

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Shaul Ladany, Suzanne Konan and Martha Flatto

in re Account of Dionys Ladany

Claim Numbers: 205425/AH; 208362/AH; 209155/AH

Award Amount: 45,456.00 Swiss Francs

This Certified Award is based upon the claims of Shaul Ladany (“Claimant Ladany”), Suzanne Konan (“Claimant Konan”), and Martha Flatto, née Zemanek (“Claimant Flatto”) (together the “Claimants”) to the account of Dionys Ladany (the “Account Owner”) at the Zurich 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 Claimants

Claimants Ladany and Flatto submitted similar Claim Forms and Initial Questionnaires identifying the Account Owner as their father, Dionys Ladany, who was born on 20 July 1903 in Pencz, Hungary, was married to Sofia Ladany, née Kassovitz, in 1932, and had one son, Claimant Ladany and one daughter, Shoshana Konan, née Ladany, Claimant Konan. The Claimants indicated that Dionys Ladany and Sofia Ladany adopted their niece, Claimant Flatto, on 6 July 1946, after her parents were shot dead at the Danube on 23 January 1942 and her brother was killed in Auschwitz. The Claimants indicated that from 1930 to approximately 1941, their family resided at Petra Mrkonjica 4, Belgrade, Yugoslavia, and that their father, who was a chemical engineer, was the owner of a chemical factory, Oksid, at Viline Vode 41, Belgrade. The Claimants further indicated that their father was also a patent attorney with offices at Brijanova 7, and Resavska 62, Belgrade, and held the title of Diplomat. The Claimants stated that their father and his family fled to Hungary after the Nazis occupied Yugoslavia in April 1941. Finding no refuge in Hungary, their father was arrested several times due to his Jewish faith, and he was eventually imprisoned by the Nazis in the Budapest Ghetto in May 1944. The Claimants indicated that their parents were unable to flee Hungary because they were repeatedly refused a Swiss entry visa. In July 1944, the Nazis deported their family to Bergen-Belsen, where they were kept until 21 January 1945, when they were released and transported to Switzerland with the “Kastner-Train.” In Switzerland they were incarcerated in a closed police-military refugee camp in Caux, Montreux, until April 1945, and then in Basel, Switzerland,

where their father was allowed to stay for several months in return for research he conducted, for free, for the Swiss university subject to the strict supervision of the Basel Police. The Claimants further indicated that in 1945, their parents returned to their family home at Petra Mrkonjica 4, Belgrade, where they stayed until 1948. Eventually, the Claimants' father immigrated to Israel, where he remained until his death on 31 December 1963. The Claimants indicated that their mother, who was the sole heir of their father, died on 15 February 1997, and in her will she bequeathed her entire estate to the Claimants in equal parts. The Claimants submitted numerous documents including letters written on their father's business stationery dated 1939, indicating his account at the Zurich branch of the Bank, confirmations and compensation records issued by the German, Yugoslavian, and Croatian authorities regarding family assets looted by the Nazis, records of Dionys Ladany's detention in Bergen-Belsen and the family's arrival at the Caux refugee camp in 1945, a letter from the chief of the Swiss police at the Caux refugee camp demanding the deportation of the Claimant's father, police records regarding the terms of the family's move to Basel, and a bill in the amount of 1,685.00 Swiss Francs sent to the Claimants' father by the refugee camp police for the costs of their incarceration and detention in the camp.

Claimant Konan submitted an additional claim to the account of her grandparents Miksa (Max) Kassovitz and Ida Stern-Kassovitz, indicating that her parents were Dionys Ladany and Sofia Ladany, née Kassovitz, and that her wealthy grandfather had business relations in Switzerland and that her mother had a sister who resided in Zurich in 1936. Claimant Konan submitted her identity records indicating the name of her father, and her mother's death certificate. Claimant Ladany indicated that he was born on 2 April 1936 in Belgrade. Claimant Konan indicated that she was born on 22 March 1933 in Belgrade, and Claimant Flatto indicated that she was born on 11 July 1941 in Novi Sad, Yugoslavia.

Claimant Ladany previously submitted two Initial Questionnaires with the Court in 1999 and ATAG Ernst & Young claim form in 1998 asserting his entitlement to Swiss bank accounts owned by Dionys Ladany, and by his grandparents Ida Stern-Kassovitz and Maxim (Max) Kassovitz. Claimant Konan previously submitted an Initial Questionnaire, asserting her entitlement to Swiss bank accounts owned by her grandparents, Miksa (Max) Kassovitz and Ida Stern-Kassovitz. Claimant Flatto previously submitted an ATAG Ernst & Young claim form in 1998, asserting her entitlement to Swiss bank accounts owned by Bela Zemanek and Piroska (Piri) Zemanek, née Kassovitz.

Information Available in the Bank Records

The bank records consist of account statements from 1939 and 1943 to 1945 and two letters written to the Account Owner by the Bank. According to these records, the Account Owner was Dionys Ladany, who resided at Brianova 7, Belgrade, Yugoslavia. The bank records indicate that the Account Owner held a demand deposit account, which was opened at an unknown date. The account statements show that on 31 December 1939, the account value was 3,788.00 Swiss Francs, and it was depleted by fees until 31 December 1945, when the amount in the account was 42.00 Swiss Francs. Additionally, there is an indication in one account statement that 1,685.00 Swiss Francs were transferred to *EIDG Kassen- u. Rechnungswesen*, the Swiss Federal Accounting Authority, in Bern on 8 May 1945. The bank records do not indicate when or if the

account was closed, or to whom it was paid, nor do these records indicate the value of this account. 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”) 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 or his heirs closed the account and received the proceeds themselves.

The CRT’s Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their father’s name and country and city of residence match the published name and place of residence of the Account Owner. In addition, the Claimants submitted their father’s street address at Brijanova 7 in Belgrade, which matches the unpublished address of the Account Owner contained in the bank documents. Furthermore, the Claimants identified the Bank and branch where their father kept his account, both of which match unpublished information about the account contained in the bank records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, fled to Hungary after the Nazis occupied Yugoslavia, was arrested several times due to his Jewish faith, and eventually was deported with his family to Bergen-Belsen.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Dionys Ladany, and indicates that his date of birth was 20 July 1903 and place of birth was Penc, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

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 their father. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The CRT notes that the bank records include an account statement of 30 June 1945, which indicates that 1,685.00 Swiss Francs were transferred from the account to the *EIDG Kassen & Rechnungswesen Bern* on 8 May 1945. This payment amount is identical to the amount of the bill that was sent to Dionys Ladany by the Swiss refugee camp police for the costs of his incarceration. Later bank records from 31 December 1945 indicate that the account still existed after the Account Owner had returned to Yugoslavia and that the account had been depleted by fees to 42.00 Swiss Francs. Given the above and the application of Presumptions (h), (i), and (j) contained in Appendix A,¹ 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. The CRT's conclusion that it is plausible that the Account Owner was unable to access his Swiss account and receive its proceeds is supported by the fact that during and after the Second World War, the Swiss authorities used Swiss bank accounts of refugees as a guarantee during their stay, and these refugees had very limited access to 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 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father, 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 account.

Amount of the Award

The bank records indicate that the value of the demand deposit account as of 31 December 1939 was 3,788.00 Swiss Francs, and the CRT uses this amount to value the Account Owner's deposit as it represents the balance of the account before the period in which the account was depleted by fees over which the Account Owner had no control, during which time the Account Owner could not withdraw his deposit. The present value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case is 45,456.00 Swiss Francs.

Division of the Award

According to Article 29 of the Rules, if the Account Owner's spouse has not submitted a claim to his account, the award shall be in favor of any children of the Account Owner who have submitted such claim, in equal shares by representation. According to Article 52 of the Rules, the term "child" in the Rules applies to both biological and adopted children. The Claimants, as the children of the Account Owner, are therefore each entitled to one-third of the entire award amount.

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 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

January 28, 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).