück

Claim Number: 217354/AA

Award Amount: 49,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Dr. Hans Brück (the “Account Owner”) 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 Form identifying the Account Owner as her father, Hans Brück, who was born on 19 March 1898 in Vienna, Austria, and was married to Ida Brück, née [REDACTED]. The Claimant stated that she is the daughter of the Account Owner and that she was born in Vienna on 13 July 1928. The Claimant explained that her father was Jewish and worked as an attorney and secretary of the managing director at the factory Gerngross A.G. in Vienna and that he used an address at Stabensterngasse in Vienna. According to the Claimant, as a result of the Nazi annexation of Austria in March 1938 (the “Anschluss”), her father was not allowed to continue practicing as an attorney, and the Nazis forced him to perform labor and to aid them in implementing management procedures at the factory. During this time, according to the Claimant, her father tried to secure visas for himself and his family to escape Austria. Finally, he was able to obtain the visas, and on 5 November 1938, he and his family fled to Australia, where the Claimant’s father lived until his death on 9 January 1977.

Information Available in the Bank Records

The bank records consist of a bank ledger. According to this record, the sole Account Owner was Dr. Hans Brück who used the address Stabensterngasse in Vienna. The bank record

indicates that the Account Owner held two accounts: a demand deposit account and a custody account. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

Ida Brück is listed as the holder of power of attorney of the demand deposit account. The bank records indicate that the custody account was transferred to the Nazi-controlled *Osterreichische Kreditanstalt Bankverein* and had a balance of 2,000.00 Swiss Francs when it was closed and transferred on 17 August 1938. While there is no indication in the bank records that the demand deposit account was transferred to a Nazi-controlled bank, the CRT notes that the demand deposit account was closed on 7 April 1938, which was after the *Anschluss*, and had a balance of 247.00 Swiss Francs on the date of its closure. 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 determined that the balances of the accounts had been paid to the Nazi authorities.

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 Dr. Hans Brück and his wife, Ida Brück (née [REDACTED]).

These records indicate that Hans Brück was born on 19 March 1898, and that he reported an account he held at the Bank in Zurich, which had a reported value of 2,000.00 Swiss Francs.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her father's name matches the published name of the Account Owner. Additionally, the Claimant has provided her father's professional title and his street address at Stabensterngasse, which matches unpublished information about the Account Owner contained in the bank documents. Moreover, the Claimant's mother's name, Ida Brück, matches the name of the holder of power of attorney of Hans Brück's demand deposit account.

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 was persecuted while living in Austria until late 1938. Specifically, in March 1938, her father was prohibited from practicing as an attorney and was forced to work in a factory.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner. In addition to providing general historical family information and specific information about the Account Owner, she also provided a family tree illustrating exactly how she is related to the Account Owner.

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.¹ With regards to the demand deposit account, the CRT concludes in this case that one or more of these presumptions applies and it is therefore plausible that the account proceeds were not paid to the Account Owner or his heirs.

With regards to the custody account, the bank records indicate that the account was transferred to the Nazi-controlled *Osterreichische Kreditanstalt Bankverein*.

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 her father, and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

The bank records indicate that the value of the demand deposit account as of 7 April 1938 was 247.00 Swiss Francs, and, as of 17 August 1938, the custody account had a value of 2,000.00 Swiss Francs. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and if the amount in a custody account was less than 13,000.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the demand deposit account shall be determined to be 2,140.00 Swiss Francs, and the amount in the custody account shall be determined to be 13,000.00 Swiss Francs. In this case, the Account Owner declared on the Austrian census form the value of a Swiss bank account to be 2,000.00 Swiss Francs, which is consistent with the information in the bank records regarding the value of the custody account. Because the Account Owner himself declared this value, the amount in the custody account shall be determined to be 2,000.00 Swiss Francs. Given the absence of plausible evidence to the contrary, the CRT determines that the value of the demand deposit account shall be 2,140.00 Swiss Francs, producing a total award amount of 4,140.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the sum of the historic balance and the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case is 49,680.00 Swiss Francs.

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

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 account value of the demand deposit account. Thus, the initial payment amount is 32,988.00 Swiss Francs.

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. "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 does not exist 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).