

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Aida Szmuc

in re Accounts of Henri Klotz

Claim Number: 200762/MBC¹

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of Aida Szmuc, née Doctorczyk, (the “Claimant”) to the accounts of Henri Klotz (the “Account Owner”) at the Basel branch of 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 her uncle by marriage, Henri Klotz, who was Jewish and was married to Lisa Klotz, née Motes, the Claimant’s maternal aunt. The Claimant indicated that her uncle, an industrialist, resided in Germany, where he lived until he fled to France, some time after 1933. According to the Claimant, her uncle was deported to a concentration camp and was killed there. The Claimant explained that she has no further information because her entire family perished in the Holocaust. The Claimant further indicated that she was the only surviving member of her family and that she was born in Lodz, Poland, on 12 March 1919.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999 asserting her entitlement to a Swiss bank account owned by Henri Klotz. The Claimant indicated that the account was held at the Basel branch of the Bank.

¹ The Claimant submitted an additional claim to the account of Fiszal Doctorczyk, which is registered under the claim number 204615. The CRT will treat the claim to this account in a separate decision.

Information Available in the Bank Records

The bank records consist of an account-opening card, printouts from the Bank's database, a document issued pursuant to the 1962 Survey, and lists with account owners' names. According to these records, the Account Owner was Henri Klotz, from Wolsheim, France. The bank records indicate that the Account Owner held a demand deposit account, the balance of which was 316.45 Swiss Francs as of 28 May 1959, and a custody account, the balance of which was 985.00 Swiss Francs as of 29 January 1964. The bank documents show that the demand deposit account was transferred to a suspense account, which is a grouping of open and dormant accounts, on 21 April 1975, and it remains open and dormant. The bank records show that the custody account was closed on the same day, 21 April 1975, but they do not show to whom the proceeds of the custody account were paid.

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") indicated that there was no evidence of activity on both the custody account and the demand deposit account after 1945. There is no evidence in the bank records that the Account Owner or his heirs closed the custody account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her uncle's name and country of residence match the unpublished name and country of residence of the Account Owner. In the Initial Questionnaire that she filed with the Court in 1999, the Claimant indicated that the account was held at the Basel branch of the Bank, which matches unpublished information about the account contained in the bank records. The CRT notes that there were no other claims to this account.

The CRT also notes that in this Initial Questionnaire the Claimant asserted her entitlement to a Swiss bank account owned by Henri Klotz, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her 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 her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

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 perished in a concentration camp.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Regarding the demand deposit account, the bank records indicate that it was transferred to a suspense account on 21 April 1975 and that it remains open and dormant.

Regarding the custody account, given that the custody account was closed on the same day of the demand deposit account's suspension, and given the application of Presumptions (b), (f), and (j) contained in Appendix A,² the CRT concludes that it is plausible that the proceeds of the custody account were not paid to the Account Owner or his heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to assist in determining 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her uncle by marriage, 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 either account.

Amount of the Award

The bank records indicate that the value of the demand deposit account was 316.45 Swiss Francs as of 28 May 1959. In accordance with Article 37(1) of the Rules, this amount is increased by an adjustment of 975.00 Swiss Francs, which reflects numbered account fees and standardized bank fees charged to the demand deposit account between 1945 and 28 May 1959. There was no interest paid to this account. Consequently, the adjusted balance of the demand deposit account is 1,291.45 Swiss Francs. The bank records indicate that the value of the custody account was 985.00 Swiss Francs as of 29 January 1964. In accordance with Article 37(1) of the Rules, this amount is increased by an adjustment of 1,000.00 Swiss Francs, which reflects standardized bank fees charged to this account between 1945 and 29 January 1964. Consequently, the adjusted balance of the custody account is 1,985.00 Swiss Francs.

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss, and the amount in a custody account was less than 13,000.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the demand deposit account shall be determined to be 2,140.00 Swiss Francs and the amount in the custody account shall be determined to be 13,000.00 Swiss Francs. Therefore, the total amount in the accounts was 15,140.00 Swiss Francs.

The present value of the amount of the award is determined by multiplying the balances as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 181,680.00 Swiss Francs.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive 100% of the total award amount.

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 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

November 26, 2002

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).