

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Uri Zeev Paltin
also acting on behalf of Ira Yaakov Paltin¹

in re Accounts of Erna Hauser

Claim Number: 004448/MG

Award Amount: 157,680.00 Swiss Francs

This Certified Award is based upon the claim of Uri Zeev Paltin (the “Claimant”) to the accounts of Erna Hauser (the “Account Owner”) at 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 his grandmother’s aunt, Erna Hauser, who was born in Czechoslovakia, and was never married. The Claimant stated that his grandmother’s aunt resided at Grosse Mohrengasse 20 in Vienna, Austria. The Claimant stated that in 1942 the Nazis transported his grandmother’s aunt to Theresienstadt, where she was killed. The Claimant submitted various documents, including a letter from the General Custodian in Israel to his grandmother, Hedwig Polifka, dated 27 September 1960, referring to a claim submitted by the General Custodian, in the name of Erna Hauser, concerning securities that she owned and that were confiscated from her. The Claimant also submitted a letter from the German Federal Administration of Debts (*Bundesschuldenverwaltung*) to his grandmother dated 7 February 1961, acknowledging that Erna Hauser from Grosse Mohrengasse 20 in Vienna owned securities, which were transferred to the German *Reichsbank* on 18 March 1943. In addition, the Claimant submitted the will of his grandmother’s sister, Elsa Diamand, which indicates the name of his grandmother, Hedwig Polifka, and the name of the Claimant's father, Jochanan Paltin. The Claimant indicated that he was born on 19 October 1952 in Israel. The Claimant is representing Ira Yaakov Paltin, his brother, who was born on 18 February 1956 in Israel.

¹ The Claimant provided his name and some of his relatives’ names only in Hebrew characters in the Claim Form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the Claim Form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

Information Available in the Bank Records

The bank records consist of bank documents and work papers prepared in connection with the 1962 survey identifying account owners which were persecuted by the Nazis, a list of dormant accounts, bank documents relating to the 1945 Swiss freeze of German assets, a letter from the Bank, dated 17 March 1938, describing how it would complete, as soon as possible, a list of over 1000 custody accounts belonging to Austrian citizens as of 23 March 1938 pursuant to the Foreign Assets Law for Austria, and printouts from the Bank's database. According to these records, the Account Owner was Erna Hauser who resided at Taborstrasse 41 in Vienna, Austria. The bank records indicate that the Account Owner held a custody account numbered 32510 and a demand deposit account. According to these documents, the custody account was opened in 1931 and closed on 30 June 1938, unknown by whom. The bank documents indicate that the account was on a list of accounts transferred to the Austrian bank *der Zentral – Europäischen Länderbank* in Vienna on 1 July 1938. The amount in the custody account on the day of its transfer was 11,000.00 Swiss Francs. The demand deposit account was opened on 15 February 1932 and dormant at least from 1938 until 1959. These records indicate that the amount in the demand deposit account as of 17 February 1945 was 170.50 Swiss Francs. The bank records do not show when the demand deposit account was closed, or to whom it was paid.

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") determined that the amount in the custody account had been paid to the Nazi authorities. These auditors did not find the demand deposit 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 the demand deposit account after 1945. 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 Erna Hauser signed 28 June 1938 in Vienna. According to these documents, Erna Hauser was born on 19 December 1879 and was not married. These documents indicate that Erna Hauser resided at Grosse Mohrengasse in Vienna, Austria, and had an additional business address at Taborstrasse 41 in Vienna. In the Austrian Census form, Erna Hauser lists Swedish bonds (*Schwedische staatsanleihe* 1931 4%) with a nominal value of approximately 10,000.00 Swedish kronas, which she reported to the German *Reichsbank* on 3 April 1938. In a letter, dated 10 August 1938 in Vienna, attached to the census form, Erna Hauser writes to the Austrian authorities that pursuant to the letter she received from them on 1 July 1938, she has now sold all of her foreign securities. In an attachment to the census form, Erna Hauser also lists 2,845.00 CHF, which she exchanged to 1,621.66 Reichsmarks. It is not clear from the Austrian census form whether any of Erna Hauser's assets were held in a Swiss bank.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His grandmother's aunt's name matches the published name of the Account Owner. Furthermore, the Austrian census indicates two unpublished addresses belonging to the Account Owner. The Claimant has identified one address and the other is contained in the bank records. In addition, the Claimant stated that his grandmother's aunt was never married, which matches information contained in the Austrian census. In support of his claim, the Claimant submitted documents, including a letter from the General Custodian in Israel to his grandmother, Hedwig Polifka, dated 27 September 1960, referring to a claim submitted by the General Custodian, in the name of Erna Hauser, concerning securities that she owned and that were confiscated from her, and a letter from the German authorities to the Claimant's grandmother dated 7 February 1961, acknowledging that Erna Hauser from Grosse Mohrengasse 20 in Vienna owned securities, which were transferred to the German Reichsbank on 18 March 1943. The CRT notes that there are no other claims to the accounts of Erna Hauser.

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 she was transported to Theresienstadt, where she was killed.

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 his grandmother, Hedwig Polifka, was corresponding with Israeli and German authorities in the early 1960's regarding assets of her aunt, Erna Hauser. In addition, the Claimant submitted the will of Elsa Diamand, which indicates that Hedwig Polifka is the mother of Jochanan Paltin, and his own identity card, which indicates that the Claimant's father's name is Jochanan. 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*, Austrian Citizens who are Jewish report their assets in the 1938 census, and subsequently their accounts are closed unknown to whom or paid to Nazi-controlled banks. In this case, the bank records indicate that the custody account was paid to Nazi authorities. With regard to the demand deposit account, given the application of Presumptions (f), (h) and (j) as provided in Article 28 (see Appendix A) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT concludes that it is plausible that the demand deposit account proceeds were not paid to the Account Owner or her 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.

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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his grandmother's aunt, and that relationship 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 held one custody account and one demand deposit account. The bank records indicate that the value of the custody account as of 30 June 1938 was 11,000.00 Swiss Francs. The present value of the amount of the custody account is determined by multiplying the historic value by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an amount of 132,000.00 Swiss Francs. The bank records indicate that the value of the demand deposit account as of 17 February 1945 was 170.50 Swiss Francs. According to Article 29 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The present value of the amount of the demand deposit account is determined by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an amount of 25,680.00 Swiss Francs. Consequently, the total award amount, combining the custody account and the demand deposit account, is 157,680.00 Swiss Francs.

Division of the Award

Pursuant to the principles of distribution set forth in Article 23 of the Rules, an award shall be in favor of any descendants of the account owner's parents who have submitted a claim, in equal shares by representation. Claimant Paltin and represented party Ira Yaakov Paltin are each entitled to one-half of the award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 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
March 5, 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).