

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of Osias Horowitz

Claim Number: 005380/AY,¹ 100016/AY

Award Amount: 14,880.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the account of [REDACTED].² This Award is to the account of Osias Horowitz (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as the Claimants have in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Information Provided by Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form and Initial Questionnaires identifying the Account Owner as his father, Osias Horowitz, who was born on 21 July 1908 in Nowy Són, Poland, and was married to [REDACTED], née [REDACTED 1], in 1945 in Gent, Belgium. Claimant [REDACTED 1] stated that his father was the youngest child in a family of nine children, and that his grandfather, [REDACTED], was a Jewish scholar, and his grandmother, [REDACTED], ran the family businesses. Claimant [REDACTED 1] stated that his grandparents were highly respected because his grandfather was a Jewish scholar. Claimant [REDACTED 1] stated that because his grandmother came from a wealthy family, she was able to support her husband and children. Claimant [REDACTED 1] indicated that the family business included a textile factory, a textile shop located on Jagiellonska Street in Nowy Sacz,

¹ The Claimants provided their names and some of their relatives’ names only in Hebrew characters in the Claim Form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the Claim Form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

² The CRT will treat the claim to this account in a separate decision.

Poland, and the rental of flats located in several houses owned by the family. Claimant [REDACTED 1] indicated that the family lived in 19 Rynek Street, Nowy Sacz, in a building the family owned. The other six flats and four stores in the building were rented out by the family. Claimant [REDACTED 1] stated that the family had business interests in the Czech Republic, Austria and Germany. In order to better manage the family business, Claimant [REDACTED 1]'s father, Osias Horowitz, moved to Berlin, Germany. In 1935, Osias Horowitz returned to Poland to attend his father's funeral. He was then forced by the authorities to join the Polish army, and he served for approximately one year. Having served in the army, he was allowed to keep his Polish passport. After ending his military service, Osias Horowitz returned to Germany to manage the family business. Fearing the Nazi regime, he fled to Belgium where a local family hid him for the four years. After the Second World War, Osias Horowitz learned that all his relatives had been murdered in the Belzec concentration camp in Poland. Claimant [REDACTED 1] stated that his father then studied building engineering in Belgium, and in 1949 immigrated to Israel. Claimant [REDACTED 1] stated further that his father had described to him in detail the houses owned by the family, and had told him that some assets were kept in Switzerland. Claimant [REDACTED 1] also said that despite the knowledge of the existence of assets in Switzerland, his father refused to contact the Swiss banks, refused to speak Polish or German, and refused to file claims for compensation. Osias Horowitz passed away in Israel in 1989.

In support of his claim, Claimant [REDACTED 1] submitted his father's military card indicating that he was born on 20 July 1908 in Nowy Sons, to [REDACTED] and [REDACTED], that he was Jewish, and that he was a commercial clerk. Claimant [REDACTED 1] also submitted an official land registry card indicating entitlement to land. The card indicates the names of Claimant [REDACTED] grandparents and their nine children, including Claimant [REDACTED] father, Osias Horowitz. Claimant [REDACTED 1] submitted an envelope from a letter sent to his father's home address in Poland from Gent University, dated 1936. Claimant [REDACTED 1] stated that he was born on 16 September 1946 in Gent, Belgium, and arrived in Israel with his parents in 1949.

Claimant [REDACTED 1] previously submitted an Initial Questionnaire with the Court in 1999 asserting his entitlement to a Swiss bank account owned by Osias Horowitz.

Information Provided by Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as her husband, who was born on 21 July 1908 in Nowy Sons, and was married to her in 1945 in Gent. Claimant [REDACTED 2] indicated that her husband resided in Berlin, between 1929 and 1937, and fled from the Nazis, first to France and then to Belgium, where he later studied engineering. Claimant [REDACTED 2] indicated that her husband lived in Belgium until 1949. Claimant [REDACTED 2] submitted her husband's military card, an official land registry card indicating the names of her husband's family members, and her husband's will, indicating she was the wife of Osias Horowitz. Claimant [REDACTED 2] stated that she was born on 7 July 1908 in Romania.

Information Available in the Bank Records

The bank records consist of an account opening card, a closure card for a safe deposit box account, and printouts from the Bank's database. According to the bank records, the Account Owner was Osias Horowitz who resided at Mariannenstrasse 23, in Berlin SO 36, Germany. The records indicate that the Account Owner had an address in Poland and held a Polish passport. The bank records indicate that the Account Owner held a safe deposit box account, numbered 1330, which was opened on 9 May 1936, and was frozen in the 1945 freeze of German assets. The account was closed on 14 December 1947 unknown to whom. 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 his 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 [REDACTED 1] and the claim of [REDACTED 2] in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants' relative's name matches the published name of the Account Owner. Claimant [REDACTED 1] identified his father's Polish nationality, which matches unpublished information about the Account Owner contained in the bank records. In support of their claims, the Claimants submitted the Account Owner's military card, an official land registry card indicating the names of the Account Owner and his family members, an envelope of a letter indicating the Account Owner's home address in Poland, and the Account Owner's will, indicating that he was married to Claimant [REDACTED 2].

The CRT notes that Claimant [REDACTED 1] filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Osias Horowitz, prior to the publication in February 2001 of the list of accounts determined by Independent Committee of Eminent Persons to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED 1] has based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that Claimant [REDACTED 1] had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 1]. The CRT notes that there are no other claims to the account of Osias Horowitz.

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. The Claimants stated that the Account Owner was Jewish, and that fearing the Nazi regime, he fled from Germany to Belgium, where a local family hid him for four years. The Claimants also stated that the Account Owner's relatives were all murdered in the Belzec concentration camp in Poland.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that he was married to Claimant [REDACTED 2] and was the father of Claimant [REDACTED 1]. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given the freezing of Account Owner's account in Switzerland and the application of Presumptions (h) and (j), as provided in Article 28 (see Appendix A) of the Rules, 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 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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was her husband, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was his father, and these relationships justify 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 on safe deposit box. 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 ICEP, in 1945 the average value of a safe deposit box account 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

According to Article 23 of the Rules, Claimant [REDACTED 2] and Claimant [REDACTED 1] are each entitled to receive one-half of the total award amount.

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
March 5, 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).