

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Wilhelm Löwbeer and Paul Löwbeer

Claim Number: 300182/PY

Award Amount: 363,360.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Paul Löwbeer. This Award is to the accounts of Wilhelm Löwbeer (“Account Owner Wilhelm Löwbeer”) and Paul Löwbeer (“Account Owner Paul Löwbeer”) (together 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 Account Owner Wilhelm Löwbeer as his grandfather, Vilmos Löwbeer, also known as Wilhelm Löwbeer, who was married to [REDACTED], née [REDACTED]. The Claimant stated that his grandfather, who was Jewish, lived in Vienna, Austria. According to the Claimant, his grandparents had one child, Paul Löwbeer, whom the Claimant identified in the same Claim Form as his father, Account Owner Paul Löwbeer. The Claimant stated that his father was born on 27 January 1911 in Vienna, and was married to [REDACTED], née [REDACTED], on 28 March 1939 in Paris, France. The Claimant stated that his father, Paul Löwbeer, who was Jewish, was an herbalist in Vienna. The Claimant added that his father fled Austria to France, where he resided at Rue de Civry 25 in Paris. According to information provided by the Claimant, his grandparents also fled to Paris, where they resided at 5, Rue Erlanger. The Claimant stated further that his grandmother died on 10 September 1942, probably in Auschwitz, and that his father was interned at Drancy in May 1943 and was later transported to Auschwitz in July 1943, where he perished. The Claimant believes his grandfather also perished in a concentration camp. The Claimant stated that his mother, [REDACTED], died on 27 May 1969, in Brighton, England. The Claimant submitted a certificate issued by the French Ministry for War Veterans and War Victims dated 5 November 1948 confirming his father’s disappearance, as well as a certificate dated 22 February 1947 issued in Paris stating that his father was presumed to have perished in Auschwitz. The Claimant

also submitted his parents' marriage certificate, which states that his father's parents were [REDACTED] and [REDACTED], née [REDACTED]. In addition, the Claimant also submitted his birth certificate, which in turn indicates that his parents were Paul and [REDACTED] Löwbeer, as well as a deed dated 26 March 1957, declaring the change of name of the Claimant from [REDACTED] to [REDACTED]. Finally, the Claimant submitted a copy of a questionnaire submitted to the Contact Office for the Search of Dormant Accounts Administered by Swiss Banks in 1997, in which the Claimant inquired about a Swiss bank account owned by Paul Löwbeer. The Claimant indicated that he was born on 4 May 1941 in Nimes, France.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Paul Löwbeer.

Information Available in the Bank Records

The bank records consist of a customer card and a list of Austrian account holders identified from the Austrian State Archives (Archive of the Republic, Finance). According to these records, the Account Owner was Wilhelm Löwbeer, who resided in Vienna, Austria. The bank records indicate that Account Owner Wilhelm Löwbeer a custody account and a demand deposit account, both numbered L44096, another custody account numbered L58822, as well as a separate unnumbered demand deposit account.

The custody and demand deposit accounts, both numbered L44096, were transferred on 14 March 1938 to Account Owner Paul Löwbeer. The amounts in the accounts on the date of their transfer are unknown. No separate bank records belonging to Account Owner Paul Löwbeer were found by 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"). There is no indication of when or if these accounts were closed or to whom they were paid after the transfer to Account Owner Paul Löwbeer.

The custody account numbered L58822 and the unnumbered demand deposit account were both closed on 10 April 1938. The amounts in these accounts on the respective dates of their closure are unknown. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the ICEP determined that the amounts in the accounts had been paid to the Nazi authorities.

There is no evidence in the bank records that the Account Owners or their heirs closed any one of 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 there are documents numbered 46881, dated 14 July 1938,

concerning the assets of Wilhelm Löwbeer. These records indicate that Wilhelm Löwbeer was Jewish, that he was born on 9 June 1862, and that he was married to [REDACTED], née [REDACTED]. These records show that Wilhelm Löwbeer resided at Köllnerhofgasse 6 in Vienna I, and owned a company, also named *Wilhelm Löwbeer*. The records further indicate that Wilhelm Löwbeer owned real estate worth 23,200.00 Reichsmarks (1938 value) at Riglergasse 8, Vienna XVIII, and securities deposited in Amsterdam, The Netherlands; Zurich, Switzerland; Milan, Italy; and London, England, totalling approximately 36,600.00 Reichsmarks (1938 value). In addition, Wilhelm Löwbeer also had pension funds worth approximately 57,000.00 Reichsmarks (1938 value). The value of the securities held in Zurich is not identified in these records.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Wilhelm Löwbeer. His grandfather's name and country of residence match the published name and country of residence of Account Owner Wilhelm Löwbeer. The Claimant identified his grandfather's city of residence as Vienna, which matches unpublished information about Account Owner Wilhelm Löwbeer contained in the bank records. The Claimant has also plausibly identified Account Owner Paul Löwbeer, because his father's name matches the unpublished name of Account Owner Paul Löwbeer. Furthermore, the CRT notes that there were no other claims filed to these accounts.

Status of the Account Owners as Victims 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 fled Austria to France. The Claimant stated that Account Owner Paul Löwbeer was presumed to have died in Auschwitz, and that he believes that Account Owner Wilhelm Löwbeer also perished in a concentration camp.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting his birth certificate, which indicates that his father was Paul Löwbeer, as well as his parents' marriage certificate, which indicates that Paul Löwbeer's father was Vilmos Löwbeer.

The Issue of Who Received the Proceeds

Regarding the custody account numbered L58822 and the unnumbered demand deposit account, the auditors determined that the amounts in these accounts had been paid to Nazi authorities.

Given that two of Account Owner Wilhelm Löwbeer's accounts were known to have been paid to the Nazis and given the application of Presumptions (h) and (j) as provided in Article 28 (see Appendix A) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"),

the CRT concludes that it is plausible that the proceeds of the related custody and demand deposit accounts numbered L44096 that were transferred to Account Owner Paul Löwbeer were not paid to Account Owner Paul Löwbeer 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 the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were his grandfather and father respectively, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither Account Owners Wilhelm and Paul Löwbeer nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owners held two custody accounts and two demand deposit accounts. 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, while the average value of a demand deposit account was 2,140.00 Swiss Francs. Using these average values, the total 1945 value of these four accounts is 30,280.00 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 363,360.00 Swiss Francs.

Scope of the Award

The Claimant 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 11, 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).