

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2], [REDACTED 3] and [REDACTED 4]

in re Account of Ernst Hanak

Claim Number: 224445/MO¹

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the account of Ernst Hanak (the “Account Owner”) 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 Owner as his grandmother’s cousin, Ernst (Arnost) Hanak. According to various official documents, such as residence registration forms, land registry forms, police records and extracts from the commercial registry, which were obtained by the Claimant from archives in Brno, Czechoslovakia, Ernst Hanak was born on 15 April 1890 in Brno (or Brünn in German) and was married to [REDACTED] on 11 April 1936 in Frydlant, Czechoslovakia. These documents show that he was the son of [REDACTED], who was originally from Boskowitz, Czechoslovakia, and [REDACTED]. They also indicate that Ernst Hanak was the brother of Fritz (Bedrich) Hanak, who was born in Sagan, Silesia, Czechoslovakia, on 22 September 1888, and was married to [REDACTED] on 7 September 1912 in Brno. According to these records, Fritz Hanak resided, *inter alia*, at Legionar Avenue no. 28 in Brno, and Ernst Hanak resided, *inter alia*, at Bastiaeh no. 8 in Brno. The Claimant indicated that Ernst and Fritz Hanak’s mother, [REDACTED], was the sister of [REDACTED], who is the Claimant’s paternal great-grandfather. In support of his claim, the Claimant submitted a copy of a residence registration paper, showing that his great-grandfather was also originally from Boskowitz and that he resided in Brno. Furthermore, the Claimant

¹ The Claimant submitted additional claims to the accounts of his grandfather, [REDACTED], his grandmother, [REDACTED], and his great uncle, [REDACTED], which are registered under the claim numbers 224447, 224448 and 224449. The CRT will treat the claims to these accounts in separate decisions.

stated that before his death, [REDACTED] placed his son, [REDACTED], under the prolonged guardianship of Ernst Hanak and Fritz Hanak. This agreement is contained in the will of [REDACTED] (a copy of its English translation was submitted by the Claimant), in which [REDACTED] refers to Ernst Hanak and to Fritz Hanak as his nephews. The Claimant asserted that [REDACTED]' guardians had put money aside for him outside of Czechoslovakia. Furthermore, the Claimant indicated that [REDACTED] was the founder of, and majority shareholder in, one of the largest textile factories in Czechoslovakia prior to the Second World War, *Weiss & Hanak*. According to the Claimant, the Hanak family was brought into the business by his great-grandfather as salaried partners. The Claimant submitted an extract from the commercial registry, indicating that *Weiss & Hanak* was a wool product factory in Brno, owned by [REDACTED]. According to the records submitted by the Claimant, Ernst Hanak was a director of a factory in Brno. Based on information provided by the Claimant, Fritz Hanak, who was Jewish, died on 28 October 1944 in Auschwitz. The Claimant asserted that Ernst Hanak moved in 1935 from Brno to Novo Mesto pod Smrkem in Northern Bohemia, which was seized by the Germans during the implementation of the Munich Agreement, and that the Claimant subsequently lost contact with him. The Claimant stated that his family never heard from Ernst Hanak again and that he probably did not survive the Second World War. There is no indication in these records that Ernst Hanak or Fritz Hanak had any children. The Claimant indicated that [REDACTED] died in 1919 and that his son, [REDACTED], was arrested by the Gestapo very shortly after the German invasion of Czechoslovakia in 1939 and was eventually killed in Dachau in 1941. The Claimant submitted a Red Cross certificate evidencing the aforesaid.

The Claimant indicated that he was born on 3 April 1959 in New York, New York, the United States. The Claimant is representing in these proceedings his father, [REDACTED 2], who was born on 23 May 1920 in Vienna, Austria, and his paternal uncle, [REDACTED 3] (formerly Schwarz), who was born on 14 August 1923 in Vienna. [REDACTED 2] and [REDACTED 3] are the only children of [REDACTED], who is the daughter of [REDACTED]. The Claimant is also representing his father's cousin, [REDACTED 4] (formerly Neumann), who was born on 17 July 1924. [REDACTED 4] is the only child of [REDACTED], who is the daughter of [REDACTED]. In support of his claim, the Claimant submitted various documents, including copies of his grandparents' birth certificates and marriage certificate as well as his father's, his uncle's, [REDACTED 4]'s, and his own birth certificates.

Information Available in the Bank Records

The bank records consist of a power of attorney form dated 21 December 1927 in Brünn, Czechoslovakia, and printouts from the Bank's database. According to these records, the Account Owner was Ernst Hanak, who resided at Auf der Bastei 8 in Brünn, and the Power of Attorney Holder was Fritz Hanak, who resided at Legionärstrasse 28 in Brünn. The bank records indicate that the Account Owner held a custody account.² The bank records do not show when

² 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

the account at issue was opened or 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 (“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 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.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His relatives’ names match the published names of the Account Owner and the Power of Attorney Holder. The Claimant identified his relatives’ addresses, which substantially match unpublished information about the Account Owner and the Power of Attorney Holder contained in the bank records. Finally, the Claimant submitted documents containing samples of his relatives’ handwriting, which match the handwriting samples 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 and the Power of Attorney Holder were Victims of Nazi Persecution. The Claimant stated that the Account Owner and the Power of Attorney Holder were Jewish. He also stated that the Power of Attorney Holder perished in the Holocaust and that this was probably the fate of the Account Holder, who resided in northern Bohemia when it was seized by the Germans.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Bedrich Hanak, and indicates that his date of birth was 22 September 1888 and place of residence was Czechoslovakia, which matches the information about 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 Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that he was the cousin of the Claimant’s grandmother. There is no information to indicate that the Account Owner has surviving heirs other than the Claimant and his relatives whom he is representing in these proceedings.

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 Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) contained in Appendix A,³ the CRT concludes 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 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 the cousin of his grandmother, 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 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, 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 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 101,400.00 Swiss Francs.

Division of the Award

The Claimant is representing his father, his paternal uncle and his father’s cousin in these proceedings. According to Article 29(e) of the Rules, and as the closest living relatives of the Account Owner, the Claimant’s father’s cousin, the Claimant’s father, and the Claimant’s uncle will each receive one-third of any payments made to the Claimant.

³ 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 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
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).