

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED] and [REDACTED]

in re Accounts of Rudolf Fischer and Jana Fischerova

Claim Numbers: 216108/MG; 216109/MG

Award Amount: 170,880.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Rudolf Fischer and Jana Fischerova, née [REDACTED] (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 identifying the Account Owners as her paternal uncle and aunt. The Claimant stated that her uncle, Rudolf Fischer, was born in 1885 in Prague and was married in 1920 in Prague to Jana Fischer, who was born in 1890 in Prague. The Claimant stated that her uncle owned a company in Prague named *Zuckerman* that imported sausage skins. According to the Claimant, her uncle often traveled on business, including to Switzerland, where he opened bank accounts. The Claimant stated that in 1939 the Nazis took over her uncle’s house and he was forced to leave with his wife and two children, Bedrich and Olga. The Claimant stated that the family fled to Slovakia, where her uncle was caught by the Slovak Police and imprisoned because he tried to transfer money to Switzerland. According to the Claimant, while her uncle was in prison, the Nazis deported her aunt Jana and both children to Auschwitz, where they were murdered. The Claimant stated that her uncle survived Nazi persecution and returned to Prague after the Second World War, where he died in 1958.

In support of her claim, the Claimant submitted various documents, including her birth certificate, which was issued by the Jewish community in Beroun, Czechoslovakia (near Prague), and which indicates that her maiden name is Fischer, photos of her uncle’s family, her Canadian passport, and a family tree which indicates that she is her uncle and aunt’s closest living relative. The Claimant indicated that she was born on 19 May 1920 in Beroun. The Claimant is

representing her sons, [REDACTED], who was born on 12 December 1949 in Prague, and [REDACTED] who was born on 23 September 1952 in Prague.

The Claimant previously submitted two Initial Questionnaires with the Court in 1999 asserting her entitlement to a Swiss bank account owned by Rudolf Fischer.

Information Available in the Bank Records

The bank records consist of a safe deposit box opening contract, a Power of Attorney Form dated 24 August 1938 and signed by Jana Fischerova of Prague XVIII, a Power of Attorney Form signed by Rudolf Fischer in Zurich on 17 February 1939, and lists of Account Owners and Power of Attorney Holders. According to these records, the Account Owners were the businessman (“*Kaufmann*”) Rudolf Fischer and Jana Fischerova, née Sommer, who were domiciled in Prague, and the Power of Attorney Holders were Bedrich Fischer and Olga Fischer, the Account Owner’s children. The bank records indicate that Account Owner Jana Fischerova held a safe deposit box account, numbered 4972. The bank records also indicate that Jana Fischerova and Rudolf Fischer jointly held a custody account, numbered 45619. Both accounts were opened in August 1938. The records indicate that the keys to the safe deposit box account were placed in a sealed envelope in the custody account, and were to be kept there for one year, until 23 August 1939. According to these records, the last customer contact related to these accounts was on 17 February 1939. The records also show that the custody account was charged a maintenance fee of 5.00 Swiss Francs per year. The Bank forcibly opened the safe deposit box on July 1947, and the custody account was closed on 8 October 1959, unknown by whom. There is no evidence in the bank records that the safe deposit box continued in existence after its forcible opening. The amount in the accounts on the dates of their closure is unknown. There is no evidence in the bank records that the Account Owners or their heirs closed the custody account and received the proceeds themselves.

The CRT’s Analysis

Joinder of Claims

According to Article 43(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 the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. Her uncle's and aunt’s names match the published names of the Account Owners, and her cousins’ names match the published names of the Power of Attorney Holders. The Claimant identified her uncle's and aunt’s city of domicile, which matches published information about the Account Owners contained in the bank records. The claimant also identified her uncle’s profession, which matches unpublished

information about one of the Account Owners contained in the bank records. In support of her claims, the Claimant submitted various documents, including her birth certificate, issued by the Jewish community in Beroun and showing that her maiden name is [REDACTED], photos of her uncle's family, and her Canadian passport.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, that her aunt and cousins were murdered in Auschwitz, and that her uncle survived Nazi persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents demonstrating that she was born in Beroun, Czechoslovakia, which is near Prague, and that her maiden name is [REDACTED]. The Claimant has also provided photographs of the Account Owner's family and a detailed family tree demonstrating that she is the niece of the Account Owners. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With regard to the safe deposit box, the bank records indicate that it was forcibly opened by the Bank, and do not indicate if or when the account was closed. If the account was closed, given the application of Presumptions (h), and (j), contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds of the account 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.

With regard to the custody account, given the application of Presumptions (b), (i), and (j), contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, the Power of Attorney Holders, or their heirs.

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 Owners were her paternal uncle and her aunt, 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 account.

¹ 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 accounts being awarded. Based on the Independent Committee of Eminent Persons (“ICEP”) Investigation, in 1945 the average value of a safe deposit box account was 1,240.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs. The CRT notes that it is not clear from the bank records if the sole content of the custody account was the key to the safe deposit box. The CRT also notes that the Bank charged the Account Owners 5.00 Swiss Francs per year for maintenance of the custody account, and that it is therefore plausible that there were other assets held in the custody account, which were depleted by the Bank in order to cover the maintenance costs until 1959. Therefore, the CRT will use the presumptive value of 13,000.00 Swiss Francs for the custody account at issue, and the present value of the safe deposit box and custody account is calculated by multiplying them by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 170,880.00 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 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 accounts values, and 65% of the total award amount is 111,072.00 Swiss Francs.

Division of the Award

The Claimant is representing her children in these proceedings. According to Article 29 of the Rules, the Claimant is entitled to the entire amount of the Award.

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 her claims 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
October 24, 2002

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).