

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Simon Cymerman

in re Account of Simon Cymerman

Claim Number: 707316/RS¹

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of Simon Cymerman (the “Claimant”) to the unpublished account of Simon Cymerman (the “Account Owner”) at the Bern branch of the [REDACTED] (the “Bank”).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 an Initial Questionnaire (“IQ”) identifying himself as the Account Owner, Simon Cymerman, who was born on 2 October 1926.

The Claimant indicated that he is Jewish, and that he held Polish citizenship before the Second World War. The Claimant further indicated that in 1943, he fled from Strasbourg, France to cities in southern France, including Lourdes, Cannes, and Saint Gervais, and finally into Switzerland. According to the Claimant, in Switzerland, he was placed first in various refugee camps, including camps Charmilles and Champel, both close to Geneva, Switzerland; then in an orphanage named *Lily Volkart*; and finally in a labor camp in Davesco, (Ticino) Switzerland. The Claimant stated that while his actual birth date was 2 October 1926, he falsified his age upon entry into Switzerland so that he would not be rejected at the border; consequently, some of his official papers indicate that his birth date was 20 June 1928.

¹ Simon Cymerman did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered FRE-0007-061, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 707316.

The Claimant explained that when he arrived at Charmilles refugee camp in August 1943, his money was confiscated and later deposited by Swiss authorities at the Bank.²

In support of his claim, the Claimant submitted copies of documents from the Bank. These documents are described in more detail below

The Claimant indicated that he was born on 20 June 1928.

Information Available in the Bank's Records

The CRT notes that 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") did not report an account belonging to Simon Cymerman during their investigation of the Bank.

The documents evidencing an account belonging to Simon Cymerman were submitted to the CRT by the Claimant and consist of a transfer certificate (*Übergabeprotokoll*), issued by the refugee camp in Charmilles, Switzerland, on 29 August 1943; a letter from the Bank addressed to the Account Owner at Davesco Work Camp (Ticino, Switzerland), dated 3 December 1943; and an account statement, dated 13 September 1943.

According to these documents, the Account Owner was Simon Cymerman, who was born 20 June 1928, and who was Polish and Jewish. These documents indicate that on 29 August 1943, Simon Cymerman was interned at Charmilles civil refugee camp in Switzerland, and that he was forced to transfer his funds, namely FF 150.00, to the authorities at that camp on that date. The transfer certificate also indicates that the camp authorities then transferred the funds to the Bank as trustee. The letter from the Bank indicates that if the Account Owner wished to access his funds, he was obliged to contact the Police Division of the Federal Department of Justice and Police in Bern, Switzerland.

The account statement dated 13 September 1943 indicates that a demand deposit account was opened in Simon Cymerman's name on 13 September 1943, and that 150.00 French Francs ("FF"), which the Bank equated to 2.40 Swiss Francs ("SF"), was credited to that account. These records contain no further information regarding the account's subsequent disposition.

² The CRT notes that pursuant to the Swiss Federal Council's Decree of 12 March 1943 ("the Decree"), the assets of all refugees who had entered Switzerland after 1 August 1942 were confiscated by the Swiss Federal authorities and held for them in accounts at the *Schweizerische Volksbank* (the "Bank"). The Decree applied retroactively to refugees who entered Switzerland after 1 August 1942, and provided that cash exceeding 100.00 Swiss Francs, securities, and valuables belonging to refugees were to be put under the control of the Swiss Federal authorities. See Independent Commission of Experts, Switzerland - Second World War, *Switzerland, National Socialism, and the Second World War: Final Report*, at 158-59 (2002) ("*Bergier Final Report*"). See also Independent Commission of Experts, Switzerland - Second World War, *Die Schweiz und die Flüchtlinge zur Zeit des Nationalsozialismus (Switzerland and Refugees in the Nazi Era)* ("*Refugee Report*").

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified himself as the Account Owner. The Claimant's name matches the unpublished name of the Account Owner.

In support of his claim, the Claimant submitted documents, including a transfer certificate, issued by the refugee camp in Charmilles, and an account statement, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank's records as the name of the Account Owner and evidencing the existence of an account in his name.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Simon Cymerman, and indicates that his date of birth was 20 June 1928, that he was a Polish national, and that he arrived in Switzerland on 28 August 1943, which matches the information that the Claimant provided about himself. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that there are no other claims to this 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 he is Jewish, that he fled Nazi persecution in France, and that he was interned in at least three refugee and work camps in Switzerland during the Second World War.

As noted above, a person named Simon Cymerman was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is the Account Owner by submitting specific information and documents, including a transfer certificate and a letter from the Bank.

The Issue of Who Received the Proceeds

Given that refugees in Switzerland whose assets were placed in accounts at the Bank by the Swiss authorities generally could not freely dispose over their accounts;³ that a number of account owners could not retrieve the value of those accounts following the Second World War;⁴ that complaints of refugees mostly concerned the fact that their deposited assets were not

³ *Refugee Report*, at 295, 315.

⁴ *Refugee Report*, at 309, 312 ff.

returned;⁵ that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; that the Account Owner would not have been able to obtain information about his account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner. Based on its precedent and 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 18 of the Rules Governing the Claims Resolution Process (the "Rules"). Second, the Claimant has plausibly demonstrated that he is the Account Owner, and that justifies an Award. Third, the CRT has determined that it is plausible that the Account Owner did not receive the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The Bank's records indicate that the value of the account as of 13 September 1943 was FF 150.00, which the Bank equated with SF 2.40. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The CRT notes that the Claimant himself provided the Bank statement showing the money that was confiscated from him. However, the CRT notes that there is no evidence that the statement accurately reflects the amount confiscated from the Claimant over sixty years ago. Moreover, according to official exchange rates used by the CRT, in 1943 FF 150.00 was equivalent to SF 7.50, not SF 2.40, indicating that the amount reflected as credited to the Claimant's account was under-reported by a factor of three. Given these facts, the CRT concludes that the account statement provided by the Claimant does not constitute evidence sufficient to rebut the Article 29 value presumption. Accordingly, the value of this account is determined to be SF 2,140.00. The current value of this amount is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 26,750.00.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to

⁵ Jung, Joseph (ed.): *Zwischen Bundeshaus und Paradeplatz - Die Banken der Credit Suisse Group im Zweiten Weltkrieg (Between Parliament and Paradeplatz: The Banks of the Credit Suisse Group in the Second World War)*, Zurich: NZZ Verlag, 2001, at 704.

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
25 November 2008