

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Abraham Engel

Claim Number: 212316/ME¹

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (formerly [REDACTED]) (the “Claimant”) to the account of Abraham Engel (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 Enoch Abraham Heinrich Engel, who was born on 23 November 1896 in Pabjanice, Gubernia, Poland. On 7 October 1929 in Berlin, Germany, Enoch Abraham Heinrich Engel was married to the Claimant's maternal aunt, [REDACTED]. [REDACTED] was born on 4 June 1894 in London, England. The Claimant stated that his aunt and uncle had one child, [REDACTED], who was born on 17 August 1930 in Berlin. According to the information provided by the Claimant, his uncle was a merchant who owned a men's clothing store and a textile factory that were located at Anzengruberstr. 25, Neukölln, Berlin. Furthermore, the Claimant stated that his uncle, who was Jewish, resided at Skalitzerstr. 103, Berlin, until he fled to France in 1938, where he owned a cardboard box factory and resided at 52 Rue d'Angouleme, Paris. The Claimant stated that his aunt brought her son to live with the Claimant's family in 1938 or 1939 in London, where the Claimant and his cousin were raised together. The Claimant stated that although his aunt held British citizenship, she returned to Paris to be with her husband because he was unable to acquire a British visa.

¹ The Claimant submitted two additional claim forms to the accounts of [REDACTED] and [REDACTED], which are registered under the Claims Numbers 219776 and 219777, respectively. The CRT will treat the claims to these accounts in a separate decision.

According to the information provided by the Claimant, his aunt was deported from Drancy on 27 July 1942 on Transport No. 11 to Auschwitz, where she arrived on 29 July 1942. His uncle was deported from Drancy on 26 June 1943 in transport No. 55 to Auschwitz, where he arrived on 25 June 1943. According to the information provided by the Claimant, his aunt and uncle perished in Auschwitz on arrival, and his cousin died while serving in the Royal Air Force on 10 July 1953. The Claimant submitted his aunt's birth certificate, his aunt and uncle's marriage certificate, his cousin's British naturalization certificate, his cousin's death certificate, a Drancy deportation list identifying the Claimant's uncle, a letter dated 28 February 1945 written from the American Joint Distribution Committee to the Claimant's father confirming that the Claimant's aunt was deported from Drancy on 27 July 1942, a letter from the French government dated 19 March 1945 verifying that the Claimant's uncle was deported from Drancy on 23 June 1943, the Claimant's grandmother's birth certificate, his grandparent's marriage certificate, his grandmother's naturalization certificate, her grandmother's death certificate, his mother's birth and death certificates, his parent's marriage certificate, his own birth certificate, and a certificate issued by the Royal Life Saving Society to the Claimant's cousin. The Claimant indicated that he was born on 17 December 1934 in Berlin.

Information Available in the Bank Records

The bank records consist of an account opening card and a list dated 1 December 1954 of account owners whose accounts were listed at the Swiss Compensation office in Bern (*Schweizerische Verrechnungsstelle in Bern gemeldeter Vermögenswerte*) between 1945 and 1948. According to these records, the Account Owner was Abraham Engel, who resided in Berlin, Germany. The bank records indicate that the Account Owner held a demand deposit account, which was opened on an unknown date. The account was frozen in the Swiss freeze of German assets on an unknown date and was unfrozen on 5 November 1954, when the value of the account was 682.00 Swiss Francs. The bank records do not show if or when the account at issue was closed or to whom it was paid. 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 this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was evidence of activity on this account after 1945. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His uncle's name matches the published name of the Account Owner. The Claimant identified one of his uncle's places of residence as Berlin, which matches published information about the Account Owner contained in the bank records. In support of his claim, the Claimant submitted documents, including his uncle's marriage certificate identifying him as Abraham Engel. The CRT notes that the bank

records do not contain any specific information about the Account Owner other than his name and place of residence. The CRT further notes that the other claims to this account were disconfirmed because those claimants provided an incorrect country of residence for the Account Owner.

The CRT notes that a database containing the names of victims of Nazi persecution includes a person named Abraham Engel, and indicates that his date of birth was 23 November 1896 and place of birth was Pabjanice, Poland, and that he had places of residence in Berlin, Germany and Paris, France, 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.

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, that he fled to France in 1938, and that he was deported to Auschwitz in 1943, where he was killed.

As noted above, the Account Owner's name is included in the CRT's database of Nazi victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents including his birth certificate, his mother's birth certificate, and his uncle's marriage certificate, demonstrating that the Account Owner was his uncle.

The Issue of Who Received the Proceeds

Given that the Account Owner and his wife died in Auschwitz, and given the application of Presumptions (h) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner 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 uncle, 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.

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

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 Independent Committee of Eminent Persons (“ICEP” or 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.

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 value, and 65% of the total award amount is 16,692.00 Swiss Francs.

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

23 January 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).