

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Accounts of Dr. Paul Norbert Ehrenstein and Edith Ehrenstein

Claim Numbers: 218296/JT; 219586/JT; 219587/JT¹

Award Amount: 289,902.12 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) to the accounts of Dr. Paul Norbert Ehrenstein (“Account Owner Paul Ehrenstein”) and Edith Ehrenstein (“Account Owner Edith Ehrenstein”) (together the “Account Owners”), at the Geneva and Zurich branches 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 Claimants submitted Claim Forms identifying the Account Owners as Claimant [REDACTED 1]’s parents and Claimant [REDACTED 2]’s maternal aunt and uncle, Dr. Ing. Paul Norbert Ehrenstein, who was born on 14 August 1895 in Vienna, Austria, and Edith Ehrenstein, née Pollak, who was born on 22 March 1894 in Johannesburg, South Africa. Claimant [REDACTED 2] indicated that he was claiming the account of the Account Owners in case his cousin, Claimant [REDACTED 1], did not submit a claim. Claimant [REDACTED 1] indicated that her parents were married on 20 September 1921 in Vienna, Austria and that she is their only child. Claimant [REDACTED 2] stated that his mother, [REDACTED], née [REDACTED], and Claimant [REDACTED 1]’s father were brother and sister. Claimant [REDACTED 1] indicated that her father, an engineer, and her mother, a psychologist, were both Jewish and lived in Vienna, Austria until a few days after the Nazi annexation of Austria (*Anschluss*) in March 1938, when they fled. According to Claimant [REDACTED 1], she and her parents fled Austria on the last train taking “foreign tourists” out of the country and went first

¹ Claimant [REDACTED 1] submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 219810. The CRT will treat the claim to this account in a separate decision.

to Lyon, France, and shortly thereafter, to Craponne, France, where they lived at Chateau des Hirondelles, Chemin des Alouettes. Claimant [REDACTED 1] indicated that in December 1939, her father was interned in a French concentration camp and she and her mother fled to Paris, France and London, England, eventually making their way to Johannesburg, South Africa in June 1940. Claimant [REDACTED 1] further indicated that her father was later released. Claimant [REDACTED 1] explained that prior to fleeing Austria, her father often traveled between Vienna and Lyon, passing through Switzerland. She also stated that both of her parents survived the Second World War and that her father never joined Claimant [REDACTED 1] and her mother in South Africa, but remained behind in France in the general area where he had been interned. Claimant [REDACTED 1] further stated that the Second World War separated her parents and that her father married [REDACTED] in Chalabre, France sometime after the end of the Second World War. Claimant [REDACTED 1] indicated that her mother died on 16 April 1969 in Johannesburg, her father died on 10 August 1972 in Chalabre, and [REDACTED] died in October 1999. Claimant [REDACTED 1] submitted a family tree, her parents' marriage certificate identifying them as Paul Norbert Ehrenstein and Edith Pollak, her father and mother's death certificates, and her own birth certificate identifying her as [REDACTED], daughter of Ing. Paul Norbert Ehrenstein and Edith Ehrenstein, née Pollak.

Claimant [REDACTED1] indicated that she was born on 26 February 1928 in Vienna. Claimant [REDACTED 2] indicated that he was born on 1 September 1917, also in Vienna.

Information Available in the Bank Records

The bank records consist of an opening card, an extract from an account ledger and printouts from the Bank's database. According to these records, the Account Owner of one demand deposit account in Swiss Francs and one safe deposit box account, numbered 274, was Dr. Paul Norbert Ehrenstein and the joint owners of a custody account, numbered 18280, which was opened on 3 April 1936, were Dr. Paul Norbert Ehrenstein and Edith Ehrenstein, née Pollak, Austrian citizens who resided at "Les Hirondelles" in Craponne, Rhône, France. The bank records indicate that the Account Owners first lived at 7, Rue de la Platière, and at 69, Chemin des Mures, in Lyon, France and had moved to Craponne by 11 October 1938.

The demand deposit account was closed on an unknown date, unknown to whom. The amount in the account as of 31 December 1933 was 687.85 Swiss Francs. The safe deposit box account was closed on an unknown date, unknown to whom. The bank records indicate that the Account Owners deposited 521.00 Pounds Sterling in gold pieces into the safe deposit box account on 28 March 1936. The custody account was closed on an unknown date, unknown to whom. The amount in the account on the date of its closure is unknown.

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 find these accounts in the Bank'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 Owners or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the two claims of Claimant [REDACTED 1] and Claimant [REDACTED 2]'s claim in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The names of Claimant [REDACTED 1]'s parents and Claimant [REDACTED 2]'s aunt and uncle match the published names of the Account Owners. Claimant [REDACTED 1] identified her parents' address in Craponne, France, their Austrian citizenship, and the year in which they moved to France, which matches unpublished information about the Account Owners contained in the bank records. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Paul Ehrenstein, and indicates that his date of birth was 14 August 1895 and place of birth was Vienna, Austria, which matches the information about Account Owner Paul Ehrenstein provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. Furthermore, Claimant [REDACTED 1] identified her father's title as Dr. Ing., which is consistent with unpublished information about Account Owner Paul Ehrenstein's use of the title "Dr." in the bank records.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners were Jewish, and that they fled Austria for France in 1938 and that Account Owner Paul Ehrenstein was interned in a French concentration camp in 1939. As noted above, Account Owner Paul Ehrenstein is identified as a victim of Nazi persecution in the Yad Vashem database.

The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting documents demonstrating that Claimant [REDACTED 1] is their daughter and Claimant [REDACTED 2] is their nephew. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, the domestic and foreign assets of Austrian citizens who were Jewish were

confiscated or transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible that after the *Anschluss* that account proceeds of Austrian citizens who were Jewish were paid to the Nazis, and 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 in this case were not paid to the Account Owners or their heirs. 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 Claimants. First, their claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly demonstrated that the Account Owners were their parents and aunt and uncle, respectively, and those relationships justify 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 accounts.

Amount of the Award

The bank records indicate that the Account Owners held a custody account, a demand deposit account and a safe deposit box. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here with respect to the custody account, numbered 18280, 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 a custody account was 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an amount of 156,000.00 Swiss Francs.

The bank records indicate that the value of the demand deposit account as of 31 December 1933 was 687.85 Swiss Francs. According to Article 29 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The present value of this account is determined by multiplying the value of the demand deposit account as determined by Article 29 by a factor of 12, in accordance with Article 31(1) of the Rules, for a total of 25,680.00 Swiss Francs.

The bank records indicate that the value of the safe deposit box account, numbered 274, was 521.00 Sterling Pounds as of 28 March 1936, and thus, the historic value of the account is 9,018.51 Swiss Francs.² The present value of this account is determined by multiplying the historic value of the safe deposit box by a factor of 12, in accordance with Article 31(1) of the Rules, for a total of 108,222.12 Swiss Francs.

Consequently, the total award amount in this case is 289,902.12 Swiss Francs.

² The exchange rate for British Sterling Pounds to Swiss Francs was 17.31 in 1945.

Division of the Award

In accordance with Article 23 of the Rules, as Claimant [REDACTED 1] is a child of the Account Owners and Claimant [REDACTED 2] is their nephew, Claimant [REDACTED 1] has a better entitlement to the accounts than Claimant [REDACTED 2] and shall therefore receive the total amount of the award.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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
April 4, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).