

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Heinrich Herzog

in re Account of *Herz & Strauss*

Claim Number: 209820/MD¹

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of Heinrich Herzog (the “Claimant”) to the account of *Herz & Strauss* (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 a bank owned by his father, Jacques (Jacob) Herzog, the son of Philip and Johanna Herzog. The Claimant stated that Jacques Herzog was married to Franziska Bamberger, and that the couple had one child, the Claimant, who was born in 1914 in Vienna, Austria. The Claimant stated further that his father lived in Vienna, where he was the sole owner of the bank *Herz & Strauss* located at Schottenring 7. The Claimant stated that his father’s bank had business relations with the Bank in Switzerland, as well as with another bank in Zurich, Switzerland, and a company in Zug, Switzerland. The Claimant also stated that his paternal uncle, Emil Herzog, made frequent trips to Basel, Switzerland, where he deposited assets. Emil Herzog committed suicide in Vienna in 1938.

According to the information provided by the Claimant, his father, who was Jewish, was arrested with the Claimant’s mother by the Gestapo in March 1938 and put in jail in Vienna, and his bank was liquidated by the Nazis. The Claimant explained that his father managed to flee Austria to the United States later in 1938. The Claimant indicated that his father died in Mt. Vernon, New York, the United States in August 1957, and that his mother died in White Plains, New York, the United States, in 1960. The Claimant indicated that he was born on 18 March 1914 in Vienna.

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 200369 and 209820. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 209820.

In support of his claim, the Claimant submitted his birth certificate and a letter sent to the Swiss Banking Ombudsman on 10 August 1997, in which he requested assistance in search for his father's bank accounts in Switzerland.

The Claimant previously submitted an Initial Questionnaire to the Court in 1999, asserting his entitlement to a Swiss bank account owned by the bank *Herz & Strauss*. He also submitted two ATAG Ernst & Young Claim forms in 1998, asserting his entitlement to a Swiss bank account owned by Emil Herzog, Herzog Strauss, and Jacques Herzog.

Information Available in the Bank Record

The bank record consists of a bank customer card. According to this record, the Account Owner was a bank named *Herz & Strauss* that was located at Schottenring 7 in Vienna. The card states that correspondence from the Bank should be directed to a Louise Baumberger at Spiegelgasse 8 in Vienna I. The bank record indicates that the Account Owner held a custody account, numbered 8253, that was opened no later than May 1934, and closed on 11 May 1939. The amount in the account on the date of its closure is unknown. There is no evidence in the bank records that the Account Owner or Jacques Herzog, as the owner of the bank that was the Account Owner, closed the account and received the proceeds.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father's company name matches the published name of the Account Owner. The Claimant identified the company *Herz & Strauss* as a bank and provided its precise 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 Claimant has made a plausible showing that the Account Owner's shareholder was a Victim of Nazi Persecution. The Claimant stated that the Account Owner's shareholder, who was Jewish, was imprisoned by the Gestapo in Vienna, and that the bank owned by him was liquidated by the Nazis.

The Claimant's Relationship to the Account Owner

According to Article 29(3) of the Rules Governing the Claims Resolution Process (the "Rules"), if the account owner is a legal entity, the award shall be made in favor of those claimants who establish a right of ownership to the assets of the entity. The Claimant asserted that the sole owner of the Account Owner was his father, Jacques (Jacob) Herzog, and provided his birth certificate, demonstrating that he is the son of Jacques Herzog.

The Issue of Who Received the Proceeds

Given the application of Presumptions (a) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the legitimate owner of the Account Owner or his 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was a company owned by his father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, its legitimate owner, nor his 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 the average value of a custody account in 1945 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. In this case, the Claimant is age 75 or older and is therefore entitled to receive payment of 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 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

November 26, 2002

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

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).