

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Hanna Hartmann

Claim Number: 601563/PY¹

Award Amount: 207,460.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED] (the “Claimant”) to the accounts of Hanna Hartmann (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 an Holocaust Claims Processing Office (“HCPO”) Claim in September 1997 identifying the Account Owner as her paternal aunt, Hanna Hartmann, née [REDACTED], who was born on 5 May 1876 in Germany and was married to [REDACTED], a director of the company *Allgemeine Elektrizitäts-Gesellschaft* (AEG), in Berlin, Germany. According to the Claimant, [REDACTED] and Hanna Hartmann had no children, and [REDACTED] died in or about 1926. The Claimant stated that her aunt, who was Jewish, lived in Berlin until approximately 1927, when she moved to Vienna, Austria. The Claimant stated that in Vienna, her aunt resided at Sternwartestrasse 49 in Vienna 18, Flossgasse 3 in Vienna 2, and Felix Mottl Strasse in Vienna 19. The Claimant recalled that her aunt had stated clearly her intention to deposit her money in Switzerland. According to the Claimant, Hanna Hartmann was deported from Vienna on 27 April 1942 and the Claimant believes that she died in a ghetto in Poland. The Claimant indicated that she was born on 12 March 1915 in Vienna.

In support of her claim, the Claimant submitted correspondence documenting her previous attempts to locate information regarding her aunt’s accounts, including her correspondence with the Swiss Ministry of Justice in Bern and the Trade Development Bank in Geneva between 1964 and 1967. In 1967, the Claimant gave power of attorney to [REDACTED], Managing Director

¹ The Claimant submitted a claim, numbered B-00097, on 25 September 1997, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned claim number 601563.

of the Trade Development Bank in Geneva, to conduct investigations in Switzerland in connection with assets owned by Hanna Hartmann. On behalf of the Claimant, [REDACTED] wrote the Federal Division of Justice, Department of Properties Belonging to Disappeared Foreigners (“*Meldestelle für Vermögen verschwundener Ausländer*”). In a letter dated 27 June 1967, the Swiss authorities reported that they found no evidence of any account in the name of Hanna Hartmann.

The Claimant also submitted correspondence from the Swiss Banking Ombudsman dated 7 June 1996 documenting her claim regarding a Swiss bank account owned by Hanna Hartmann, for which she paid a fee of 100.00 Swiss Francs. In a letter dated 8 November 1996, the Ombudsman informed the Claimant that its member banks reported no records of any dormant account belonging to Hanna Hartmann.

The Claimant also provided a copy of the Austrian census form which her aunt was required to submit, which was identical to that found in the Austrian State Archives, as well as the Austrian census forms completed by her father, [REDACTED], and her mother, [REDACTED], née [REDACTED].

Information Available in the Bank Records

The bank records consist of a bank opening card and printouts from the Bank’s database. According to these records, the Account Owner was Hanna Hartmann, who was a widow. The bank records indicate that the Account Owner held one demand deposit account in Swiss Francs, one demand deposit account in United States Dollars, and a custody account numbered L45550.

According to the records, the demand deposit account held in Swiss Francs was closed on 10 August 1938, the demand deposit account held in United States Dollars was closed on 20 March 1938, and the custody account was closed on 23 May 1938. The bank records do not indicate to whom the proceeds of the accounts were paid, nor do these records indicate the value of these accounts. There is no evidence in the bank records that the Account Owner or her heirs closed the accounts 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 Hanna Hartmann. These records include an Austrian census form for Hanna Hartmann, numbered 42584, dated 11 July 1938, and attachments. The documents indicate that Hanna Hartmann was Jewish, that she was born on 5 May 1876 and that she resided at Sternwartestrasse 49, Vienna 18. The records also show that Hanna Hartmann owned a considerable number of stocks and bonds, including those of a Swiss company valued in Swiss Francs and of an American company valued in United States Dollars, as well as cash and assets worth approximately 142,000.00 Reichsmarks (1938 value). There is no mention in these records of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her aunt's name and country of residence matches the published name and country of residence of the Account Owner. The Claimant also indicated that the Account Owner's husband had been deceased since 1926, which matches unpublished information about the Account Owner's marital status contained in the bank records. Finally, the CRT received two other claims to these accounts, but these claims were disconfirmed because the claimants provided different names and countries of residence from the Account Owner in this case. In support of her claim, the Claimant submitted documents, including letters written in 1941 from the Account Owner to the Claimant.

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 was deported to the ghetto in Poland on 27 April 1942, and that she was likely to have died there.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting letters written to her by the Account Owner, on which the Account Owner signs as "Aunt Hanna." There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Jewish Austrian citizens are arrested, searched, or report their assets in the 1938 census, and, beginning immediately thereafter, and in many cases within the same year, their accounts are transferred to Nazi-controlled banks or closed unknown to whom. In the present case, the Account Owner was deported from Vienna and killed, and the existence of any account in her name was denied by Swiss authorities in 1967 and as late as 1997. Given that the CRT's precedents indicate that it is plausible in such situations that the account proceeds were paid to the Nazis, and the application of Presumptions (a) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds in this case were not paid to the Account Owner or her heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to assist in determining 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 her aunt, and that relationship

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

justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case the Account Owner had two demand deposit accounts and one custody account. 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 demand deposit account was 2,140.00 Swiss Francs. The average value of two demand deposit accounts in 1945 would therefore be 4,280.00 Swiss Francs. Based on the ICEP investigation, the average value of a custody account in 1945 was 13,000.00 Swiss Francs. The present values of these amounts are 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 207,360.00 Swiss Francs for these accounts.

In addition, the Claimant paid 100.00 Swiss Francs to the Swiss Banking Ombudsman to research her aunt's account. The CRT determines that this amount should be refunded. The total award amount is 207,460.00 Swiss Francs.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive 100% of the total award amount.

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

January 28, 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).