

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Mark Brunner

in re Account of Maria Brunner

Claim Number: 218044/EZ¹

Award Amount: 276,480.00 Swiss Francs

This Certified Award is based upon the claim of Mark Brunner (the “Claimant”) to the accounts of Maria Brunner (the “Account Owner”) at the Bern and Luzern branches of the [REDACTED] (“Bank I”) and at the [REDACTED] (“Bank II”).

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 identifying the Account Owner, Maria (Mitzi) Brunner, née Urban, as his mother, who was born on 9 August 1891 in Wiener-Neudorf, Austria, and was married to Felix Brunner in 1923 in Vienna, Austria. The Claimant stated that before the Second World War, his parents lived in Mödling, Austria, and Vienna, Austria, where his father was a factory owner. The Claimant stated that after the German annexation of Austria (the “*Anschluss*”), his father, who was Jewish, fled with him and his sister Helene. The Claimant explained that his mother remained with her siblings in Vienna. The Claimant stated that his parents survived the War, and that his mother died on 16 April 1962 in Mödling and his father died on 3 August 1963 in Mödling. The Claimant indicated that he was born on 13 March 1926 in Vienna.

¹ The Claimant submitted additional claims to the accounts of Isabella Trier, Berta Trier, Robert Brunner and Felix Brunner, which are registered under the claim numbers 218040, 218042, 218043 and 218045, respectively. The CRT will treat the claims to these accounts in separate decisions.

Information Available in the Bank Records

The bank records relating to Bank I consist of printouts from Bank I's database. The records indicate that the Account Owner held two accounts of unknown type. One account was opened by Maria Brunner at the Bern branch of Bank I. The account was transferred on an unknown date to a suspense account, which is a grouping of open and dormant accounts, and remains open and dormant. According to the bank records, the balance of this account on the date of transfer was 104.65 Swiss Francs. The other account was opened by Marie Brunner at the Luzern branch of Bank I. This account was transferred on 10 August 1955 to a suspense account, and it remains open and dormant. According to the bank records the balance of this account on the date of transfer was 14.25 Swiss Francs.

The bank records relating to Bank II consist of a ledger card and a power of attorney form and contain a signature sample from the Account Owner. These records indicate that the Account Owner was Maria Brunner from Vienna, Austria, and that she held a custody account and a demand deposit account. Power of Attorney over the custody account was granted to Mr. Werner S. from Basel. The bank records do not indicate the Account Owner's relationship to the Power of Attorney Holder. The bank records indicate that the custody account was opened on 9 June 1933, when the power of attorney form was signed in Vienna. The bank records do not indicate when the demand deposit account and the custody account were closed, or to whom they were paid, nor do these records indicate the value of these accounts. 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") did not find these accounts in Bank II's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945.

There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder or their heirs closed any of the accounts at issue 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 Maria Brunner numbered 23905 and dated on 15 July 1938 in Mödling. According to these records, Maria Brunner was born in August 1891, and was considered by the Nazis to be "Aryan." The records indicate that Maria Brunner was married to Felix Brunner, who was Jewish and was born on 28 April 1885. The records indicate that Maria and Felix Brunner resided in Mödling, where they owned real estate at Mozartgasse 7 with an estimated value of 80,000.00 Reichsmarks (1938 value). These records contain a list of assets owned by Maria Brunner that were confiscated by the Nazis, including Austrian government bonds, real estate and personal properties. These records also contain a signature sample of Maria Brunner. There is no indication in the census records that Maria Brunner owned a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His mother's name matches the published name of the Account Owner. The Claimant stated that his mother resided in Vienna, Austria, which matches unpublished information about the Account Owner contained in the bank records of Bank II. Moreover, the information contained in the Austrian Census records precisely matches the information provided by the Claimant. The signature sample contained in the Austrian Census records is identical to the signature of the Account Owner contained in the bank records of Bank II. Therefore, it is clear that the Claimant's mother and the Account Owner are the same person.

The CRT notes that the bank records relating to Bank I do not contain any specific information about the Account Owner other than her name. Thus, the additional information provided by the Claimant cannot be compared with the bank information. However, the CRT notes that there are no other claims to the accounts of Maria Brunner at Bank I.

Status of the Account Owner as a Target or Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Target of Nazi Persecution because she was married to a Jewish man. Her family had to flee from the Nazis.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The bank records relating to Bank I indicate that the accounts of unknown type remain open and dormant. Therefore, it is clear that neither the Account Owner nor her heirs received the proceeds of those accounts.

As for the accounts at Bank II, given the application of Presumptions (f), (h), and (j) contained in the Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder or their heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (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.

² 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 mother, 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 accounts.

Amount of the Award

The bank records relating to Bank I indicate that the value of one of the accounts of unknown type on the date of its transfer to a suspense account was 104.65 Swiss Francs. The date of transfer is unknown, and therefore the CRT cannot calculate the present value of this account. Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here, as determined by the CRT, 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 an award amount of 47,400.00 Swiss Francs for this account.

The bank records relating to Bank I indicate that the value of the second account of unknown type as of 10 August 1955 was 14.25 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 165.00 Swiss Francs, which reflects standardized bank fees charged to the account between 1945 and 10 August 1955. Consequently, the adjusted balance of the account at issue is 179.25 Swiss Francs. According to Article 35 of the Rules, if the amount in an account of unknown type was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an award amount of 47,400.00 Swiss Francs for this account.

As noted above, the bank records do not indicate the value of the demand deposit account and the custody account at Bank II. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of a custody account was 13,000.00 Swiss Francs. The present value of these amounts is calculated by multiplying them by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an award amount of 181,680.00 Swiss Francs for these two accounts.

Consequently, the total award amount for the four accounts is 276,480.00 Swiss Francs.

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 65% of the Certified Award, and the claimant may receive a second payment of up to 35% 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 values, and 65% of these accounts award amount is 179,712.00 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 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
October 24, 2002

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).