

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by [REDACTED]

in re Account of Herbert Ehrlich

Claim Number: 201352/MC

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED](the “Claimant”) to the account of Herbert Ehrlich (the “Account Owner”) at the Basel 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 a claim form identifying the Account Owner as her husband, Herbert Ehrlich, who was born on 13 September 1906 in Berlin, Germany to [REDACTED] and [REDACTED]. According to the Claimant, Herbert Ehrlich, who was Jewish, owned movie theaters in Germany and Italy. The Claimant stated that Herbert Ehrlich fled to Italy, where, in 1939, he lived at the Hotel Croce di Malta in La Spezia. The Claimant further stated that he ultimately immigrated to the United States, where, on 11 December 1943, he married [REDACTED] in New York. Herbert and [REDACTED] Ehrlich had one child, [REDACTED], who was born on 23 May 1945 in New York. The Claimant stated that Herbert Ehrlich died on 12 October 1979 in New York. The Claimant stated that she was the wife of Herbert Ehrlich and that she was born on 24 March 1908 in Hanau am Main, Germany.

In support of her claim, the Claimant submitted documents, including a copy of her husband’s transit visa, issued on 25 February 1939 by the Consulate General of Chile in Genoa, Italy, which identifies Herbert Ehrlich’s residence as the Hotel Croce di Malta in La Spezia. The transit visa states the date of Herbert Ehrlich’s departure from Italy as 27 February 1939 by steamship from the port of Genoa.

Information Available in the Bank Records

The bank record consists of a copy of the account-opening card. According to the record, the Account Owner was Herbert Ehrlich, who resided in La Spezia. The record indicates that the Account Owner owned a demand deposit account that was opened on 29 January 1939 and closed on 24 March 1939. The amount in the account on the date of its closure is unknown. There is no evidence in the bank record that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owner. Her husband's name exactly matches the published name of the Account Owner. The Claimant has also submitted a copy of her husband's transit visa that identifies his residence as the Hotel Croce di Malta in La Spezia. This matches unpublished information about the Account Owner contained in the bank record.

Status of the Account Owner as a Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant has stated that her husband was Jewish and lived in Berlin until 1939, when he was forced to flee to Italy, and ultimately to the United States.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents, including her Ketouba, certifying the Jewish marriage between herself and Herbert Ehrlich, her husband's birth and death certificates, and her husband's transit visa issued in Italy, demonstrating that she was the Account Owner's wife. Information provided by the Claimant indicates that the Account Owner's son is living. The CRT notes, however, that the Account Owner's son did not file a claim to this account.¹

The Issue of Who Received the Proceeds

In assessing whether the Account Owner received the proceeds of the account, the CRT has carefully taken into consideration that the account was opened on 29 January 1939 by the Account Owner when he was present in Italy after fleeing from Austria, and closed on 24 March 1939--unknown by whom--within less than two months from the time it was opened. In this case the disposition assessment would appear to depend on whether the account was closed before the Account Owner left Italy or after his departure. Pre-departure closing would suggest that the Account Owner had both an immediate need for the funds and the ability to withdraw them.

¹ The Account Owner's son submitted a claim form to the account of his father's brother, [REDACTED], which is registered under the claim number 200008. The CRT will treat the claim to this account in a separate decision.

Post-departure closing, on the other hand, would suggest that despite his evident need for the proceeds of his account, he was afraid to access them or was refused access for any number of reasons including Nazi efforts to confiscate them under the confiscatory laws that had become applicable to Austrians after the Anschluss.

However, the CRT notes that, according to Account Owner's Chilean transit visa issued 25 February 1939, which was submitted to the CRT by the Claimant, the Account Owner was scheduled to leave Italy on 27 February 1939 on the steamship "Orazio" from Genoa. Thus, the CRT finds that, given the desperate situation of Account Owner's flight from Germany to a safehaven outside Europe, it is plausible that the Account Owner did, in fact, leave Italy on the day of his scheduled departure as stated in his transit visa, and that the Account Owner, no longer being present in Europe, would not have received the proceeds of his account when it was closed on 24 March 1939. Given the Nazi efforts to confiscate the foreign assets of German Jews as described in the expanded version of Appendix A², and the fact that the Account Owner was a German national fleeing from Germany, this determination is consistent with Presumption (j) of the Presumptions in Appendix A that the CRT applies to assist in making its analysis of whether Account Owners or their heirs received the proceeds of their accounts in that there is no evidence in the record that the Account Owner or his heirs received the proceeds of the account. These presumptions are based on the CRT's precedents and the Rules Governing the Claims Resolution Process (the "Rules").

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 husband, 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

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 of a demand deposit account was 2,140.00 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 a total award amount of 25,680.00 Swiss Francs.

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 35% of the Certified Award, and the claimant may receive a second payment of up to 65% 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 value and 35% of the total award amount is 8,988.00 Swiss Francs.

² The expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Scope of the Award

The Claimants 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).

Certification of the Award

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

Claims Resolution Tribunal

Appendix A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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).