

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED], [REDACTED],
and [REDACTED]

in re Account of Dr. Felix Koenigsberger

Claim Number: 601296/ZP¹

Award Amount: 14,880.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Dr. Felix Koenigsberger (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 to the Holocaust Claims Processing Office (“HCPO”) in December 1997 and an Initial Questionnaire in 1999 identifying the Account Owner as her grandfather, Dr. Felix Koenigsberger, who was born on 21 February 1884 in Silesia, Germany. The Claimant stated that her grandfather was married to [REDACTED], née [REDACTED], on 4 January 1914 in Berlin, Germany. [REDACTED] was born on 29 January 1891 in Berlin. Dr. and Mrs. Koenigsberger had two daughters: the Claimant’s mother, [REDACTED], née [REDACTED], who was born on 6 August 1920 in Berlin and died on 18 April 1976 in Rhode Island, the United States; and [REDACTED], who was born on 15 September 1916, in Berlin, and who currently lives in Israel.

The Claimant stated that her grandfather was a successful doctor of medicine who had his own practice in Berlin. According to the Claimant, her grandmother, [REDACTED], owned a hat shop named *Jenny Unger*, which was also located in Berlin, at Chaussestrasse 15. The Claimant stated that her grandfather was very wealthy and owned artwork and real estate in Germany. The Claimant further stated that her great-grandparents, [REDACTED] and [REDACTED], née

¹ The Claimant submitted a claim, numbered B-00461 on 18 December 1997, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601296.

[REDACTED], were successful jewelers who owned a shop named *Adolf's* located in Berlin. The Claimant stated that, according to her aunt [REDACTED], it is likely that Dr. Koenigsberger stored his parents' jewels and other assets in a safe deposit box in Switzerland.

According to the Claimant, her grandfather frequently traveled to Zurich, where her aunt attended high school. The Claimant stated that her grandfather lived in a building he owned at Friedrichstrasse 155/156, in Berlin; on the family's 120 hectare farm in Gut Balzdorf, Templin, Germany; and in both Paris, France and Nice, France. The Claimant stated that her grandmother, who was Jewish, was imprisoned in the concentration camp located in Gurs, France. Her grandmother survived the camp and died on 15 December 1983 in Passaic, New Jersey, the United States. The Claimant stated that her grandfather, who was Jewish, was captured by the Nazis in Nice, and from there he was deported first to Auschwitz and then to Dachau, where he was murdered in March 1945.

The Claimant stated that she was born on 13 January 1954 in the Bronx, New York, the United States. The Claimant is representing family members, including her aunt, [REDACTED], and her brothers, [REDACTED], who was born on 18 April 1943 in Nice, and [REDACTED], who was born on 13 June 1952 in New York. In support of her claim, the Claimant provided correspondence between the HCPO and the Bank, an account card provided by the Bank, [REDACTED]'s United States Certificate of Naturalization, and a statement from [REDACTED], which the Claimant notarized.

Information Available in the Bank Records

The bank records consist of an account opening card, a file label, and correspondence between the Bank and the HCPO. According to these records, the owner of safe deposit box number 445 was Dr. Felix Koenigsberger, who resided in Paris, France. The account was opened on 25 July 1935 and was closed on 7 December 1959. The amount in the account on the date of its closure is unknown. The bank records do not show to whom the proceeds of the account at issue were paid, nor do these records indicate the value or content of this account. The correspondence from the Bank acknowledges that the Dr. Königsberger referred to by the HCPO was deported to Auschwitz in 1944 before perishing at Dachau in 1945. The Bank states that it is unable to determine if the owner of the safe deposit box held at the Bank and the Dr. Königsberger referred to by the HCPO are the same person. The Bank suggests that Dr. Königsberger's wife or another family member could have closed the account. However, 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 the Account Owner

The Claimant has plausibly identified the Account Owner. Her grandfather's name and one of his places of residence, Paris, France, match the published name and place of residence of the Account Owner. Furthermore, the Claimant identified her grandfather's title as "Dr.," which matches unpublished information about the Account Owner contained in the bank records. The Claimant also indicated that her grandfather traveled often to Zurich, and owned a safe deposit box in Switzerland, which matches the type of account held at the Bank, and the branch at which it was held.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Felix Koenigsberger, and indicates an age at death that matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. The CRT also notes that there are no other claimants to the account of Felix Koenigsberger.

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 was murdered in Dachau in 1945. As noted above, the Account Owner's name appears on the above database containing the names of victims of Nazi persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that the Account Owner was her grandfather. The CRT notes that the Claimant indicated on her claim form that she is representing her brothers, [REDACTED] and [REDACTED], and the sole living daughter of the Account Owner, [REDACTED].

The Issue of Who Received the Proceeds

Given the Account Owner's death in a concentration camp in 1945, the account's closure in 1959, and the application of Presumptions (b), (h) and (j) contained in Appendix A,² 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 Governing the Claims Resolution Process (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.

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

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 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 of the claimed accounts.

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 investigation carried out pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a safe deposit box 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 37(1) of the Rules, to produce a total award amount of 14,880.00 Swiss Francs.

Division of the Award

The Claimant is representing her aunt and her own two brothers in these proceedings. According to Article 29 of the Rules, children of Account Owners who have submitted a claim are entitled to equal shares of the Award. Where a child of the Account Owner is deceased, but that child’s descendants are living and have submitted a claim, those descendants are entitled to equal portions of the deceased child’s share of the Award. Accordingly, [REDACTED] is entitled to one-half of the Award, and the Claimant and her two brothers, [REDACTED] and [REDACTED], are each entitled to one-sixth of the Award.

Initial Payment

Article 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 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, however, because [REDACTED] is age 75 or older, she is entitled to receive payment of 100% of her portion of the total award amount. Accordingly, the initial payment amount is 12,276.00 Swiss Francs, which is comprised of 100% of [REDACTED]’s portion of the award (7,440.00 Swiss Francs) and 65% of the Claimant’s, [REDACTED]’s and [REDACTED]’s portions of the award (4,836.00 Swiss Francs).

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

December 27, 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).