

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED] represented by [REDACTED]

in re Accounts of Hugo Mautner, Friedrich Mautner and Kitty Mautner

Claim Number: 220957/JT

Award Amount: 312,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Hugo Mautner. The Award is to the account of Hugo Mautner (“Account Owner Hugo Mautner”) at the Zurich branch (“Branch I”) of the [REDACTED] (“the Bank”) and to the account of Friedrich Mautner (“Account Owner Friedrich Mautner”) and Kitty Mautner (together, the “Joint Account Owners”) at the Basel branch (“Branch II”) of 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 and Initial Questionnaire identifying Account Owner Friedrich Mautner as her father-in-law, who was born on 15 August 1885 in Gablonz, Czechoslovakia, and was married to Kitty Mautner, née Duschenes in Prague, Czechoslovakia. The Claimant identified Account Owner Hugo Mautner as her cousin-in-law, who was born on 19 June 1884 in Neustupov, Czechoslovakia, and was married to Grete Mautner, née Schleinova.

The Claimant stated that both Account Owners were Jewish. The Claimant further stated that her father-in-law held the professional title “Dr.” and provided documents showing that he was placed on a “Jude Transport” in 1944. The Claimant stated that her cousin-in-law was a bank director, who lived at 53 Podskalskagasse in Prague between 1921 and 1933. The Claimant further stated that her cousin-in-law was deported in 1941 to a concentration camp, and he perished in Auschwitz. The Claimant stated that she was born in Holic, Czechoslovakia, on 28 August 1922.

Information Available in the Bank Records

The bank records for the account held at Branch I consist of a power of attorney form dated 11 November 1926 and printouts from the Bank's database. According to these records, the Account Owner was Hugo Mautner and the Power of Attorney Holder was Grete Mautner. The bank records indicate that the Account Owner held a custody account.¹ The bank records further indicate that the Account Owner lived at 53 Podskalskagasse in Prague.

The bank records for the account held at Branch II consist of an opening contract for a joint account, which appears to be dated 23 May 1936, and printouts from the Bank's database. According to these records, the Account Owners were Dr. Friedrich Mautner and Kitty Mautner, née Kitty Duschenes, who resided at Stresovice 362 in Prague, Czechoslovakia and worked at Lutzowawova 43 in Prague. The bank records indicate that the Joint Account Owners held a joint custody account, numbered 32161.

The bank records do not show if or 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 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 and there is no evidence that the Account Owners closed the accounts and received the proceeds themselves.

The Tribunal's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her father-in-law's name matches the unpublished name of Account Owner Friedrich Mautner, and her cousin-in-law's name matches the published name of Account Owner Hugo Mautner. Furthermore, the Claimant identified her father-in-law's "Dr." title, which matches unpublished information contained in the bank documents. Moreover, the Claimant's cousin-in-law's street address matches unpublished information contained in the bank documents for Account Owner Hugo Mautner. Furthermore, the name of her father-in-law's wife, Kitty Mautner, matches the name of the unpublished joint account holder of her father-in-law's account. In support of her claim, the Claimant submitted documents, including a family tree and her father-in-law's and cousin-in-law's marriage certificates.

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 provided documents showing that Account Owner Friedrich Mautner was deported in 1944 and that Account Owner Hugo Mautner was deported in 1941. The Claimant further stated that Account Owner Hugo Mautner perished in Auschwitz and that Friedrich and Kitty Mautner were also killed in the Holocaust.

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. Although this power of attorney form therefore does not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the Tribunal concludes that it is plausible that he held such an account.

Moreover, the Tribunal notes that a database containing the names of victims of Nazi persecution includes a person named Hugo Mautner, and indicates that his date of birth was 19 June 1884, which matches information about Account Owner Hugo Mautner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents demonstrating that she is Account Owner Friedrich Mautner's daughter-in-law and Account Owner Hugo Mautner's cousin-in-law. There is no information to indicate that the Account Owners have other surviving heirs.

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, given that as the German invasion spread across Europe as the Second World War progressed it would have been increasingly difficult and dangerous for the Account Owners to travel to Switzerland to access their accounts, the imposition of Swiss visa requirements in January 1939 would have also made it difficult for the Account Owners to access their accounts after that time, the Account Owners were victims of Nazi persecution in Czechoslovakia, and that presumption (j) applies in this case, it is plausible that the Account Owners did not receive the proceeds of the accounts during the War. Given the application of presumption (h), it is plausible that the Account Owners and their heirs did not receive the proceeds of the accounts after the War.

Basis for the Award

The Tribunal 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 Owners were her father-in-law and cousin-in-law, and these relationships justify an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

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, producing an amount of 26,000.00 for the two custody accounts. 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 312,000.00 Swiss Francs.

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 35% of the Certified Award, and the claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of

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

Article 35 of the Rules to calculate the account values and 35% of the total award amount is 109,200.00 Swiss Francs.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal 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).

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. 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).