

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Dr. Berthold Georg Harth

in re Account of Josefine Markus

Claim Number: 210457/AY¹

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of Dr. Berthold Georg Harth (the “Claimant”) to the account of Ignaz Markus.² This Award is to the account of Josefine Markus, née Markus, (the “Account Owner”) at 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 his maternal aunt, Josefine Markus, who was born on 10 September 1874, and was married to Ignaz Markus, who was born in Kolomea, Poland. The Claimant indicated that his uncle and aunt, who were Jewish, resided at Nordbergstrasse 10 in Vienna IX, Austria. The Claimant identified his uncle as a commercial representative working for the steel and iron company *Wertich AG* located at Landskronngasse 1 in Vienna.

The Claimant indicated that between 1938 and 1940, his uncle and aunt were persecuted by the Nazis and that his uncle was arrested by the Nazis. The Claimant further stated that his uncle and aunt fled to Palestine in 1940, from where they were deported to an internment camp on the island of Mauritius by British authorities. The Claimant stated that his uncle and aunt were released in 1945 and returned to Palestine, where Ignaz Markus died in 1948 and Josefine Markus died in 1965. The Claimant indicated that he was born on 10 August 1913 in Kimpolung-Bukowina, Romania.

¹ The Claimant submitted an additional claim to the account of Josef Moses Harth, which is registered under the Claim Number 210456. The CRT will treat the claim to this account in a separate decision.

² The CRT will treat the claim to this account in a separate decision.

In support of his claim, the Claimant submitted documents signed by his aunt, including her will, demonstrating that Josefina Markus was his maternal aunt.

The Claimant previously submitted two ATAG Ernst & Young claim forms in 1998, asserting his entitlement to a Swiss bank account owned by Josefina and Ignaz Markus. In these claim forms, the Claimant indicated that his aunt and uncle told him that they had an account in Switzerland.

Information Available in the Bank Records

The bank records consist of a power of attorney form, dated 30 April 1928 in Vienna, Austria, and printouts from the Bank's database. According to these records, the Account Owner was Josefina Markus and the Power of Attorney Holder was Ignaz Markus, the Account Owner's husband, both of whom resided at Nordbergstrasse 10 in Vienna IX. The bank records indicate that the Account Owner held a custody account.³

The bank records do not show when the account at issue was closed, or to whom it was paid, nor do these records 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 records that the Account Owner, the Power of Attorney Holder, or their heirs closed the account 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 (Archive of the Republic, Finance), there are documents concerning the assets of Ignaz Markus, numbered 43812. These records indicate that Ignaz Markus was Jewish, that he was born on 25 May 1873, that he was married to Josefina Markus, née Markus, and that he was a commercial representative (*Handelsagent*) for *Wertich AG*. The records show that Ignaz and Josefina Markus resided at Nordbergstrasse 10, Vienna IX, Austria. The records also indicate that Ignaz Markus held a bank account in Vienna worth 40,000.00 Reichsmarks, and that he had two insurance policies worth a total of 16,939.87 Reichsmarks, which were confiscated by the Nazis. The records also contain a list of jewelry and household assets valued at 1,059.00 Reichsmarks. There is no mention in these records of assets held in a Swiss bank account. However, these records include a letter sent by Ignaz Markus to the Austrian authorities, indicating that on 24 April 1938 he and his wife were arrested under the suspicion of having breached the foreign exchange law. By the sentence of the criminal court in Vienna issued on 20 July 1938, Josefina Markus was found guilty and was sentenced to two years imprisonment, and Ignaz Markus was acquitted.

³ 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.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His aunt's and uncle's names match the published names of the Account Owner and the Power of Attorney Holder, respectively. The Claimant identified his aunt's street address in Vienna, which matches unpublished information about the Account Owner contained in the bank records. Furthermore, the information provided by the Claimant regarding his relatives' address also matches information contained in the Austrian State Archives. Finally, the Claimant submitted a sample of his aunt's signature, which matches the signature sample contained in the bank records. In support of his claim, the Claimant submitted documents, including the Account Owner's will. The CRT notes that it received one other claim to the account of Josefine Markus, but this claim was disconfirmed.

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 was persecuted by the Nazis in Austria until 1940, when she fled to Palestine.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents and biographical information demonstrating that the Account Owner was his maternal aunt. There is no information to indicate that the Account Owner has other surviving heirs.

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*, the Austrian citizens who are Jewish report their assets in the 1938 census and/or are arrested by the Nazis, and their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. The CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis. Given Ignaz Markus' arrest by the Nazis, the Account Owner's conviction for violation of the foreign exchange laws, her flight from the Nazis, her detention in an internment camp when she and her husband arrived in Palestine, the confiscation of assets held by her husband, Ignaz Markus, as evidenced by the Austrian State Archives, and the applicability of Presumptions (h) and (j) contained in Appendix A,⁴ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (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.

⁴ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Basis for the Award

The CRT has determined that an Award may be made in favour 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 his maternal aunt, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed account.

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 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 37(1) of the Rules, to produce a total award amount of 156,000.00 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 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

December 31, 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).