

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Paul Lester
also acting on behalf of Monica Lester
represented by Frank Lee

and to Claimant Lilian Sicular
also acting on behalf of Elizabeth Weinberger

in re Account of Richard Lichtenstern and Oskar Lichtenstern

Claim Numbers: 212551/ME, 218923/ME

Award Amount: 229,080.00 Swiss Francs

This Certified Award is based upon the claims of Paul Conrad Lester (“Claimant Lester”) and Lilian Sicular, née Weinberger (“Claimant Sicular”) (together the “Claimants”) to the account of Richard Lichtenstern (“Account Owner Richard Lichtenstern”) and Oskar Lichtenstern (“Account Owner Oskar Lichtenstern”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where claimants have not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by Claimant Lester

The Claimant submitted a Claim Form identifying Richard Lichtenstern as his paternal grandfather, who was born on 22 April 1870 in Vienna, Austria. Richard Lichtenstern married Elsa Lichtenstern, née Wolf, who was born on 18 December 1882, with whom he had two children: Kurt Heinz and Maria. The Claimant stated that his grandfather, who was Jewish, was a ceramics manufacturer and founded the first factory for the production of toilets in Laufenburg, Aargau, Switzerland, in the 1930s, together with his nephew, Paul Mocsari. The Claimant stated that, shortly before his death, his grandfather, who was never granted Swiss citizenship, moved to Orsalino, Switzerland, where he was hospitalized in a hospital with a special leukemia unit. According to the information provided by the Claimant, his grandfather died of leukemia in Orsalino on 26 May 1937.

The Claimant stated that his father, Kurt Heinz Lichtenstern, who was born on 5 November 1907 and studied in Zurich, Switzerland during the 1930s, inherited his father Richard Lichtenstern's interest in the company. The Claimant's father was deported from Switzerland in 1937, shortly

after the death of the Claimant's grandfather. The Claimant stated that his father, who was Jewish, returned to Austria and fled to Czechoslovakia in 1938. He then fled to France, Spain, Portugal, Morocco, Brazil, and the United States, where he became a United States citizen and served as a Sergeant in the United States Army during the Second World War. According to the information provided by the Claimant, his father changed his legal name to Conrad Henry Lester on 21 August 1941 in New York, New York. The Claimant stated that his father lived in California after the Second World War and returned to Austria in 1967, where he became an Austrian citizen. According to the information provided by the Claimant, his father took up residency in Ascona, Switzerland in 1969, but he returned to Vienna, where he died on 10 January 1996.

The Claimant identified Paul Mocsari as his paternal grandfather's nephew. The Claimant stated that Paul Mocsari, after whom he is named, did not marry or have children, and that he fled to the United States during the Second World War. He died in the United States in 1949. According to the information provided by the Claimant, the Claimant's father inherited Paul Mocsari's interest in the company in 1949.

The Claimant identified Oskar Lichtenstern as the brother of his grandfather, and he stated that Oscar Lichtenstern's granddaughter, Lilian Sicular, has made a claim to his account. The Claimant submitted copies of his grandfather's and father's birth and death certificates, a court order memorializing his father's name change, as well as his sister's and his own birth certificates. The Claimant indicated that he was born on 21 October 1950 in Los Angeles, California, the United States. The Claimant is representing Monica Johanna Lester, his sister, who was born on 1 September 1947 in Los Angeles.

Information Provided by Claimant Sicular

The Claimant submitted a Claim Form identifying Oskar Lichtenstern as her maternal grandfather, who was born on 13 December 1878 in Vienna, and was married to Erna Lichtenstern, née Furst, on 15 November 1906 in Vienna, with whom he had two children: Frank and Elizabeth, the Claimant's mother. The Claimant stated that her grandfather had four siblings: Marianne, Berta, Ida, and Richard. Furthermore, the Claimant stated that her grandfather was a manufacturer and the director of a dinnerware company that went by the name of *Ditmar Urbach*, which was located in Znaim/Znojmo, Czechoslovakia. According to the information provided by the Claimant, her grandfather lived at Kantgasse 3, Vienna I, until 1912, at which time he moved to Znaim to purchase *Ditmar Urbach*. The Claimant stated that her grandfather opened additional *Ditmar Urbach* branches in Austria and Switzerland. According to the information provided by the Claimant, her grandfather suffered a heart attack at the time that Czechoslovakia was occupied by the Nazis, and he left Moravia in 1938. The Claimant stated that her grandfather, who was Jewish, fled to Bruno, Czechoslovakia in 1938, after which he fled to London, England, then to Switzerland for a brief time in 1939, and on to Sao Paulo, Brazil, where he lived from 1940 to 1941. The Claimant stated that her grandfather moved to New York in June of 1941, and he died there on 16 January 1946. Furthermore, the Claimant stated that she and her parents lived in Switzerland from December 1938 to May 1940. The Claimant submitted her grandfather's death certificate, Letters Testamentary on the estate of her

grandfather, Austrian State Archive documents concerning the assets of her grandfather, as well as a document verifying her grandparents' United States residency, dated 8 January 1946, indicating that her grandparents had been officially residing in the United States since 26 September 1941.

The Claimant identified Paul Mocsari as her grandfather's nephew, the son of Marianne Lichtenstern (sister of Oskar Lichtenstern). The Claimant stated that Paul Mocsari, who was Jewish, lived in Vienna and was involved with *Ditmar Urbach*. According to the information provided by the Claimant, Paul Mocsari did not marry or have children and fled to the United States in 1941, where he died in the late 1940s.

The Claimant identified Richard Lichtenstern as the brother of her grandfather, Oskar Lichtenstern. The information provided by the Claimant about Richard Lichtenstern is consistent with the information provided by Claimant Lester.

The Claimant indicated that she was born on 20 April 1933 in Vienna. The Claimant is representing Elizabeth Weinberger, née Lichtenstern, her mother, who was born on 18 October 1907 in Vienna. The Claimant previously submitted an ATAG Ernst & Young claim form in 1997, asserting her entitlement to a Swiss bank account owned by her father, Hans Weinberger.

Information Available in the Bank Records

The bank records consist of a joint account opening contract dated 16 January 1926 in Zurich, a power of attorney form dated 3 January 1928 in Vienna, and printouts from the Bank's database. According to these records, the Account Owners were Richard Lichtenstern, who resided at Helfersdorferstrasse 6, Vienna I and Oskar Lichtenstern, who resided at Dominikanerbastei 10, Vienna I. Moreover, the bank records indicate that the Power of Attorney Holder was Paul Mocsari. The bank records indicate that the Account Owners held a custody account and a demand deposit account numbered 25327, and an account of unknown type numbered 22858. Furthermore, the bank records indicate that the account of unknown type was opened on 16 January 1926. The bank records do not indicate when the custody account and the demand deposit accounts were opened.

The bank records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts. 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. There is no evidence in the bank records that the Account Owners, the Power of Attorney Holder, 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. Claimant Sicular submitted two letters contained in the Austrian State Archives (Archive of the Republic, Finance) including one letter dated 14 April 1943 from the apparent new owner of Oskar Lichtenstern's company to the Nazis, regarding the settlement of taxes that Oskar Lichtenstern allegedly owed to the Nazis following the new owner's "purchase" of the company. Additionally, the Austrian State Archives include a letter dated 22 February 1943 written by the Gestapo to the Finance Ministry in Vienna, indicating that Oskar Lichtenstern was born on 13 December 1878 in Vienna, and was married to Erna Lichtenstern, née Fürst, who was born on 15 June 1885. This letter indicates that Oskar Lichtenstern resided in an apartment on Kantgasse 3, Vienna I, that he lived in Znaim at the time of its German invasion, and that he was subject to the Nazi decree requiring Jews to register their assets. The letter further states that the Gestapo was able to acquire information about the assets of Kurt Lichtenstern, who was born on 5 November 1907 in Vienna, and resided at Grinzerstrasse 25, Vienna XIX.

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 two claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. Their grandfathers' names and places of residence match the published names and cities of residence of the Account Owners. Furthermore, their relative Paul Mocsari's name matches the published name of the Power of Attorney Holder. The Claimants also identified both Account Owners, although the Account Owners' names were published separately on the 5 February 2001 list of bank accounts. Claimant Lester submitted a copy of his grandfather's death certificate and his father's birth certificate which refer to Account Owner Richard Lichtenstern by name and city of residence. Finally, the Claimants have identified the names and birth dates of Oskar Lichtenstern and Kurt Lichtenstern, which match information contained in the Austrian State Archives.

Status of the Account Owners as a Victims of Nazi Persecution

The Claimants have made a plausible showing that Account Owner Oskar Lichtenstern was a Victim of Nazi Persecution. Claimant Sicular stated that Account Owner Oskar Lichtenstern was Jewish, that he fled Nazi-annexed Moravia in 1938, and that he went to the United States in 1941. The Claimants also stated that the Power of Attorney Holder Paul Mocsari was Jewish and that he fled to the United States in 1941.

The Claimants' Relationships to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting documents demonstrating that they were their grandparents. Claimant Lester submitted copies of his father's and sister's birth certificates which identify his grandfather and his father, respectively. There is no information to indicate that the Account Owners had surviving heirs other than the Claimants and those whom they are representing.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and the application of Presumptions (a) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds in this case 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.

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

Amount of the Award

In this case the Account Owner held a custody account and an account of unknown type. 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 of custody account was 13,000.00 Swiss Francs, the average value of a account of unknown type was 3,950.00 Swiss Francs and the average value of a demand deposit account was 2,140.00 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 229,080.00 Swiss Francs.

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

Division of the Award

According to Article 29(1)(c), if the spouse of the Account Owner has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Claimant Sicular is representing her mother, Elizabeth Weinberger, who is the only living child of Account Owner Oskar Lichtenstern. Because Elizabeth Weinberger is the child of an Account Owner, she is entitled to all of Account Owner Oskar Lichtenstern's half of the joint account, while Claimant Sicular is not entitled to any portion of the award. Claimant Lester is representing his sister, Monica Lester, and because they are the only living direct descendants of Account Owner Richard Lichtenstern, they are entitled to share equally his half of the joint account. Since the Claimants are the only persons to have submitted a claim to the accounts of their grandparents, the proceeds of the award shall be divided as follows:

Elizabeth Weinberger	one-half (1/2)
Claimant Lester	one-fourth (1/4)
Monica Lester	one-fourth (1/4)

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 Elizabeth Weinberger 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 188,991.00 Swiss Francs, which is comprised of 100% of Elizabeth Weinberger's portion of the award (114,540.00 Swiss Francs) and 65% of Paul Lester's and Monica Lester's portion of the award (74,451.00 Swiss Francs each).

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

23 January 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).