

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Berthold Buchholz

Claim Number: 213446/EZ¹

Award Amount: 12,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED] (the “Claimant”) to the account of Berthold Buchholz (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 Claim Forms identifying the Account Owner as her maternal great-uncle, Berthold Buchholz, who was born to [REDACTED] and [REDACTED] on 10 April 1886 in Vienna, Austria. The Claimant stated that Berthold Buchholz’s parents were the grandparents of [REDACTED], née [REDACTED], who is the Claimant’s late mother. The Claimant indicated that her great-uncle was a lawyer with an office in Vienna who was active and well-known in the Jewish Community there. The Claimant stated that her great-uncle frequently traveled to Zurich. Being Jewish, he had to live in hiding in Vienna during the Second World War. The Claimant stated that she is the only living family member of her great-uncle and that most of her family was taken to work camps by the Nazis. The Claimant stated that her great-uncle never married, or had any children, and died on 3 November 1950 in Vienna. In support of her claim, the Claimant submitted copies of various documents, including her mother’s death certificate and photographs of her great-uncle.

The Claimant stated that she was born on 28 August 1945 in Cluj, Romania. She currently lives in Ashqelon, Israel.

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 213446 and 219709. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 213446.

Information Available in the Bank Records

The bank records consist of various registry cards. According to these records, the Account Owner was Dr. Berthold Buchholz, *Rechtsanwalt* (Lawyer), who lived at Streichgasse 2 in Vienna I, Kohlmarkt 7 in Vienna I, and used an address at Rennweg 26 in Zurich. The bank documents include the Account Owner's signature. The bank records indicate that the Account Owner held a demand deposit account, numbered 28947. The account balance in 1937 was 1,000.00 Swiss Francs. The account was closed on 28 September 1938, with an unknown balance. 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 (the "ICEP Auditors") indicated that the account was closed by a person whose identity is unknown, and was "potentially paid to unauthorized party." There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her maternal great-uncle's name matches the published name of the Account Owner contained in the bank records. The Claimant stated that her great-uncle lived in Vienna, which matches published information about the Account Owner contained in the bank records. Furthermore, the Claimant stated that her great-uncle was a lawyer, which matches unpublished information about the Account Owner contained in the bank 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 survived the Holocaust by hiding in Vienna.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting biographical details about her great-uncle some of which are confirmed by unpublished information in the bank records. The Claimant stated that she is her great-uncle's sole heir. She also provided her mother's inheritance documents demonstrating that her mother's maiden name was [REDACTED].

The Issue of Who Received the Proceeds

Given the existence of Nazi confiscatory legislation in Austria at that time² and the application of Presumptions (a) and (j) contained in Appendix A,³ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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.

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 great-uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

The bank records indicate that the value of the account as of 1937 was 1,000.00 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, in the absence of plausible evidence to the contrary the amount in the account would be determined to be 2,140.00 Swiss Francs. In this case the bank records appear to provide an accurate statement of the amount in the account at that time. The present value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case is 12,000.00 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).

² As described in the expanded version of Appendix A (see II. A. 2), which appears on the CRT II website -- www.crt-ii.org.

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal

December 27, 2002

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).