

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Hedwig Lea Prowisor
also acting on behalf of Ernestine Ruth Davidovic

in re Accounts of Desider Friedmann

Claim Number: 000200/MO

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Hedwig Lea Prowisor, née Friedmann, (the “Claimant”) to the accounts of Desider Friedmann (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her father, Desider Friedmann, who was born on 24 November 1880 in Boskovice (now in the Czech Republic), and was married to Ella Friedmann, née Stiassni, on 6 January 1921 in Vienna, Austria. The Claimant stated that her father was the son of Samuel and Ernestine Friedmann. The Claimant further indicated that her parents resided at Albertgasse 26, Vienna, until 1934, and then moved to Börsegasse 14, Vienna, where they resided until 1938. The Claimant identified her father as an attorney and the president of the Jewish congregation in Vienna. The Claimant indicated that, according to her father’s office administrator, her father deposited money in a Swiss bank in Basel. Furthermore, the Claimant stated that upon the Nazi occupation of Austria, her father, who was Jewish, was interned in Dachau and later in Buchenwald. She stated that later, upon the outbreak of the Second World War, her parents were deported to Theresienstadt and from there to Auschwitz, where they perished in 1944. The Claimant indicated that she was born on 4 October 1923 in Vienna and emigrated to Israel in October 1938. The Claimant is representing Ernestine Ruth Davidovic, née Friedmann, her sister, who was born in Vienna on 17 November 1921 and emigrated to Israel in 1939. In support of her claim, the Claimant submitted copies of her and her sister’s birth certificates and their marriage certificates.

The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Dr. Desider Friedmann and Ella Friedmann, née Stiassni.

Information Available in the Bank Records

The bank records consist of safe deposit box rental agreement, a power of attorney form, a customer card, a safe opening protocol, and printouts from the Bank's database. According to these records, the Account Owner was Dr. Desider Friedmann, who was a lawyer with an address at Schottenring 26, Vienna I, and the Power of Attorney Holder was Mrs. Ella Friedmann, the Account Owner's spouse, who resided at Albertgasse 26, Vienna VIII. The bank records indicate that the Account Owner held a safe deposit box account, numbered 808, and an account of unknown type, numbered 36387. With regard to the safe deposit box account, the bank records show that it was opened on 9 September 1931, and that on 16 February 1945 it was frozen under the 1945 Freeze of German assets in Switzerland. Furthermore, it is indicated that the safe was forced open by the Bank in the presence of the Swiss Clearing Office on 4 March 1946, after the 1945 Freeze was lifted, and that it was found empty. 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") therefore presumed that it was closed. With regard to the account of unknown type, the bank records indicate that it was opened on 17 January 1931, but they do not indicate when this account was closed. The bank records do not show to whom it was paid, nor do these records indicate the value of this account. The auditors who carried out the investigation of this bank 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 no evidence of activity on this account after 1945. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder or their heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Dr. Desider Friedmann, numbered 44710, and his spouse, Ella Friedmann, née Stiasni, numbered 44746. According to these documents, Dr. Desider Friedmann, who was born on 24 November 1880, and Ella Friedmann, who was born on 25 December 1897, resided at Börsegasse 14, Vienna I. The documents indicate that the offices of Dr. Desider Friedmann, who was a lawyer, were located at Schottenring 26, Vienna I. According to these documents, the value of the assets of Dr. Friedmann and his spouse as of 9 May 1939 was 176,711.00 Reichsmarks and included, *inter alia*, real estate in Innsbruck, Austria, insurance policies, bank accounts (including accounts in Czechoslovakian banks), and securities. In a letter dated June 1938, Ella Friedmann indicated that Dr. Desider Friedmann had been arrested and held in custody since 18 March 1938 and asked for an extension of time to submit her census form, her spouse's form, and the forms of their minor daughters, Ernestine and Hedwig. It is indicated that

Siegmund Stiassni, Ella Friedman's father who died in 1935, bequeathed his partial ownership rights in an apartment in Munich to Ernestine Friedmann and bequeathed a 5,000.00 United States Dollars insurance policy to Hedwig Friedmann. Dr. Desider Friedmann's census form was signed in his name by Ella Friedmann on 30 August 1938; however, Dr. Friedman signed the revisions to this form dated 29 December 1938 and 27 June 1939.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her parents' names match the published names of the Account Owner and the Power of Attorney Holder. The Claimant identified her parents' street address and her father's profession, which match unpublished information about the Account Owner contained in the bank records. The Claimant also indicated that her father deposited money in a Swiss bank in Basel, where the accounts at issue were in fact held, which matches unpublished information contained in the bank records.

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 and that he perished in Auschwitz in 1944.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Dr. Desider Friedmann and his spouse, Ella Friedmann, née Stiassni, and indicates that his date of birth was 24 November 1880 and place of birth was Boskowitz, which matches the information about the Account Owner and the Power of Attorney Holder provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. The CRT further notes that Dr. Desider Friedmann is mentioned in *Unser Wien*¹ as a lawyer and the president of the Jewish congregation, who was sent on the first transport from Austria to Dachau (the so-called "transport of the prominent") on 1 April 1938.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is his daughter. There is no information to indicate that the Account Owner has surviving heirs other than the Claimant's sister, whom the Claimant is representing in these proceedings.

¹ *Unser Wien* / Tina Waltzer and Stephan Temple, *Aufbau-Verlag GmbH*, Berlin 2001, Pg. 28.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j), contained in Appendix A,² the CRT concludes in regard to the account of unknown type that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, 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 respect to the safe deposit box account opened in 1931 and found empty in 1946, the CRT will not reach a decision at this time, pending further consideration as to whether or not the Account Owner received the proceeds of that account.

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 father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here with respect to the account of unknown type, 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 an account of unknown type was 3,950.00 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 an award amount of 47,400.00 Swiss Francs per the account of unknown type.

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 values, and 65% of the total award amount is 30,810.00 Swiss Francs.

Division of the Award

The Claimant is representing her sister in these proceedings. According to Article 29 of the Rules, the Claimant's sister is entitled to receive one-half of any payment made to the Claimant.

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

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 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
October 24, 2002

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).