

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Dr. Wolfgang Hirsch-Weber¹
also acting on behalf of Henriette Lucchesi

in re Account of Dr. Josef Hirsch

Claim Number: 219617/ME

Award Amount: 14,880.00 Swiss Francs

This Certified Award is based upon the claim of Dr. Wolfgang Hirsch-Weber (the “Claimant”) to the account of Dr. Josef Hirsch (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 father, Willi Josef Hirsch, who was born on 1 July 1899 in Mannheim, Germany, and was married to Mathilde Anna Hirsch, née Weber, on 17 November 1920 in Kehl, Germany. The couple had two children, Henriette and the Claimant. According to the Claimant, his father was a journalist until 1933, and a manager at *Samt und Seide GmbH* in Mannheim from 1933 until 1938, after which he was a representative for a French film distribution company. The Claimant stated that his father lived in Heidelberg, Germany until 1933, after which he lived and worked in Mannheim until 1939. Furthermore, the Claimant stated that his father, who was Jewish, took yearly vacations to Davos, Switzerland, St. Moritz, Switzerland and the Vierwaldstättersee, Switzerland, between 1935 and 1938. The Claimant further stated that his father and his uncle, Ferdinand Weber, who was not Jewish, helped Jews who wished to flee Nazi Germany by transporting their assets to Switzerland for safekeeping. The Claimant stated that on one occasion in March 1939, his father arranged for a German police officer to carry a package containing valuables belonging to the Claimant’s father and a family from Heidelberg, the package was confiscated at the Swiss border in Basel, and the Swiss customs officer returned the package to the German authorities. The Claimant stated that his uncle was arrested a few days later and committed suicide while in police custody. According to the information provided by the Claimant, his father was arrested several days after the Claimant’s uncle’s arrest, and was

¹ The Claimant submitted an additional claim to the account of Fritz Hirsch, which is registered under the Claim Number 219618. The CRT will treat the claim to this account in a separate decision.

tried, convicted and sentenced in 1940 to two and a half years of imprisonment and a fine for assisting Jews in arranging to transport their assets out of Germany. The Claimant stated that after his father's imprisonment, he was sent to the Flossenbürg concentration camp, where he was murdered. The Claimant provided a copy of a newspaper article which describes the legal case brought against his father in 1940 and which refers to at least three packages and a valuable stamp collection which were transported to Switzerland for safekeeping. Additionally, the Claimant provided a copy of his father's certificate of joint inheritance indicating his father's full name and place of residence as Mannheim, Germany. The Claimant stated that he was born on 20 July 1920. The Claimant is representing his sister, Henriette Lucchesi, née Hirsch, who was born on 9 September 1922 in Mannheim.

Information Available in the Bank Record

The bank record consists of an account registry card. According to this record, the Account Owner was Dr. Josef Hirsch who resided in Berlin and Mannheim, Germany. The bank record indicate that the Account Owner held a safe deposit box account, numbered 1924, which was opened on 18 April 1936.

The safe deposit box was closed unknown by whom on 25 March 1937. The amount in the safe deposit box account on the date of its closure is unknown. There is no evidence in the bank record that the Account Owner or his heirs closed the safe deposit box account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father's name and place of residence match the published name and place of residence of the Account Owner. The CRT notes that a database containing the names of victims of Nazi persecution includes a person named Willi Josef Hirsch, and indicates that his date of birth was 1 July 1899, and place of birth was Mannheim, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant also submitted a copy of his father's certificate of joint inheritance identifying the Account Owner by name, date of birth, residence as well as his two children. Additionally, the Claimant provided a copy of a newspaper article identifying his father who was convicted and sentenced to two and a half years' imprisonment as well as a fine in 1940 for assisting Jews in arranging to transport their assets out of Germany. This article specifically identifies Switzerland as a destination country for the transported assets. The CRT notes that the two other claims to this account were disconfirmed because the persons identified in the claim forms were not from Germany and had no connection to Germany.

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 he was deported to the Flossenbürg concentration camp where he was murdered. As noted above, a person named Willi Josef Hirsch was included in the CRT's database of victims.

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 the Account Owner is his father. The Claimant submitted a copy of his father's certificate of joint inheritance identifying the Account Owner and his two children.

The Issue of Who Received the Proceeds

Given the application of Presumption (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 to the Account Owner or his heirs. Based on its precedent and the Rules, the CRT applies presumptions to determine whether 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 father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one safe deposit box account. Pursuant to Article 29 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a safe deposit box was 1,240.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 14,880.00 Swiss Francs.

Division of the Award

The Claimant is representing Henriette Lucchesi, his sister, in these proceedings. According to Article 23 of the Rules, his sister is entitled to receive one-half of any payment made to the Claimant.

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 28, 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).