

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED1]
also acting on behalf of [REDACTED] and [REDACTED]

and

to Claimant [REDACTED2]
also acting on behalf of [REDACTED]

in re Account of Albert Hertmann

Claim Numbers: 216815/MO; 217542/MO

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED1], née [REDACTED1], (“Claimant [REDACTED1]”) and the claim of [REDACTED2] (“Claimant [REDACTED2]”) (together “the Claimants”) to the account of Albert Hertmann (the “Account Owner”) at the Lausanne branch of 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 Claimants

The Claimants submitted two Claim Forms identifying the Account Owner as their grandfather, Albert Hertmann, who was born on 1 September 1870 in Zagreb (Austro-Hungarian Empire, today Croatia), and was married to [REDACTED], née [REDACTED], on 23 September 1894 in Zagreb. The Claimants stated that their grandfather, who was Jewish, was the son of [REDACTED] and [REDACTED], née [REDACTED]. The Claimants further indicated that their grandparents had three daughters: [REDACTED], née [REDACTED], who was born on 19 May 1899 in Zagreb; [REDACTED], née [REDACTED], who was born in Zagreb on 14 July 1901; and [REDACTED], née [REDACTED], who was born in Zagreb on 18 June 1904. The Claimants identified their grandfather as a businessman and the owner of a company by the name of *Josip Hertmann & Sohn*, a wholesale leather business located at Jelacicev Trg 12, Zagreb. The Claimants indicated that their grandfather resided at the same address as his three married daughters, who had their own apartments in the same house. Based on documentation provided by Claimant [REDACTED2], his grandfather had previously resided at Ilica 5, Zagreb. The

Claimants stated that their grandfather traveled to Switzerland for business and vacation. They also indicated that their grandfather died on 22 August 1940 in Pociteljski, Herzegovina.

The Claimants stated that Albert Hertmann's daughter [REDACTED], née [REDACTED], died on 21 November 1936 in Zagreb. Albert Hertmann's wife, [REDACTED], who was also Jewish, and his other two daughters, [REDACTED] and [REDACTED], fled from Zagreb to Split, Yugoslavia, in June 1941 after the Nazi invasion of Yugoslavia in April 1941. Claimant [REDACTED1], her sisters [REDACTED] and [REDACTED], and her cousins, Claimant [REDACTED2] and his brother [REDACTED], fled to Split with [REDACTED] and [REDACTED]. Two weeks before the Nazis occupied the area around Split, the family escaped to Italy. Prior to the Nazi invasion of Italy in 1943, they fled again, this time to Switzerland. The Claimants indicated that their grandmother passed away on 3 July 1961 in Baden, Switzerland.

Claimant [REDACTED1] indicated that she was born on 5 March 1927 in Zagreb, and that she is the daughter of [REDACTED], née [REDACTED], who died on 6 April 1993 in Zurich, Switzerland. She is representing her sisters, [REDACTED], who was born on 1 November 1929 in Zagreb, and [REDACTED], who was born there on 6 September 1932. Claimant [REDACTED2] stated that he was born on 16 September 1931 in Zagreb, and that he is son of [REDACTED], née [REDACTED]. He is representing his brother, [REDACTED], who was born in Zagreb on 18 June 1936. The Claimants stated that their aunt, [REDACTED], née [REDACTED], died on 6 February 1964 in Solothurn, Switzerland, without issue. In support of their claims, the Claimants submitted various documents, including copies of the birth certificates of the Claimants and their siblings as well as the birth certificates and the death certificates of the daughters of Albert Hertmann. The Claimants also submitted copies of their grandparents' marriage and death certificates, and Claimant [REDACTED2] submitted a copy of his marriage certificate.

Information Available in the Bank Records

The bank records consist of a customer card, balance sheets, lists of dormant accounts and a printout from the Bank's database.¹ According to these records, the Account Owner was Albert Hertmann. In a customer card dated 16 February 1920, it is indicated that the Account Owner resided at Ilica 5, Zagreb and deposited 10,000.00 Swiss Francs. The bank records indicate that the Account Owner held an account of unknown type. It is not indicated when the account was opened. The bank records show that the amount in the account on 20 December 1948 was 536.50 Swiss Francs and that the account was transferred on 21 June 1949 to a suspense 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 indicated that there was no evidence of activity on this account after 1945. It is further indicated that the account was closed to bank fees on 7 July 1987.

¹ In June 1945, another Swiss bank acquired certain assets and liabilities of the Bank, including the account at issue.

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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their grandfather's name matches the published name of the Account Owner. Claimant [REDACTED2] submitted documents indicating his grandfather's street address, which matches unpublished information about the Account Owner contained in the bank records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the beneficial owners of the account, [REDACTED], [REDACTED] and [REDACTED], were Victims of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and lived in Yugoslavia until his death on 22 August 1940. After his death, his account would have passed to his wife and his daughters, [REDACTED] and [REDACTED], who were Jewish and fled to Italy and then to Switzerland after the Nazi occupation of Yugoslavia.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that the Account Owner was their grandfather. There is no information to indicate that the Account Owner has other surviving heirs than the Claimants and their siblings whom they represent.

The Issue of Who Received the Proceeds

The bank records indicate the account was closed to fees. Given 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 Owner or his 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.

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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their grandfather, and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

The CRT can not rely on the account value as of 1920 as the Account Owner could have accessed the account up until the imposition of Swiss visa requirements on 20 January 1939 or his death in 1940. The bank records provide another valuation of the account after a long period of dormancy as of 20 December 1948 as 536.50 Swiss Francs. In accordance with Article 37(1) of the Rules, this amount is increased by an adjustment of 60.00 Swiss Francs, which reflects standardized bank fees charged to the account between 1945 and 20 December 1948. Consequently, the adjusted balance of the account at issue is 596.50 Swiss Francs. According to Article 35 of the Rules, if the amount in an account of unknown type was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

Division of the Award

Claimant [REDACTED1] is representing her two sisters and Claimant [REDACTED2] is representing his brother. According to Article 29 of the Rules, Claimant [REDACTED1] and her sisters will equally share one-half of the Award, and Claimant [REDACTED2] and his brother will equally share the other half of the Award.

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, however, because Claimant [REDACTED1] is age 75 or older, she is entitled to receive payment of 100% of her portion of the total award amount. Accordingly, the initial payment amount is 33,575.00 Swiss Francs, which is comprised of 100% of Claimant [REDACTED1]' portion of the award (7,900.00 Swiss Francs) and 65% of the award portions of Claimant [REDACTED1]' sisters and Claimant [REDACTED2] and his brother (25,675.00 Swiss Francs).

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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).