

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Selma Corti and Hildegard Aeberhard

Claim Number: 210420/IG

Award Amount: 16,086.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Selma Corti and Hildegard Aeberhard (the “Account Owners”) at 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 and an Initial Questionnaire identifying Account Owner Selma Corti as his paternal grandmother, Selma (or Sela or Shela) Cortin (or Corti or Kortyn). The Claimant stated that the beneficial owner of the account was [REDACTED], the Claimant’s paternal grandfather, who was born in 1870 in Sebez, Russia, and was killed by the Nazis in Sebez in March 1942. The Claimant indicated that his paternal grandparents had two children: [REDACTED], the Claimant’s father, who was born in 1895 and died in 1975; and [REDACTED], who was born in 1899 and died in 1980, without descendants. The Claimant stated that his paternal grandfather was a wealthy businessman who, from 1928 to 1942, lived in Sebez. He also lived in Riga, Latvia, and in various cities in Switzerland, including Bern, Lausanne and Biel. The Claimant stated that his grandmother spent long periods of time in Switzerland for medical treatment.

Before the Russian Revolution the Claimant’s grandfather was the owner of a leather factory and a tannery in Sebez with a branch in Riga, and after the Revolution he was a bookkeeper. The Claimant explained that his grandfather sold his leather factory and put his money in a Swiss bank account. The Claimant mentioned that, because his grandfather was afraid of persecution, he might have opened the account at issue in his wife's name. The Claimant stated that his grandparents, who were Jewish, were murdered by the Nazis in Sebez in March 1942. The Claimant also explained that his family used the same spelling for the family name in Cyrillic but used different variations of it in Latin characters, including Cortin, Kortyn, and Corti.

In support of his claim, the Claimant submitted copies of his birth certificate, his father's death certificate, a photograph of his grandfather, and a document dated 26 November 1944 from the Yad Vashem archive, containing eye witness evidence describing the atrocities against the Jewish population of Sebezh and mass execution of the Sebezh Jews by the German troops. In a telephone conversation with the CRT on 24 April 2002, the Claimant stated that he did not possess any additional information about his grandmother.

The Claimant indicated that he was born on 28 December 1925 in Nizhniy Novgorod, the Soviet Union. The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his grandfather [REDACTED].

Information Available in the Bank Record

The bank record consists of an account ledger. According to this record, the joint Account Owners were Selma Corti, née [REDACTED], and Hildegard Aeberhard, née Mayer. Selma Corti resided in Biel, Switzerland, and Hildegard Aeberhard resided in Lugano, Switzerland. The bank record indicates that the Account Owners held a savings/passbook account, numbered 2586. The account was closed on 14 September 1949, and the amount in the account on the date of its closure was 1,455.05 Swiss Francs. The bank records do not show to whom the account was paid at its closure. The bank records show the balances of the account at various dates between 1938 and 1949, and indicate that the balance of the account was 1,340.50 Swiss Francs as of 1 January 1945.

There is no evidence in the bank record that the Account Owners or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified Account Owner Selma Corti. The Claimant explained that his grandmother, Selma Cortin, also used the surname Corti, which matches the published name of Account Owner Selma Corti. In addition, the Claimant identified his grandmother's connection to Biel, which is consistent with unpublished information in the bank records. The Claimant did not identify a person named Hildegard Aeberhard; however, CRT notes that the Claimant stated that all family documents relating to his grandmother's account were destroyed because of fear of Nazi persecution.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Account Owner Selma Corti's husband, [REDACTED], prior to the publication in February 2001 of the list of accounts determined by ICEP 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 owning a Swiss bank account bears the 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 that 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. The CRT notes that there are no other claimants to this account.

Status of the Account Owner Selma Corti as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Selma Corti was a Victim of Nazi Persecution. The Claimant stated that Account Owner Selma Corti was Jewish, and was murdered by the Nazis in March 1942.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to Account Owner Selma Corti by submitting documents demonstrating that Account Owner Selma Corti was his grandmother. There is no information to indicate that Account Owner Selma Corti has other surviving heirs.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h), (i) and (j) contained in Appendix A,¹ 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 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 Selma Corti was his paternal grandmother, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

According to Article 31 of the Rules, in cases where a joint account is claimed by relatives of only one of the joint account owners, it shall be presumed that the account was owned as a whole in equal shares by the account owners whose shares of the account have been claimed. The CRT notes that it has received no claims to the account of Account Owner Hildegard Aeberhard.

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

The bank records indicate that the value of the savings/passbook account as of 1 January 1945 was 1,340.50 Swiss Francs. 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 16,086.00 Swiss Francs.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive payment of 100% of the total award amount.

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

January 28, 2003

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).