

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Samuel Jakobson Ben-Jaakow and Bernhard Dow Lewy

in re Account of Jacques Lewy

Claim Numbers: 003931/MD; 214820/MD; 223815/MD

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claims of Samuel Jakobson Ben-Jaakow (“Claimant Ben-Jaakow”) and Bernhard Dow Lewy (“Claimant Lewy”) (together the “Claimants”) to the account of Jacques Lewy (the “Account Owner”) at the Geneva branch of the [REDACTED] (the “Bank”).

All awards are published. Where no claimants have requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimants

Information Provided by Claimant Ben-Jaakow

Claimant Ben-Jaakow submitted a Claim Form identifying the Account Owner as his great-aunt’s husband, Jacques Lewy. Claimant Ben-Jaakow stated that Jacques Lewy was born in approximately 1880 in Poland, was married to Anna Lewy, née Idelson, and that the couple had two children: Mietek, who was born in 1908 in Lodz, Poland; and Eleonora, who was born in approximately 1910 in Lodz. Claimant Ben-Jaakow explained that his relative practiced medicine in Lodz where he lived with his family. Claimant Ben-Jaakow stated that Jacques Lewy, who was Jewish, was sent to the Lodz Ghetto and perished in the Holocaust. According to Claimant Ben-Jaakow, Anna Lewy and Eleonora Lewy also perished in the Holocaust. According to the family tree provided by Claimant Ben-Jaakow, Anna Lewy, née Idelson, was the sister of Claimant Ben-Jaakow’s maternal grandmother, Maja Jakobsohn, née Idelson. Claimant Ben-Jaakow stated that he and Claimant Lewy are the only surviving heirs of Jacques Lewy. In support of his claim, Claimant Ben-Jaakow submitted his birth certificate, family pictures, and a writing sample of Anna Lewy. Claimant Ben-Jaakow indicated that he was born on 23 September 1916 in Latvia.

Information Provided by Claimant Lewy

Claimant Lewy submitted two Claim Forms identifying the Account Owner as his paternal uncle, Jacques (Jakub) Lewy, who was born in Talsen, Latvia, and whose father was Moses (Mosche) Lewy. Claimant Lewy stated that Jacques Lewy was married to Anna (Chana) Lewy and that they had a child, Mietek. Claimant Lewy explained that his uncle lived initially in Riga, Latvia, and then he and his family moved to Lodz, Poland. Claimant Lewy explained that Jacques Lewy owned a textile factory in Lodz and had business connections in Switzerland. Claimant Lewy stated that Jacques and Anna Lewy, who were Jewish, were sent to the Lodz Ghetto and were killed during its liquidation. Claimant Lewy stated further that Mietek Lewy perished during the Second World War. Claimant Lewy indicated that he was born on 6 February 1916 in Moscow, Russia to Samuel Lewy, Jacques Lewy's brother. Claimant Lewy also indicated that he has a brother, Filipp Lewy, who resides in the United States.

Information Available in the Bank Record

The bank record consists of a power of attorney form dated 25 May 1929 in Geneva. According to this record, the Account Owner was Jacques (also known as Jakub) Lewy, and the Power of Attorney Holders were *Mme.* (Mrs.) Anna Lewy (also known as Chana Lewy) and Alexandre Stephan Lewy. The Account Owner and the Power of Attorney Holder Anna Lewy resided in Lodz, Poland, at Rue Ewangelicka 5. The bank record indicates that the Account Owner held a custody account.¹

The bank record does not show when the account at issue was closed, or to whom it was paid, nor does this record 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 record that the Account Owner, the Power of Attorney Holders, or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(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.

¹ The bank records contain a power of attorney form that references a "*Titeldepot*," 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. The CRT concludes that it is plausible that the Account Owner held such an account.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their relatives' names and city and country of residence match the published names and city and county of residence of the Account Owner and of Power of Attorney Holder Anna Lewy. Claimant Ben-Jaakow submitted a sample of Power of Attorney Holder Anna Lewy's handwriting, which matches the signature contained in the bank record. While the information submitted by the Claimants is not consistent, the CRT finds it plausible that, given the different degrees of relationship to the Account Owner and the passage of time, such inconsistencies may occur.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner, who was Jewish, was sent to the Lodz Ghetto and perished during the Holocaust.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by providing specific biographical information demonstrating that the Account Owner was Claimant Lewy's uncle and the husband of Claimant Ben-Jaakow's great-aunt.

According to the principles of distribution set forth in Article 23(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim. Claimant Lewy, as a direct descendant of the Account Owner's parents, is entitled to the account. In light of Claimant Lewy's claim, Claimant Ben-Jaakow, who is related to the Account Owner through marriage, is not entitled to the account. Consequently, pursuant to Article 29 of the Rules, Claimant Lewy is entitled to the entire amount of the Award. The CRT notes that in a telephone conversation with the CRT on 8 January 2003, Claimant Lewy's brother, Filipp Lewy, stated that he does not wish to make a claim to this account.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j), as provided in Article 28 (see Appendix A) of the Rules, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, 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.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant Lewy. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant Lewy has plausibly demonstrated that the Account Owner was his uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither

the Account Owner, nor the Power of Attorney Holders, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody account. Pursuant to Article 29 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 of a custody account was 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

Scope of the Award

Claimant Lewy should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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
March 5, 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).