

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Dr. Eve Hochwald
acting on behalf of herself and Miriam Hochwald,
and Emmanuel Horowitz
acting on behalf of himself and Jane Sharfstein

in re Account of Adolf Hochwald

Claim Numbers: 220686/MC; 221324/MC

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claims of Dr. Eve Hochwald (hereinafter “Claimant Hochwald”) and Emmanuel Horowitz (hereinafter “Claimant Horowitz”) (together the “Claimants”) to the account of Adolf Hochwald (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published. Where Claimants have not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimants

Claimant Hochwald submitted a Claim Form identifying the Account Owner as her father’s first cousin, Adolf Hochwald, who was born in approximately 1904 in Tesin, Czechoslovakia. Claimant Hochwald stated that she is the daughter of the Account Owner’s first cousin, Werner Hochwald, and that she was born in St. Louis, Missouri, on 12 February 1945. According to Claimant Hochwald, Adolf Hochwald was the son of Eduard Hochwald and Emma Hochwald, née Fischl. Claimant Hochwald stated that Adolf Hochwald’s father, Eduard, had ten siblings, one of whom was Moritz Hochwald. Moritz married Elsa Stahl and had three children, Werner, Fritz, and Hilde. Werner Hochwald married Hilde Landenberger and had two children, Claimant Hochwald and her sister, Miriam Hochwald, on whose behalf Claimant Hochwald also acts.

Claimant Hochwald stated that Adolf Hochwald was Jewish and that, before the Second World War, most of the Hochwald family lived in Brno, Czechoslovakia. According to Claimant Hochwald, Adolf Hochwald never married, had no children and was a medical doctor. Claimant Hochwald stated that most of the Hochwald family were killed by the Nazis, but Adolf Hochwald was able to flee Czechoslovakia late in 1939 and emigrate to Boston, Massachusetts. Claimant Hochwald further stated that, after the Second World War, Adolf Hochwald worked for

the “United Nations Refugee Assistance (UNRA)” program in Europe. According to Claimant Hochwald, Adolf Hochwald died in Bay Brook, New York on 30 August 1958. Claimant Hochwald submitted a copy of a letter written by Adolf Hochwald that includes his signature.

Claimant Horowitz submitted a Claim Form identifying the Account Owner as his mother’s first cousin, Adolf Hochwald, who was born on 5 September 1906 in Brno, Czechoslovakia. Claimant Horowitz stated that he is the son of the Account Owner’s first cousin, Lia Redlich, and that he was born in Boston, Massachusetts, on 28 May 1948. According to Claimant Horowitz, Adolf Hochwald was the son of Eduard Hochwald and Ernastine Hochwald, née Fischel. Claimant Horowitz stated that Adolf Hochwald’s mother, Ernastine Fischel, had two sisters, Gisella and Elisabeth Fischel. Gisella Fischel married Sigmund Redlich and had one child, Lia Redlich. Lia Redlich married Joseph Horowitz and had one child, Claimant Horowitz. Ernastine Fischel’s other sister, Elisabeth, married Jakob Meissner and had one child, George Felix Meissner. He married Betty Shief and had one child, Jane Elisabeth Sharfstein, on whose behalf Claimant Horowitz also acts.

Claimant Horowitz stated that Adolf Hochwald was Jewish and that, from approximately 1935 to 1938, he lived in Brno, Prague, Czechoslovakia, and Vienna, Austria. According to Claimant Horowitz, in approximately 1938, Adolf Hochwald fled to Switzerland and, in 1939, to Spain and Portugal. He later passed through Haiti and Canada before arriving in Boston in approximately 1944. Claimant Horowitz has submitted a copy of Adolf Hochwald’s passport. The passport identifies Adolf Hochwald’s place of birth as Tesin, Czechoslovakia. Moreover, the passport indicates that Adolf Hochwald entered Switzerland on 2 March 1939. The passport further indicates that Adolf Hochwald thereafter returned to Czechoslovakia, and that he obtained an entry visa for Switzerland at the Swiss Embassy in Prague on 27 November 1939. According to Claimant Horowitz, Adolf Hochwald never married and had no children. Claimant Horowitz stated that Adolf Hochwald was a medical doctor who worked for the “United Nations Relief and Rehabilitation Administration (UNRRA).” According to Claimant Horowitz, Adolf Hochwald died in Lake Placid, New York in 1958.

Information Available in the Bank Records

The bank records consist of a power of attorney authorization and printouts from the Bank’s database. According to these records, the sole Account Owner was Dr. Adolf Hochwald of Brünn, Czechoslovakia, and the Power of Attorney Holder was Professor Dr. Hans Goldman, a member of the governing board of the Eye Clinic in Bern. 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”) determined that the Account Owner held a custody account. The power of attorney authorization, signed in Zurich on 4 March 1939, includes the Account Owner’s signature and indicates that the Account Owner resided in Brünn, Czechoslovakia. The bank records do not show if or when the account at issue was closed or to whom it was paid, nor do these records indicate the value of this account. The auditors did not find this account in the Bank’s system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence

in the bank records that the Account Owner, the Power of Attorney Holder or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 claims of Claimant Hochwald and of Claimant Horowitz in one proceeding.

Identification of the Account Owner

Both Claimants have plausibly identified the Account Owner. The name of each Claimant's relative matches the published name of the Account Owner. Each Claimant has provided information about the Account Owner's profession that matches unpublished information contained in the bank documents. In support of his claim, Claimant Horowitz has submitted a copy of the Account Owner's passport. The passport indicates that Adolf Hochwald was in Switzerland at the time the account was opened. The passport also indicates that Adolf Hochwald fled Czechoslovakia for Switzerland in late 1939. Finally, both Claimants submitted samples of their relative's signature, which match the signature sample contained in the bank records. Although the Claimants do not mention each other in their claim forms, the CRT notes that they are equally distant relatives descended from different sets of the Account Owner's grandparents, and the information they submit about their relative is virtually identical. The CRT concludes that both claimants have plausibly identified the same person and that their relative is the Account Owner. The CRT notes that the only other claim to this account was disconfirmed because the claimed account owner was from a different country.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Each Claimant stated that the Account Owner was Jewish and lived in Czechoslovakia in 1939 after its occupation by Nazi Germany and was forced to flee Europe to avoid persecution.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner. Claimant Hochwald has plausibly demonstrated that her father (and her sister's father) was the first cousin of Adolf Hochwald on Adolf's father's side by submitting documents that identify details about her family and a copy of a letter written and signed by Adolf Hochwald. Claimant Horowitz has plausibly demonstrated that his mother (and his cousin's father) was the first cousin of Adolf Hochwald on Adolf's mother's side by submitting documents that identify

details about his family and a copy of Adolf Hochwald's Czechoslovakian passport. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given the persecution of Jews in Czechoslovakia and the confiscation of Jewish assets during the War, the fact that the most of the Account Owner's family was murdered by the Nazis, that the Account Owner himself narrowly escaped, and the application of Presumptions (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder or their 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that their relative is the Account Owner and that relationship justifies an award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody 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 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 31(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

Division of the Award

Article 23(1)(e) of the Rules provides that, in the absence of other claimants more closely related to the Account Owner, the Award shall be divided equally among any of the children of the Account Owner's grandparents or their descendants who have submitted claims to the account. Therefore, Claimant Hochwald is entitled to half the award amount and Claimant Horowitz is entitled to half the award amount.

Claimant Hochwald is representing her sister in these proceedings. According to Article 23 of the Rules, her sister is entitled to receive half of any payment made to Claimant Hochwald. Claimant Horowitz is representing his cousin in these proceedings. According to Article 29 of the Rules, his cousin is entitled to receive half of any payment made to Claimant Horowitz.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 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
April 21, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).