

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Else Israel

Claim Number: 501549/MBC¹

Award Amount: 339,204.75 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published account of Else Israel (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 her maternal grandmother, Else Israel, née Cohn, who was born in Germany, and was married to [REDACTED]. The Claimant indicated that her grandmother, who was Jewish, resided at Bendlerstrasse 38 in Berlin, Germany, and that, in 1916, she adopted the Claimant’s mother, [REDACTED], née [REDACTED], when the Claimant’s mother was five years old. The Claimant stated that in approximately 1934 and prior to her marriage, her mother reverted to the use of her birth name and fled Germany for Palestine. According to information provided by the Claimant, her grandmother perished in Theresienstadt on 17 August 1942. The Claimant stated that her parents, [REDACTED] and [REDACTED], née [REDACTED], at some point resided in Zug, Switzerland.

In support of her claim, the Claimant submitted a document certifying that the Claimant and her parents changed their last name from [REDACTED] to [REDACTED], and an inheritance certificate issued in Berlin in 1951, which confirms that Else Israel, née Cohn, resided in Berlin and perished in Theresienstadt; identifies her minor granddaughter, the Claimant, as her sole heir; and recognizes the Claimant’s father, [REDACTED], who resided at 2600 Henry Hudson Parkway in Riverdale, New York, the United States, as her representative.

¹ The Claimant submitted an additional claim to the account of Felix Bär, which is registered under the Claim Number 501551. The CRT will treat the claim to this account in a separate decision.

The Claimant indicated that she was born on 23 October 1941 in New York, New York, the United States.

Information Available in the Bank's Records

The Bank's records consist of a letter dated 8 October 1949 written by [REDACTED], who resided at 2600 Henry Hudson Parkway in Riverdale, New York, the United States, addressed to the Bank, and a response from the Bank dated 14 October 1949. In his letter, [REDACTED] referred to a bank statement, which appears to be copied onto the bottom of his letter, that references a custody account, numbered 45914, which [REDACTED] identified as belonging to Else Israel. In his letter, [REDACTED] stated that his wife, [REDACTED], as the daughter of Else Israel, was the sole heir to the account. He further wrote that Else Israel was married to *Kommerzienrat* (commercial councilor, an honorific bestowed on businessmen) [REDACTED], and resided at Bendlerstrasse 38, in Berlin, Germany. In his letter, [REDACTED] inquired whether Else Israel had held other securities at the Bank in addition to those listed on the statement and "if and when these securities had to be delivered, or sold and for whose account." The securities listed on the statement were:

- 4.5% Brazilian Loan 1888 bonds with a nominal value of 1,000.00 Pound Sterling ("£");
- 5% United States of Brazil funding Bonds 1931, 40 years, English tranche bonds with a nominal value of £ 120.00;
- 4% City of Kopenhagen of 1910 bonds with a nominal value of £ 300.00;
- 4% City of Kopenhagen of 1911 bonds with a nominal value of £ 700.00; and
- 4% Chicago, Rock Island and Pacific Railway Comp. first & ref. mortgage gold bonds p. 1934 with a nominal value of 5,000.00 United States Dollars ("US \$").

In its reply, the Bank wrote that it usually did not respond to inquiries about accounts of clients who were deceased until the inquirer had demonstrated that he/she was the legitimate heir of the account owner. However, the letter continues, the Bank would make an exception in this case in order to spare [REDACTED] unnecessary expense. The Bank wrote that it could say that Else Israel had not had a relationship with the Bank since 1936, and that, because Swiss law required the retention of correspondence with account owners for only ten years, it had already destroyed all its files that were dated prior to 1939.

The Bank's reply does not contain information about the type and value of the account held by the Account Owner. [REDACTED]'s letter of 8 October 1949 contains handwritten notations, mostly illegible, that appear to have been made by Bank employees and that appear to address the various securities listed in the statement. One of the notations appears to refer to a demand deposit account belonging to Else Israel that was closed ("*saldiert*") on 16 December 1936.

There is no evidence in the Bank's records that the Account Owner or her heirs received the proceeds of the accounts.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's maternal grandmother's name and country of residence match the published name and country of residence of the Account Owner. The Claimant identified the Account Owner's street address, which matches unpublished information about the Account Owner contained in the Bank's records. The Claimant indicated that her mother was [REDACTED], which matches unpublished information about the Account Owner's daughter contained in the Bank's correspondence records. The Claimant also identified her father as [REDACTED], whose initials and last name match the unpublished name of the husband of the Account Owner's daughter contained in that correspondence. Furthermore, the Claimant identified her father's address in New York, which further matches unpublished information contained in the Bank's records.

In support of her claim, the Claimant submitted documents, including an inheritance certificate confirming that Else Israel resided in Berlin, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants either provided a different city or country of residence than the city and country of residence of the Account Owner.

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 perished in Theresienstadt. The Claimant also submitted an inheritance certificate confirming that Else Israel, née Cohn, perished in Theresienstadt.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's maternal grandmother. These documents include an inheritance certificate pertaining to the estate of Else Israel, naming her granddaughter, the Claimant, as her sole heir. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

In this case, the existence of two accounts belonging to the Account Owner is supported by what appears to be a copy of a statement listing securities contained in a custody account, which [REDACTED] included in his letter of inquiry to the Bank, dated 8 October 1949, as well as the notations of a Bank employee on that letter that refer to a demand deposit account that was

closed on 16 December 1936. The Bank's response, in which it waived the requirement that the inquirer demonstrate that he/she was the legitimate heir of the account owner demonstrates the reliability of the statement included in [REDACTED]'s letter of 8 October 1949.

The CRT notes that the Bank responded that it had no customer relationship with the Account Owner since 1936, and that, pursuant to Swiss law, it had destroyed all its correspondence with account owners that was dated prior to 1939. The CRT notes that this response is disingenuous at best, as in this specific case, internal Bank notations on [REDACTED]'s letter clearly indicate, despite their illegibility, that the Bank had information pertaining to the disposition of these securities, and chose not to reveal it to [REDACTED].

The CRT notes that the year cited by the Bank as the year during which its customer relationship with the Account Owner ended (1936) is the same year during which more stringent Nazi legislation requiring the repatriation of foreign-held securities became effective. Indeed, the United States District Court for the Eastern District of New York (the "Court") has approved several awards to custody accounts held by German account owners that were closed in 1936.² The Bank's reluctance to reveal the information that it clearly had regarding the Account Owner's account is thus more readily explained by its concern for double liability, which the Court specifically addressed in its Memorandum and Order of February 19, 2004:

... Swiss banks were often aware of the fact that they had made improper transfers during the Nazi era and that they could be held liable if they released information. As noted above, the banks' own legal departments had warned them that authorizing a forced transfer could be understood as a breach of their fiduciary duty, and the Swiss courts had repeatedly affirmed this view. *See* Bergier Report, at 276. After the war, many surviving account holders or their heirs approached the banks seeking information about accounts, often with valid legal claims. The banks, which had improperly transferred the funds in the accounts to the Nazis, were afraid that they would be called to account for the breach of their fiduciary duties. *See, e.g., Albers v. Credit Suisse*, 188 Misc. 229, 234, 67 N.Y.S.2d 239, 244 (N.Y. City Ct. 1946) (holding Credit Suisse liable for transferring a client's assets to a German bank pursuant to the client's orders because "above all it knew that the plaintiff was not likely of his free will to transfer property of his located in Switzerland to a bank in German territory controlled by the German government").³

The Court's Memorandum notes that, after the Second World War, Swiss banks stonewalled as a matter of course and was of one mind about this. Citing the Bergier Report, the Court notes that:

² See, e.g., *In re Account of Erna Solmsen* (approved on 29 March 2002).

³ *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 59, 67 (E.D.N.Y. 2004), *amended*, 319 F. Supp. 2d 301 (E.D.N.Y. June 1, 2004).

In May 1954, the legal representatives of the big banks co-ordinated their response to heirs so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry. They agreed not to provide further information on transactions dating back more than ten years under any circumstances, and to refer to the statutory obligation to keep files for only ten years, even if their records would have allowed them to provide the information.

Id. At 446. As was the case with the decision to transfer assets when the account holder was making the request under duress, the most noteworthy aspect of this Bergier Commission finding may be the fact that it was such a collective decision by the banks. The banks, as a matter of policy, refused to disclose information regarding accounts, even where they had it.

The Court's Memorandum and Order further notes that Swiss banks distinguished among account owners when applying their stonewalling tactics:

Notably, the banks' understanding of where they could be liable and where they most needed to employ stonewalling turned on the identity of the account owners. The Volcker Committee described records found in one of Switzerland's large commercial banks as follows:

Legal department documents from 1953 to 1969 outline recommended procedures for responding to claims of Jewish account holders and their heirs whose assets were transferred to Germany in the 1930s. A letter from 1969 recommends that in the case of inquiries about Jewish clients whose assets had to be transferred on their instructions to Germany during the 1930s, or with regard to inquiries received from their heirs, we have always responded that we could not supply the requested information as we are only obliged to retain ledgers and correspondence for a period of 10 years.

The legal department recognized that because the transfer orders were made under duress the risk existed that the bank might be liable to restore the accounts to the rightful owners. **However, the legal department noted that claims by non-Jewish German nationals were not considered a liability, which suggests that the bank treated inquiries from Jewish customers differently from those received by non-Jewish German nationals.** The management of the bank apparently endorsed these procedures in December 1969.

Volcker Report, Annex 5, at 83 (emphasis added). The banks considered Jewish account holders a special problem.⁴

Given these facts; that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax and other confiscatory measures, including confiscation of assets held in Swiss banks; that the demand deposit account was closed on 16 December 1936, when the Account Owner was in Germany; that the Account Owner remained in Germany until her deportation to the concentration camp at Theresienstadt, where she perished, and would not have been able to repatriate her accounts to Germany without losing ultimate control over their proceeds; that there is no record of the payment of the Account Owner's accounts to her, nor any date of closure for the custody account; that the Account Owner's heirs were not able to obtain information about her accounts after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquires by account owners because of the banks' concern regarding double liability; given the application of Presumptions (a), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendices A and C), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her 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 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 her grandmother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one demand deposit account and one custody account. With respect to the demand deposit account, the CRT notes that the Bank employee's notations on the letter of inquiry written by [REDACTED] in 1949 do not indicate the value of the demand deposit 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 current 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 demand deposit account was SF 2,140.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 26,750.00 for this account.

⁴ *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 59, 67 (E.D.N.Y. 2004), *amended*, 319 F. Supp. 2d 301 (E.D.N.Y. 2004).

With respect to the custody account, the CRT notes that the letter written by [REDACTED] contained in the Bank's records appears to contain a copy of a statement listing the securities in the Account Owner's custody account, and that the Bank considered this statement sufficiently reliable to allow it to respond to [REDACTED]'s inquiry without requiring him to prove himself to be the rightful heir of the Account Owner. Given these facts, the CRT considers the list to be a sufficiently reliable basis for the determination of the value of the custody account.

[REDACTED]'s letter of 8 October indicates that the custody account contained the following securities:⁵

- 4.5% Brazilian Loan 1888 bonds with a nominal value of £ 1,000.00, which was equivalent to 15,300.00 Swiss Francs ("SF"),⁶ which were in default and which on 16 December 1936 were trading at 24 percent, putting their market value at SF 3,672.00;⁷
- 5% United States of Brazil funding Bonds 1931, 40 years, English tranche, with a nominal value of £ 120.00, which was equivalent to SF 1,836.00, which were not in default at end December 1936;⁸
- 4% City of Kopenhagen of 1910 bonds with a nominal value of £ 300.00, which was equivalent to SF 4,590.00, and which were trading at 109.00 percent on 15 December 1936,⁹ putting their market value at SF 5,003.10;
- 4% City of Kopenhagen of 1911 bonds with a nominal value of £ 700.00, which was equivalent to SF 10,710.00, and which were trading at 109 percent on 15 December 1936,¹⁰ putting their market value at SF 11,673.90; and
- 4% Chicago, Rock Island and Pacific Railway Comp. first & ref. mortgage gold bonds p. 1934 with a nominal value of US \$5,000.00, which was equivalent to SF 15,300.00. The company had filed for reorganization under the Bankruptcy Act of 1933 and the bonds, which were in default, were trading at 18.375 percent on 16 December 1936,¹¹ putting their market value at SF 2,811.38.

⁵ The letter lists the securities and their nominal value. Market values were obtained by the CRT from the sources cited below. Where the source notes a high and low trading value for the given date, these values were averaged to yield the market quotation used in determining the award value of the security in question.

⁶ The CRT uses official exchange rates when making currency conversions.

⁷ The default status of the bond is shown in *Moody's Manual of Investments, American and Foreign Government Securities*, Moody's Investors Service, New York, 1940, (hereinafter "*Moody's*") p. 1715. The market value was obtained from the *London Times*, 17 December 1936.

⁸ The non-default status of the bond is shown in *Moody's*.

⁹ This market value was obtained from the *London Times*, 16 December 1936. The CRT has used the quotation for the 1910 City of Copenhagen loan for the 1911 issue as well, as the two loans traded on the Geneva Stock Exchange under the same quotation since 2 January 1928. See *Manuel des Valeurs Cotées à la Bourse de Genève, Édition 1937*, note (a), *Geneva: Société de Banque Suisse, 1937*, p. 46. The CRT further notes that although the range of quotations for the two issues on the other Swiss exchanges was not identical, an average of the high and the low for the year results in the same price for both issues. See *Schweizer Börsenhandbuch für 1937. Ein Jahrbuch für Banken und Kapitalisten*, Zurich: Albert Mueller, 1937, 6th ed. (Ed. C. Kling), p. 84.

¹⁰ This market value was obtained from the *London Times* 16 December 1936.

¹¹ The status of the bond is shown in *Moody's Manual of Investments, American and Foreign: Railroad Securities*, Moody's Investor Service, New York, 1940, p. 634. The market value was obtained from the *New York Times*, 17 December 1936, which also shows the company being in reorganization.

According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, securities are awarded at market value, except that bonds not in default are awarded at their nominal value if their market value was below their nominal value on the date the account owner is deemed to have lost control over the account. In these cases the CRT presumes that the account owner, if able to decide freely, could have opted to hold the respective bond to maturity to avoid a capital loss. In the current case, the 4.5% Brazilian Loan 1888 bonds were in default, and the Chicago, Rock Island and Pacific Railway Comp. was in reorganization, which is similar in status to default. Pursuant to these Guidelines, the CRT uses the market value of the two series of City of Copenhagen bonds, the 4.5% Brazilian Loan 1888 bonds, the 4% Chicago, Rock Island and Pacific Railway Comp. bonds, and the nominal value of the 5% United States of Brazil funding bonds 1931 to determine the award amount. The total 1945 value is therefore SF 24,996.38. The current value of this amount is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules. Therefore, the award amount for the custody account is SF 312,454.75.

Consequently, the total award amount is SF 339,204.75.

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 her claim to determine whether there are additional Swiss bank accounts to which she 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
3 March 2006