

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Joseph Ben-Brit
also acting on behalf of Natan Leonhard Ben-Brit, Israel Paul Bundheim, Thirza Feigenbaum
and Noa Rosel Leiserowiz

in re Accounts of Ernst Bundheim

Claim Number: 001044/MO

Award Amount: 94,800.00 Swiss Francs

This Certified Award is based upon the claim of Joseph Ben-Brit (the “Claimant”) to the accounts of Ernst Bundheim (the “Account Owner”) at 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 identifying the Account Owner as his father, Ernst Bundheim, who was born on 16 February 1895 in Altona, Germany, and was married to Johanna Bundheim, née Glückstadt, on 9 February 1923 in Hamburg, Germany. The Claimant indicated that his father was the son of Natan Bundheim and Caroline Gelle Bundheim, née Wertheim. The Claimant identified his father as an importer and exporter of mattress stuffing material (Crim d'Afrique) with offices at Hohe Bleichen 20, Hamburg. He also indicated that his family resided in Hamburg, at Haynstrasse 10 from 1926 to 1930, at Benekestrasse 2 from 1930 to 1935 and at Brahmsallee 26 from 1935 to 1939. The Claimant further stated that his father, who was Jewish, was arrested during the Night of Broken Glass Pogrom (*Kristallnacht*) on 10 November 1938, and was detained in the Oranienburg concentration camp until April 1939. The Claimant asserted that his father's property was confiscated and nationalized. According to the Claimant, his father was arrested again by the Belgians on 12 May 1940 and deported to France, where he was interned in the concentration camps in St. Cyprien and Gurs. The Claimant stated that his father was sent to Drancy on 3 March 1943 and to Majdanek on 6 March 1943, where he perished on 10 March 1943. The Claimant indicated that his mother died on 6 February 1996 in Bnei-Brak, Israel. Furthermore, the Claimant indicated that he was born on 11 February 1925 in Hamburg. The Claimant is representing his siblings: Natan Leonhard Ben-Brit (formerly Bundheim), who was born on 11 December 1923; Israel Paul Bundheim, born on 3 April 1926; Thirza Feigenbaum, née Bundheim, who was born on 31 March 1928; and Noa Rosel Leiserowiz, née Bundheim, who was born on 17 June 1937, all in Hamburg. In support of his

claim, the Claimant submitted various documents, including copies of his parents' marriage certificate, his and his siblings' birth certificates, a letter from his father from the Oranienburg concentration camp dated 11 December 1938, his father's business letterhead and signature sample, his father's temporary Swedish passport dated 30 January 1941 and postcards sent by his father from Gurs and Drancy concentration camps. The Claimant also submitted copies of victim lists, which include his father's name.

Information Available in the Bank Records

The bank records consist of a list of transferred accounts and a printout from the Bank's database. According to these records, the Account Owner was Ernst Bundheim who resided in Hamburg, Germany. The bank records indicate that the Account Owner held two accounts of unknown type, one of which was numbered 2176. The bank records do not show when the numbered account was opened, but they show that the account was repatriated to the *Reichsbank* in Germany on 8 December 1937. 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") determined that the amount in the account had been paid to the Nazi authorities.

The bank records indicate that the unnumbered account was opened in 1932, but they do not show when it was closed, or to whom it was paid. The auditors who carried out the ICEP Investigation did not find the unnumbered 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 the unnumbered account after 1945. There is no evidence in the bank records that the Account Owner or his heirs closed this account and received the proceeds themselves. The bank records do not indicate the value of either of these accounts.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father's name matches the published name of the Account Owner. The Claimant identified his father's city of residence, which matches published information about the Account Owner contained in the bank records. In support of his claim the Claimant submitted various documents, including copies of his parents' marriage certificate, his and his siblings' birth certificates, a letter from his father from the Oranienburg concentration camp dated 11 December 1938, his father's business letterhead, signature sample, temporary Swedish passport from 30 January 1941, and postcards sent by his father from Gurs and Drancy concentration camps. The CRT notes that there are no other claims to the accounts of Ernst Bundheim.

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 he perished in the Holocaust.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Ernst Bundheim, and indicates that he was born in 1885 and resided in Hamburg, 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 his son. There is no information to indicate that the Account Owner has other surviving heirs other than the Claimant and his siblings, whom he represents.

The Issue of Who Received the Proceeds

With regard to the numbered account, the bank records indicate that the proceeds were paid to the Nazis.

With regard to the unnumbered account, the CRT presumes that if one of the Account Owner's accounts at the Bank was paid to Nazis, it is plausible that all the Account Owner's accounts at the Bank were paid to Nazis. Given the application of Presumptions (f), (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners 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 his father, 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 accounts.

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

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

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 each of the accounts. Consequently the total award amount in this case is 94,800.00 Swiss Francs.

Division of the Award

The Claimant is representing his siblings in these proceedings. According to Article 29 of the Rules, each of the Claimant's siblings receives one-fifth of any payment made to the Claimant.

Initial Payment

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 the total award amount is 61,620.00 Swiss Francs. In this case, however, because Claimant Joseph Ben-Brit, Natan Leonhard Ben-Brit, and Israel Paul Bundheim are age 75 or older, they are entitled to receive payment of 100% of their portions of the total award amount. Accordingly, the initial payment amount is 81,528.00 Swiss Francs, which is comprised of 100% of Claimant Ben-Brit's, Natan Leonhard Ben-Brit's, and Israel Paul Bundheim's portion of the award (18,960.00 Swiss Francs each) and 65% of Thirza Feigenbaum's and Noa Rosel Leiserowiz's portions of the award (12,324.00 Swiss Francs each).

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

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).