

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

To Claimant [REDACTED]

Acting on behalf of himself and of [REDACTED], [REDACTED],
[REDACTED], and [REDACTED]

In re Account of Dr. Isidor Hirschfeld

Claim Number: 220066/AA

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”), to the Account of Dr. Isidor Hirschfeld (the “Account Owner”) 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 the Account Owner as his grandfather, Dr. Isidor Hirschfeld, who was born on 13 January 1872 in Dirschau, Poland and was married to [REDACTED] on 1 May 1912 in Berlin, Germany. Isidor and [REDACTED], who were Jewish, had three children, the Claimant’s father, [REDACTED], born in Berlin on 6 September 1913, [REDACTED], born in Berlin on 7 January 1916, and [REDACTED], born in Mewe, Germany on 6 June 1918. The Claimant submitted further that his grandfather graduated from medical school in Wurzburg, Germany in 1897 and moved to Berlin, where he practiced as a surgeon. According to the Claimant, in 1938, his grandfather was not allowed to continue practicing as a surgeon in Germany, was forced to surrender all of his property, and his grandfather’s brothers and sister were deported to camps in Poland, where they subsequently perished. The Claimant explained that by October 1941 his grandparents were able to escape Germany to Havana, Cuba and lived there until 1944. Finally, according to the Claimant, his grandparents were admitted to the United States, where they remained financially dependent on the Claimant’s father. In support of his claim, the Claimant submitted his grandfather’s birth and death certificates, his testamentary letters, his grandfather’s immigration documents from Cuba to the United States, and a summary of diary entries written by his grandfather from 1933 to 1941. The Claimant stated that he was born on 6 March 1952.

Information Available in the Bank Records

The bank record consists of an account opening card. According to this record, the sole Account Owner was Dr. Isidor Hirschfeld, a medical doctor, of Berlin, Germany. The bank record indicates that the Account Owner held a custody account, which was opened on 14 July 1931. A notation on the account opening card indicates the account was closed on 19 May 1938. The bank documents do not indicate the value of the account. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of Account Owner

The Claimant has plausibly identified the Account Owner. His grandfather's name matches the published name of the Account Owner. Additionally, the Claimant has presented information regarding his grandfather's profession and city of residence in Germany before the Second World War, which is consistent with the Account Owner's unpublished title and domicile information contained in the bank documents.

Status of Account Owner as Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant has shown that his grandfather was Jewish and was persecuted by the Nazis while living in Germany until 1941. Specifically, in 1938, his grandfather was prohibited from practicing as surgeon, and virtually all of his property was confiscated by the Nazis.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated he is related to the Account Owner by submitting documents demonstrating that Isidor Hirschfeld was his grandfather. Namely, he has submitted his grandfather's immigration documents and [REDACTED] birth certificate, both of which name the Claimant's father as the son of Isidor Hirschfeld. He has also submitted his grandfather's marriage and death certificates and a summary of diary entries written by his grandfather. The Claimant stated that his grandfather had four other surviving heirs, the Claimant's mother, [REDACTED] and the Claimant's siblings, [REDACTED], [REDACTED] and [REDACTED], from all of whom he holds power of attorney.

The Issue of Who Received the Proceeds of Account Owner

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. These presumptions are

contained in Appendix A.¹ The CRT concludes in this case that presumption (j) applies and it is therefore plausible that the account proceeds were not paid to the Account Owner or his heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the Claim is admissible because the claimed account belonged to a Victim of Nazi Persecution. Second, the Claimant has plausibly demonstrated that the Account Owner was his grandfather, 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 at issue.

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 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.

Articles 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 35% of the Certified Award, and the Claimant may receive a second payment of up to 65% 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 35% of the total award amount is 54,600.00 Swiss Francs.

Division of the Award

According to Article 29 of the Rules, if the Account Owner's spouse has not submitted a claim, the Award shall be in favor of any descendants of the Account Owner who have submitted claims. Thus, [REDACTED], [REDACTED], [REDACTED], and [REDACTED] are entitled to one-fourth each of the Award.

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).

¹ An expanded version of Appendix A appears on the CRT II website – www.crt-ii.org.

Certification of the Award

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

Claims Resolution Tribunal

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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).