

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

in re Account of Bernard Grünhut

Claim Number: 221490/MC

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Bernard Grünhut (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published, but where the 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 Dr. Bernard Grünhut as the father of his aunt’s husband. According to the Claimant, Dr. Grünhut, who was Jewish, was a family physician in Krakow, Poland and was married to Helene Grünhut. Bernard and Helene Grünhut had one child, [REDACTED]. The Claimant stated that Dr. Grünhut was killed by the Nazis in Boryslaw, Poland, on 31 August 1942. Helene Grünhut was killed by the Nazis in Belzec on 30 September 1942.

According to the Claimant, the Account Owner’s son, [REDACTED], was married to [REDACTED], née [REDACTED], and they had no children. The Claimant stated that he is the son of [REDACTED]’s sister, [REDACTED], who was married to [REDACTED], and that he was born on 21 July 1932 in Krakow. The Claimant further stated that [REDACTED] died in London on 10 January 1952 and that in his will, he named the Claimant and the Claimant’s sister, [REDACTED], among his eight beneficiaries. The Claimant stated that five of the other six beneficiaries are dead and that he does not know the fate of the sixth.

Information Available in the Bank Records

The bank records consist of an executed power of attorney signed by the Account Owner, dated 10 October 1930. According to these records, the Account Owner was Dr. Bernard Grünhut and the Power of Attorney Holder was Helene Grünhut, the Account Owner's wife. The bank records indicate that the Account Owner held a custody account.¹ The records indicate that Bernard and Helene Grünhut lived at Dietlsgasse 49 in Krakow, Poland.

The bank records do not show if or when the account at issue was closed, or 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 to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons 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.

CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His great-uncle's and great-aunt's names match the published names of the Account Owner and Power of Attorney Holder. The Claimant has also provided information regarding the Account Owner's profession that matches the unpublished profession of the Account Owner indicated 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 lived in Nazi-controlled Krakow. The Claimant stated that Bernard Grünhut was killed by the Nazis in 1941, and Helene Grünhut was killed by the Nazis in 1942. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes persons named Bernard and Helene Grünhut. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

¹ The bank records contain a power of attorney form that references a "Titeldepot," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the CRT concludes that it is plausible that he held such an account.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner. He has submitted documents, including the certificate of inheritance of his uncle, [REDACTED], which names [REDACTED] as the beneficiary of the Account Owner's estate, as well as [REDACTED]'s will, which identifies the Claimant and his sister among [REDACTED]'s heirs, which demonstrate that he is the nephew of the Account Owner's son.

According to the principles of distribution set forth in Article 29 of the Rules Governing the Claims Resolution Process (the "Rules"), In this case, no other claimants have claimed this account. Moreover, the Claimant has submitted a copy of [REDACTED]'s certificate of inheritance, dated 25 November 1946, that certifies that he is the sole heir of the entire estate of his parents, Dr. Bernard Grünhut and Helene Grünhut. The Claimant has also submitted a copy of [REDACTED]'s death certificate and [REDACTED]'s will, which indicates that the Claimant and his sister are among [REDACTED]'s eight beneficiaries. Because the Claimant was named in the will of the Account Owner's son, who, according to the official certificate of inheritance, inherited the Account, and because no other direct descendant of the Account Owner's parents has claimed the account, the Claimant is entitled to the account under Article 29 of the Rules.

The Issue of Who Received the Proceeds

Based on its precedent and the Rules, the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.² The CRT concludes in this case that one or more of these presumptions applies and it is therefore plausible that the account proceeds were not paid to the Account Owner or his 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 Owner was his great-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.

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 custody account was 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12,

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

in accordance with Article 37(1) of the Rules, to produce a total award amount of 156,000.00 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 54,600.00 Swiss Francs.

Division of the Award

The Claimant is representing his sister in these proceedings. According to Article 29 of the Rules, his sister is entitled to receive half of any payment made to the Claimant.

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

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. "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 does not exist 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).