

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Ruth Levin

in re Accounts of Erna Levin

Claim Number: 205345/AY

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of Ruth Levin (the “Claimant”) to the account of Martin Levin.¹ This Award is to the accounts of Erna Levin (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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her mother, Erna Levin, née Pappenheimer, who was born on 7 July 1897 in Ingoldstadt, Germany, and was married to Martin Levin in Nurnberg, Germany in 1920. The Claimant stated that her parents had two children: Joseph Levin (1921-1948), and Ruth Levin, the Claimant. The Claimant also stated that her family lived at Essenweinstrasse 7 in Nurnberg, where the Claimant’s father was a medical doctor. The Claimant indicated that her family used to travel to Switzerland on holidays and that her father opened an account in the Zurich branch of a Swiss bank, because he felt Switzerland was a safe place for their money. The Claimant indicated that he could have opened the account in the name of his wife, Erna Levin. In 1938, the Claimant was sent by her parents to England. In 1939 or 1940, the Claimant’s parents managed to flee to England and then to Palestine. At the time of their escape, the Claimant’s father, Martin Levin, was paralyzed and her mother, Erna Levin, had to make all the necessary arrangements. Their passports were already stamped, indicating that they were Jewish, and since it was illegal for Jews to hold an account outside Germany, her parents fled without taking any other documents or any valuable assets. The Claimant indicated that her grandparents stayed in Germany and perished in the Theresienstadt concentration camp. The Claimant's father died in Palestine in 1944.

¹ The CRT will treat the claim to this account in a separate decision.

According to the Claimant, in 1951, she and her mother, Erna Levin, returned to Zurich to attempt to get the money out of the account at the Bank. The Bank refused to provide any information or assistance, demanding to see original documents indicating the existence of the account. Because the Claimant and her mother had no documents, they returned to England without any results. The Claimant indicated that she was born on 22 August 1922 in Nurnberg.

The Claimant previously submitted an ATAG Ernst & Young claim form in 1997, asserting her entitlement to a Swiss bank account owned by her mother, Erna Levin, or her father, Dr. Martin Levin. She also filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her father, Martin Levin.

Information Available in the Bank Record

The bank record consists of a customer card. According to this record, the Account Owner was Mrs. (*Frau*) Erna Levin who resided in Nurnberg, Germany. The bank records indicate that the Account Owner held a demand deposit account and a custody account. According to the record, the custody account was closed on 21 November 1938. The amount in the custody account on the date of its closure is unknown.

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 the demand deposit account in the Bank’s system of open accounts, and they therefore presumed that it was closed. The amount in the demand deposit account on the date of its closure is unknown. There is no evidence in the bank record that the Account Owner or her heirs closed either of the accounts and received the proceeds themselves.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her mother’s name matches the published name of the Account Owner. The Claimant identified her mother’s place of residence as Nurnberg, Germany, which matches unpublished information about the Account Owner contained in the bank record. The Claimant further stated that she and her mother went to the Zurich branch of the Bank in 1951, which indicates that the Claimant has identified the unpublished name and branch of the Bank at which the account was held.

The CRT notes that the Claimant filed an ATAG Ernst & Young claim form in 1997, asserting her entitlement to a Swiss bank account owned by Erna Levin, and an initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Martin Levin, 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 lived in Nazi-controlled Germany until late 1939 or 1940, when she fled to England.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by providing detailed information about her mother. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With regard to the demand deposit account, given the application of Presumptions (e), (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 her 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.

With regard to the custody account, given the application of Presumptions (e) and (j) contained in Appendix A,³ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs.

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 mother, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her 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 ICEP Investigation, in 1945 the average value

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

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

of a demand deposit account was 2,140.00 Swiss Francs, and the average value of a custody account was 13,000.00 Swiss Francs. Consequently, the total historic value of both of the accounts is 15,140.00 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 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

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).