

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Debora Yezerski¹
represented by Nisan Yezerski

in re Account of Maria Margulies

Claim Number: 000271/EZ

Award Amount: 206,922.00 Swiss Francs

This Certified Award is based upon the claim of Debora Yezerski (the “Claimant”) to the account of Maria Margulies (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 and an Initial Questionnaire identifying the Account Owner as her adoptive mother, who was born in Germany in approximately 1904, and was married to Josef Lazar Margulies. The Claimant stated that her adoptive parents were successful business people in Yasi and Bucharest, Romania. The Claimant provided her parents’ exact street address. The Claimant stated that Maria Margulies was a Christian and that Josef Lazar Margulies was Jewish. The Claimant further stated that her adoptive father was deported to the Sadagera slave labor camp, from which he escaped from in 1944. She also stated that her family was persecuted by the Nazi-controlled Romanian authorities. Her parents were both killed in 1945, when a bomb hit the train they were travelling in. After her parents’ death, the Claimant, then an orphan, remained in Romania until 1947, when she emigrated to Israel. The Claimant stated that during the Second World War, the Account Owner informed her that she had Swiss bank accounts, and that the Claimant was the beneficiary of these accounts. The Claimant indicated that she herself was born on 10 May 1932 in Yasi, Romania.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to Swiss bank accounts owned by her biological and adoptive parents. The

¹ The Claimant provided her name and some of her relatives’ names in Hebrew characters only in the claim form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the claim form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

information provided by the Claimant in the Initial Questionnaire is identical to the information provided in the Claim Form.

Information Available in the Bank Records

The bank records consist of ledger cards and printouts from the Bank's database. According to these records, the Account Owner was Maria Margulies from Bucharest, Romania, who held a numbered account of an unknown type. The bank records indicate that on or before 4 March 1953, the account was transferred to a suspense account, (a grouping of open and dormant accounts). The amount in the account on the date of its transfer was 16,658.50 Swiss Francs. The bank records do not show if or when the account at issue was closed, or to whom it was paid. 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 therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945, and there is no evidence in the bank records that the Account Owner or her heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her adoptive mother's name matches the published name of the Account Owner. The Claimant stated that her adoptive parents resided in Bucharest, Romania, which matches published information about the Account Owner contained in the bank records.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to Swiss bank accounts owned by her biological and adoptive parents, 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's husband was Jewish, that he was deported to the Sadagera slave labor camp, and that her family was persecuted by the Nazi-controlled Romanian authorities.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner. There is no information to indicate that the Account Owner has any other surviving heirs.

The CRT notes that in the Initial Questionnaire, the Claimant stated that the Account Owner was her adoptive mother, and that she provided information fully consistent with information that she provided in the Claim Form. This supports the credibility of information provided by the Claimant regarding her relationship to the Account Owner.

The Issue of Who Received the Proceeds

Based on its precedent and the Rules, the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.² The CRT concludes in this case that one or more of these presumptions applies and it is therefore 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 adoptive 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 account.

Amount of the Award

The bank records indicate that the value of the account as of 4 March 1953 was 16,658.50 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 585.00 Swiss Francs, which reflects numbered account fees and standardized bank fees charged to the account between 1 January 1945 and 4 March 1953. Consequently, the adjusted balance of the account at issue is 17,243.50 Swiss Francs. The present value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 206,922.00 Swiss Francs.

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).

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

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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. "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 does not exist 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).