

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]

in re Accounts of Olga and Fritz Langer

Claim Number: 216036/SJ¹

Award Amount: 331,920.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Olga and Fritz Langer (the “Account Owners”) at the Zurich branch of 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 Owners as her mother and father, Olga Langer, née [REDACTED], and Fritz Langer, respectively. Olga Langer, who was born on 5 September 1900 in Vienna, Austria, was married to Fritz Langer on 24 November 1924, in Vienna. The Claimant stated that her mother was a bookkeeper in Vienna. The Claimant also stated that her father held a Doctor of Law degree and managed two large cotton mills in Vienna until the family fled to France in 1938. The Claimant further stated that, in 1939, her family fled France for Tel Aviv, where they stayed until 1942, at which point they moved to Vancouver, Canada. The Claimant explained that, prior to fleeing Europe, her parents had traveled to Switzerland for pleasure. In support of her claim, the Claimant submitted a copy of letter dated 1966, signed by both her parents in Vancouver, her mother’s death certificate, and a copy of her own birth certificate. The Claimant indicated that she was born on 15 January 1938 in Vienna. The Claimant is representing her brother, [REDACTED 2], who was born on 26 January 1935 in Vienna.

¹ The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the claim number 216039. The CRT will treat the claim to this account in a separate decision.

Information Available in the Bank Records

The bank records consist of a signed bank card acknowledging account conditions, an account instruction form, a receipt of deposit, a page from a savings-book ledger, power of attorney forms, and printouts from the Bank's database. According to these records, there were two separate sets of accounts owned by the Account Owners. In the first set, the Account Owner was Dr. Fritz Langer and the Power of Attorney Holder was Olga Langer, the Account Owner's wife, both of whom resided at Dittesgasse 56, Vienna 19. The bank records indicate that Dr. Fritz Langer held a custody account numbered 23066 and a savings/passbook account numbered 4197. In the second set of accounts, the Account Owner was Olga Langer and the Power of Attorney Holder was Dr. Fritz Langer. The bank records indicate that Olga Langer held a custody account (no account number provided)² and a savings/passbook account numbered 4429. Additionally, the bank records list some of the securities held in Fritz Langer's custody account (valued at 5,000.00 Swiss Francs in 1930) and indicate that the Bank should hold all mail after June 1931.

According to the bank records, Dr. Fritz Langer's custody account was closed on 25 November 1938 and Olga Langer's savings/passbook account was closed on 25 April 1938. The bank records do not show when the other two accounts were closed. 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 these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. The bank records do not show to whom any of the accounts were paid, nor do these records indicate the value of these accounts at the time of their closure. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Olga Langer and Friedrich (Fritz) Langer. These records include an Austrian census form for Olga Langer, numbered 44967, and an Austrian census form for Dr. Friedrich (Fritz) Langer, numbered 43687, both of which are dated 15 July 1938. These records indicate that Olga Langer née [REDACTED] was Jewish, that she was born on 5 September 1900, and that she was married to Fritz Langer, who was also Jewish and was born on 15 August 1891. The records show that Olga and Fritz Langer resided at Gustav Tschermakgasse 34 Vienna XIX, Austria. Additionally, the records show that Olga Langer owned rental property at Kochgasse 7 Vienna VIII, valued at 19,900.00 Reichsmarks (1938 value). Finally, Olga Langer's census form

² The bank records contain a power of attorney form that references a "Titledepot," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the CRT concludes that it is plausible that she held such an account.

indicates that she and Fritz Langer had a son, [REDACTED 2], born on 26 January 1935 in Vienna. Furthermore, the census form of Fritz Langer indicates that he held the title of *Handelsangestellter*, or commercial employee, and owned a considerable number of stocks and bonds in foreign companies that he was forced to repatriate. The records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. Her parents' names match the published names of the Account Owners and the Power of Attorney Holders. The Claimant identified her parents' place of residence, which matches published information about the Account Owners contained in the bank records. Additionally, the Claimant identified her father's title, which matches unpublished information about the Account Owner contained in the bank records. In support of her claim, the Claimant submitted documents, including her mother's death certificate. Finally, the Claimant submitted samples of her parents' signatures, which match the signature samples contained in the bank records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and that they twice fled the Nazis, first fleeing Austria in 1938 and then fleeing France in 1939.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents, including her birth certificate, demonstrating that they were her parents. There is no information to indicate that the Account Owners have surviving heirs other than the Claimant and her brother, whom she represents in this proceeding.

The Issue of Who Received the Proceeds

Given the existence of Nazi confiscatory legislation in Austria at this time³ and the application of Presumptions (h) and (j), contained in Appendix A,⁴ the CRT concludes that it is plausible that the account proceeds of the savings/passbook account numbered 4197, as well as the account proceeds of Olga Langer's custody account, were not paid to the Account Owners, the Power of Attorney Holders, or their heirs. Regarding the custody account numbered 23066, closed in November 1938, and the savings/passbook account numbered 4429, closed in April 1938, Presumptions (a) and (j) apply, and the CRT therefore concludes that it is plausible that the

³ As described in the expanded version of Appendix A (see II. A. 2) which appears on the CRT II website -- www.crt-ii.org.

⁴ An expanded version of Appendix A appears on the CRT II website.

account proceeds were not paid to the Account Owners, the Power of Attorney Holders, or their 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.

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 Owners were her parents, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

The bank records indicate that the value of one of the custody accounts as of 22 October 1930 was 5,000.00 Swiss Francs. According to Article 35 of the Rules, if the amount in a custody account was less than 13,000.00 Swiss Francs, the presumed value for that type of account, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 13,000.00 Swiss Francs. The value of the remaining custody account and the two savings accounts are unknown. Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case with the remaining three accounts 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 ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs, and the average value of a savings account was 830.00 Swiss Francs. The total 1945 value of the accounts is therefore 27,660.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case is 331,920.00 Swiss Francs.

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, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account values and 65% of the total award amount is 215,748.00 Swiss Francs.

Division of the Award

The Claimant is representing her brother in these proceedings. According to Article 29 of the Rules, her brother, [REDACTED 2], is entitled to receive one half of any payment made to the Claimant.

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

October 24, 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).