

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED] and [REDACTED]
represented by [REDACTED]

in re Accounts of David Herrmann, Herbert Herrmann, and Jenny Herrmann

Claim Numbers: 221526/JT; 221530/JT; 221770/JT¹

Award Amount: 312,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of David Herrmann, (“Account Owner David Herrmann”), Herbert Herrmann, (“Account Owner Herbert Herrmann”), and Jenny Herrmann, née Hirsch, (“Account Owner Jenny Herrmann”), (together the “Account Owners”) 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 Account Owner Herbert Herrmann as the father of her late husband, [REDACTED], and Account Owners David and Jenny Herrmann, née Hirsch, as her husband’s paternal grandparents. The Claimant indicated that David Herrmann was born in 1851 in Byth, Germany and Jenny Herrmann in 1861 in Mannheim, Germany. The Claimant further indicated that David and Jenny Herrmann were Jewish and that they were married in Frankfurt, Germany. The Claimant stated that her husband’s grandparents had three children: Herbert Herrmann, the Claimant’s father-in-law, who was born on 11 November 1889 in Frankfurt, Germany and died on 29 June 1959 in Munich, Germany; [REDACTED], who was born before 1889 in Frankfurt, and is believed to have been killed during the First World War on the eastern front; and [REDACTED], who was born after 1889 and was killed in Belgium during the First World War. The Claimant stated that David Herrmann was a businessman and that he lived in Frankfurt with his wife and his son Herbert until his death on 19 January 1933. Herbert Herrmann, who was a lawyer, also lived in Frankfurt with his second wife, [REDACTED], née [REDACTED], and [REDACTED] (the Claimant’s late husband),

¹ The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 221780. The CRT will treat the claim to this account in a separate decision.

Herbert's child from his first marriage to [REDACTED], née [REDACTED]. The Claimant further stated that the remaining members of the Herrmann family fled Germany for Belgium in July 1933, living first at the seaside before moving to 154 Avenue de L'Hippodrome in Brussels. The Claimant indicated that Herbert and [REDACTED] Herrmann had two children: [REDACTED], who was born on 9 September 1934 in Brussels; and [REDACTED], who was born on 1 June 1937, also in Brussels. The Claimant indicated that shortly before the Germans invaded Belgium in 1940, the Herrmann family escaped to Tel Aviv, Palestine where Jenny Herrmann died on 23 January 1947. The Claimant further indicated that her husband was born on 3 April 1922 in Frankfurt and died on 29 April 1993 in Boston, Massachusetts, the United States.

In support of her claim, the Claimant submitted photographs of her relatives, a copy of her wedding announcement identifying her husband as [REDACTED], a copy of her husband's death certificate identifying his parents as Herbert and [REDACTED] Herrmann of Germany, and copies of both Herbert Herrmann's and [REDACTED]'s wills.

The Claimant indicated that she was born on 1 July 1922 in Copenhagen, Denmark. The Claimant is representing [REDACTED] and [REDACTED], her children, who were born on 18 May 1957 and 19 December 1958, respectively, in Boston.

Information Available in the Bank Records

The bank records consist of a joint custody account contract signed on 17 April 1929 in Basel, a customer-opening card, documents relating to bank correspondence, and printouts from the Bank's database. According to these records, the Account Owners held two custody accounts. The Account Owners of the first custody account, numbered 33439, were David and Jenny Herrmann, née Hirsch, who resided at Tiergarten 36 in Frankfurt, Germany. The Account Owner of the second custody account, numbered 33439-II, was Frau Jenny Herrmann.

The custody account numbered 33439 was opened on 17 April 1929 and a document was signed on 20 October 1931, indicating that correspondence from the Bank was to be sent to Herr Fritz Metzger at Austrasse 96 in Basel, Switzerland. As of 7 March 1935, the account was held by Frau Jenny Herrmann and Dr. Herbert Herrmann, who resided at 154, Avenue de l'Hippodrome in Brussels, Belgium. The custody account numbered 33439-II was opened on 22 August 1933 and was held by Frau Jenny Herrmann, née Hirsch, who resided at 46, rue de la Vallée in Brussels, where correspondence from the Bank regarding this account was to be sent, according to a document signed on 18 May 1935 in Brussels. The bank records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts.

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 these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the three claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. The names of her husband's father and her husbands' grandparents match the published names of the Account Owners. The Claimant identified her father-in-law's address, which matches unpublished information about the Account Owner contained in the bank records. In support of her claim, the Claimant submitted documents, including a copy of her husband's birth certificate identifying his parents as Herbert and [REDACTED] Herrmann of Germany, photographs of her relatives, and copies of the wills of Herbert Herrmann and [REDACTED].

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they fled Germany and Belgium during the Second World War.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she and those she represents are related to the Account Owners by submitting documents demonstrating that she is the daughter-in-law and granddaughter-in-law of the Account Owners, and her children are the grandchildren and great-grandchildren of the Account Owners. The CRT notes that Account Owner Herbert Herrmann has two surviving children, [REDACTED] and [REDACTED], but that they have not submitted Claim Forms or Initial Questionnaires to his account.

The Issue of Who Received the Proceeds

Given that the Account Owners were German nationals with an address recorded in the bank records as Frankfurt, Germany, the Nazi enforcement of flight taxes and the Nazi campaign to confiscate the domestic and foreign assets of its Jewish nationals, and the application of Presumptions (h) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners 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.

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

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 Owners were her husband's father and grandparents, and those relationships justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners 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, 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 value of the two custody accounts is therefore 26,000.00 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 312,000.00 Swiss Francs for the two custody accounts.

Division of the Award

The Claimant is representing her two children in these proceedings. As for the custody account numbered 33439, originally held jointly by Account Owners Jenny Herrmann and David Herrmann and later held jointly by Account Owners Jenny and Herbert Herrmann, according to Article 31(2) of the Rules, the CRT presumes that the account was owned in equal shares by the Account Owners whose shares of the account have been claimed. According to Account Owner Herbert Herrmann's will, his estate was bequeathed to his three children in equal shares. In this case, neither Herbert Herrmann's will nor the Rules provides for an award to the spouse of the Account Owner's deceased child. Accordingly, and because the Claimant is not representing Account Owner Herbert Herrmann's two surviving children, [REDACTED] and [REDACTED], and these individuals have not filed claims to these accounts, the Claimant's two children, [REDACTED] and [REDACTED] are each entitled to one-half of the award amount for this account.

As for the custody account numbered 33439-II held by Account Owner Jenny Herrmann, Article 29(1)(c) of the Rules provides that the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Accordingly, the Claimant's two children are each entitled to one-half of the award amount for this account.

Initial Payment

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 202,800.00.

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

December 27, 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).