

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of François Himly, Jacques Himly, and Nina Himly-Rabinovitch

Claim Numbers: 501300/MC; 501306/MC

Award Amount: 98,750.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the published accounts of Jacques Himly and Nina Himly-Rabinovitch. This Award is to the published accounts of François Himly (“Account Owner François Himly”), Jacques Himly (“Account Owner Jacques Himly”), and Nina Himly-Rabinovitch (“Account Owner Himly-Rabinovitch”) (together the “Account Owners”) at the Geneva 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 Claimant

The Claimant submitted two Claim Forms identifying Account Owner Nina Himly-Rabinovitch as her paternal aunt, Nina Himly, née Rabinovitch (Rabinowitz, Rabinowitsch); Account Owner Jacques Himly as her aunt’s husband, Jacques Himly; and Account Owner François Himly as her paternal aunt’s stepson, François Himly. The Claimant stated that her aunt, who was Jewish, was born on 28 June 1905 in Wiesbaden, Germany; that her aunt’s husband was born in approximately 1894 in Strasbourg, France; and that they married in approximately 1930. The Claimant explained that Jacques Himly had two children from his previous marriage, François Himly and [REDACTED], née [REDACTED]. The Claimant stated that her aunt, who was Jewish, and her uncle, who was not Jewish, resided in Paris, France, during the Second World War. The Claimant stated that her aunt was denounced by the concierge in her apartment building and that she fled from Paris to Vichy, France, but subsequently returned to Paris and worked in Gestapo headquarters as a spy for the French Resistance. In a conversation with the CRT on 11 March 2005, the Claimant stated that François Himly was not Jewish.

The Claimant explained that after the War her aunt and her husband resided in Geneva, Switzerland, where Jacques Himly died in approximately 1972 and Nina Himly-Rabinovitch

died on 15 May 1977. The Claimant stated that [REDACTED] died in approximately 1958 and that François Himly died in approximately 1979.

In support of her claim, the Claimant submitted copies of:

- (1) her father's birth certificate, indicating that [REDACTED] was born on 24 October 1901 in Wiesbaden, and that his parents were [REDACTED] and [REDACTED], née [REDACTED];
- (2) her grandmother's death certificate, indicating that [REDACTED], née [REDACTED], was born in Mohilev, Russia, and died on 4 July 1933 in Geneva;
- (3) her parents' marriage certificate, indicating that [REDACTED] married [REDACTED] on 29 June 1946 in New York, New York;
- (4) her aunt's will, indicating that Nina Himly, née Rabinowitsch, was married to [REDACTED], that François Himly was her spouse's son, and that [REDACTED], Nina Himly's niece, was entitled to one-sixth of her residual estate; and
- (5) a letter from the Justice Department of Canton Geneva ("*Pouvoir Judiciaire Publique et Canton de Genève*"), dated 3 June 1977, indicating that Nina Himly, née Rabinowitch, was born on 28 June 1905, that she was married to [REDACTED], that she resided in Geneva, and that she died on 15 May 1977 in Geneva.

The Claimant indicated that she was born on 1 March 1950 in Roslyn, New York.

Information Available in the Bank's Records

Account Owner François Himly

With respect to the account held by Account Owner François Himly, the Bank's records consist of a customer card and an extract from a list of suspense accounts. The Bank's records indicate that Account Owner François Himly held an account of unknown type. The Bank's records also indicate that Account Owner François Himly informed the Bank that he was domiciled in Switzerland and instructed the Bank to hold all correspondence. According to the Bank's records, the account proceeds were transferred to a suspense account on or before 28 June 1951, at which time the balance of the account was 7,170.50 Swiss Francs ("SF"). 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") indicated that there was no evidence of customer contact since 31 December 1945. The account remains open and dormant.

Account Owner Jacques Himly

The Bank's records pertaining to Account Owner Jacques Himly consist of a customer card, an invoice from the Swiss Compensation Office (*Schweizerische Verrechnungsstelle*), two extracts from suspense account ledgers, and a report of the auditors who carried out the ICEP

Investigation. According to these records, Account Owner Jacques Himly resided at 6 rue Cound in Paris, France. The Bank's records indicate that Account Owner Jacques Himly held one account of unknown type, which was denominated in United States Dollars ("US \$"). The Bank's records indicate that Account Owner Jacques Himly instructed the Bank to hold all correspondence. The auditors' report indicates that the account was frozen on 14 June 1941 pursuant to the United States Trading with the Enemy Act (the "1941 Freeze").¹ The Bank's records indicate that on 18 March 1948, the Bank registered the account with the Swiss Compensation Office, and at that time the amount in this account was US \$71.19, which the Bank indicated was equivalent to SF 306.11. According to the Bank's records, the amount in the account was transferred to a suspense account, and on 25 May 1951 the amount in the account was SF 282.10. The auditors who carried out the ICEP Investigation did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. The last known date of the account's existence is 27 November 1964.

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts ("Voluntary Assistance"). The Bank provided the CRT with an additional document. This document consists of an extract from a suspended account ledger, which indicates that on 28 June 1951 the amount in Account Owner Jacques Himly's account was SF 282.10.

Account Owner Himly-Rabinovitch

The Bank's records pertaining to Account Owner Himly-Rabinovitch consist of extracts from suspense account ledgers. According to these records, *Mme.* (Mrs.) Nina Himly-Rabinovitch held one account of unknown type. According to the Bank's records, the account proceeds were transferred to a collective suspense account on or before 18 May 1951. The balance of the account on this date was SF 475.00.

Pursuant to Article 6 of the Rules, the CRT requested Voluntary Assistance to obtain additional information about this account. The Bank provided the CRT with additional documents. These documents consist of a customer card and an account statement regarding the account. These documents show that Account Owner Himly-Rabinovitch died on 15 May 1977 and that the proceeds of her account were transferred to a destination within the Bank specified as "FGBR" on 17 May 1977, at which time the balance of the account was SF 475.00.² The account

¹ During the Second World War, the United States government froze certain foreign assets located in the United States, under the powers of the Trading with the Enemy Act of 1917 (50 U.S.C. App.). On 14 June 1941, President Roosevelt extended freezing controls to cover all of continental Europe (the "1941 Freeze"). Executive Order 8785 Regulating Transactions in Foreign Exchange and Foreign-Owned Property, Providing for the Reporting of all Foreign-Owned Property, and Related Matters (6 Fed. Reg. 2897). See *Plunder & Restitution: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report*, SR-44 (US Government Printing Office, 2000), available at http://www.pcha.gov/PlunderRestitution.html/html/Home_Content.html.

² It is not clear for what "FGBR" stands, however it could stand for "Fund for General Banking Risks." Generally, such a fund is an amount set aside for general banking risks, including future losses and other unforeseeable risks or contingencies. Such a fund is also designed to form part of retained earnings; credits are recorded as increases in retained earnings and are not included in the determination of profit or loss for the period. Amounts can only be

statement is dated 9 October 1991 and shows the name of Account Owner Himly-Rabinovitch, together with the designation “FGBR.” According to the account statement, on this date the account had a balance of SF 34.42, which was then booked out, leaving a closing balance of SF 0.00.

The CRT’s Analysis

Joinder of Claims

According to Article 37(1) of 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 Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Nina Himly-Rabinovitch and Account Owner Jacques Himly. The Claimant’s aunt’s name matches the published name of Account Owner Nina Himly-Rabinovitch and the Claimant’s aunt’s husband’s name matches the published name of Account Owner Jacques Himly. The Claimant identified Account Owner Himly-Rabinovitch’s date of death and Account Owner Jacques Himly’s city and country of residence, which match unpublished information contained in the Bank’s records.

In support of her claim, the Claimant submitted documents, including a copy of her aunt’s will, indicating that Nina Himly, née Rabinowitsch, was married to [REDACTED], providing independent verification that the persons who are claimed to be Account Owner Himly-Rabinovitch and Account Owner Jacques Himly had the same names recorded in the Bank’s records as the names of Account Owner Himly-Rabinovitch and Account Owner Jacques Himly.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Himly-Rabinovitch and Account Owner Jacques Himly were Victims or Targets of Nazi persecution. The Claimant stated that Nina Himly-Rabinovitch was Jewish, that she resided in Nazi-occupied France, and that she fled from Paris to Vichy before returning to Paris to work as a spy for the French Resistance. The Claimant stated that Jacques Himly was not Jewish, but was married to a Jewish woman. Given that Jacques Himly was married to a Jewish woman, the CRT concludes that he would have been targeted by the Nazi regime, and that he was therefore a Victim of Nazi persecution, as defined by the Settlement Agreement.

transferred to or from such accounts via the post-tax balance on the profit and loss account, *i.e.*, losses cannot be directly charged to such an account but must be taken through the profit and loss account. See “Proposals for the Inclusion of General Provisions/General Loan-Loss Reserves in Capital (February 1991), available at www.bis.org/pub/bcbssc113.pdf.

With regard to Account Owner François Himly, the CRT notes that according to the Claimant, he was the son of Jacques Himly and his first wife. The Claimant stated that François Himly was Nina Himly-Rabinovitch's step-son, and that neither he nor either of his biological parents was Jewish. The Claimant did not provide any information to show that François Himly was a member of one of the other Victim or Target groups, as defined by the Settlement Agreement. According to Article 18(2)(a) of the Rules, a claim is inadmissible if the claimant has provided no plausible information indicating that the person he or she believes to be the account owner was a Victim or Target of Nazi Persecution, as defined by the Settlement Agreement. Therefore, and in accordance with the Rules, the claim of the Claimant to the account of François Himly is hereby deemed inadmissible.

The Claimant's Relationship to Account Owners Himly-Rabinovitch and Jacques Himly

The Claimant has plausibly demonstrated that she is related to Account Owners Himly-Rabinovitch and Jacques Himly by submitting specific biographical information and documents, demonstrating that Account Owner Himly-Rabinovitch was the Claimant's aunt, and that Account Owner Jacques Himly was the Claimant's aunt's husband. These documents include a copy of her parents' marriage certificate, indicating that [REDACTED] married [REDACTED] on 29 June 1946 in New York, and her aunt's will, indicating that Nina Himly-Rabinovitch was married to Jacques Himly and that her niece was [REDACTED]. There is no information to indicate that Account Owners Himly-Rabinovitch and Jacques Himly have other surviving heirs.

The Issue of Who Received the Proceeds

With regard to Account Owner Jacques Himly's account, the Bank's records show that the account was frozen in the 1941 Freeze, released back to the Bank in 1948, and then transferred to a suspense account on 25 May 1951. The auditors who carried out the ICEP Investigation did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. The last known date of the account's existence is 27 November 1964.

Given that Account Owner Jacques Himly's account was frozen in the 1941 Freeze, later released back to the Bank, and then transferred to a suspense account on 25 May 1951; that there is no record of the payment of Account Owner Jacques Himly's account to him, nor any record of a date of closure of the account; that Account Owner Jacques Himly and his heirs would not have been able to obtain information about his account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (c) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid Account Owner Jacques Himly 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.

With regard to the account owned by Account Owner Himly-Rabinovitch, the Bank's records show that the account was transferred to a collective suspense account on or before 18 May

1951. Records obtained during Voluntary Assistance show that Account Owner Himly-Rabinovitch died on 15 May 1977 and that the proceeds of her account were transferred to a destination within the Bank specified as “FGBR” on 17 May 1977, at which time the balance of the account was SF 475.00. These records also show that the account was registered under Account Owner Himly-Rabinovitch’s name and with the initials “FGBR” on 9 October 1991, and that the amount in the account on that date was SF 34.42. These records show that this amount was then booked out on that date, leaving a closing balance of SF 0.00. As noted above, although the meaning of “FGBR” is not clear from the records, it appears that the account proceeds were transferred to another type of suspense account after Account Owner Himly-Rabinovitch’s death, that fees continued to be charged to her account, and that 14 years after Account Owner Himly-Rabinovitch’s death and the transfer of the account to the “FGBR” destination, the account was depleted by fees and closed by the Bank. Thus, it is clear that Account Owner Himly-Rabinovitch’s heirs did not receive the proceeds of the account.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claims to the accounts of Account Owner Jacques Himly and Account Owner Himly-Rabinovitch are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner Himly-Rabinovitch was her paternal aunt and that Account Owner Jacques Himly was her aunt’s husband, and these relationships justify an Award. Third, the CRT has determined that it is plausible that neither Account Owner Jacques Himly nor Account Owner Himly-Rabinovitch, nor their heirs, received the proceeds of the claimed accounts.

Amount of the Award

In this case, Account Owners Jacques Himly and Himly-Rabinovitch each held one account of unknown type. With regard to the account of Account Owner Jacques Himly, the Bank’s records show that as of 18 March 1948, the balance of the account was SF 306.11. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 60.00, which reflects standardized bank fees charged to the account of unknown type between 1945 and 1948. Consequently, the adjusted balance of the account at issue is SF 366.11.

With regard to the account of Account Owner Himly-Rabinovitch, the Bank’s records show that as of 18 May 1951, the balance of the account was SF 475.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 105.00, which reflects standardized bank fees charged to the account of unknown type between 1945 and 1951. Consequently, the adjusted balance of the account at issue is SF 580.00.

According to Article 29 of the Rules, if the amount in an account of unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. Thus, the values of the two accounts belonging to Account Owners Jacques Himly and Himly-Rabinovitch are determined to be SF 3,950.00 each, for a total of SF 7,900.00. The current value of this amount is determined by multiplying the

balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 98,750.00.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, the Claimant may appeal the inadmissibility decision regarding François Himly or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimant should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimant should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

In the absence of a timely appeal of this decision regarding the admissibility of the Claimant's claim to the account of François Himly, the CRT will forward a copy of this Claim Form to the Contact Office of the Swiss Bankers Association, which has a separate program for considering claims made to accounts of persons who were not Victims or Targets of Nazi Persecution as defined in the Settlement Agreement, in order for that office to consider the claim to the account belonging to the Claimed Account Owner. If the Claimant does not wish to have the Claim Form so forwarded, she may request in writing, within thirty (30) days of the date of this decision, that the CRT not do so. Such requests should be sent to the CRT at the following address:

**Claims Resolution Tribunal
Attention: Oren Wiener
P.O. Box 9564
8036 Zurich
Switzerland**

The Claimant can also obtain additional information about the Swiss banks' claims program by contacting the Swiss banks' Contact Office at the following address:

Contact Office of Swiss Bank Accounts Dormant Since World War II
P.O. Box 2761
4002 Basel
Switzerland

The CRT notes that the Claimant did not specifically claim an account belonging to François Himly in her claim form. Thus, in correspondence with the Swiss banks' Contact Office, the Claimant should inform that office that she is seeking to claim this account.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
17 December 2010