

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED1]
represented by [REDACTED]

and

to Claimant [REDACTED2], acting on behalf of
[REDACTED] and [REDACTED]

in re Accounts of Friedrich Mayer

Claim Numbers: 219488/ES; 222334/ES

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED1] (“Claimant [REDACTED1]”) and [REDACTED2] (“Claimant [REDACTED2]”) (together “the Claimants”) to the accounts of Friedrich Mayer (the “Account Owner”) 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 Claimants

Claimant [REDACTED1] submitted a Claim Form identifying the Account Owner as his father, and Claimant [REDACTED2] submitted a Claim Form identifying the Account Owner as her maternal grandfather. The Claimants stated that their relative, Friedrich Mayer, who was born on 5 June 1881 in Speyer, Germany, and was married to Anna Wolf on 1 April 1915 in Aachen, Germany. The Claimants stated that Friedrich Mayer, who was Jewish, was a businessman and owned a lumber business in Speyer. The Claimants stated that their relative lived at 25 Guidostrasse in Speyer until 22 October 1940, when he was transferred to the Gurs detention camp in France. He perished in Gurs on 31 December 1941. The Claimants stated that Friedrich Mayer’s wife, Anna, who was also Jewish, was deported to Auschwitz in August 1942 and perished there on 31 December 1945. Claimant [REDACTED1] submitted his birth certificate and his parents’ marriage certificate, identifying Friedrich Mayer as his father. Claimant [REDACTED2] submitted her grandparents’ death certificates issued by the city of Speyer, identifying her mother, [REDACTED], as Friedrich Mayer’s daughter.

Claimant [REDACTED1] indicated that he was born on 11 December 1927 in Speyer. Claimant [REDACTED2] indicated that she was born on 24 February 1944 in Detroit, Michigan, the United States. Claimant [REDACTED2] is representing her brothers: [REDACTED], who was born on 9 May 1949 in Detroit, and [REDACTED], who was born on 28 October 1954 in Detroit.

Claimant [REDACTED1] previously submitted an ATAG Ernst & Young claim form in 1999, asserting his entitlement to a Swiss bank account owned by Friedrich Mayer. With this claim Claimant [REDACTED1] attached a bank document indicating that his father, Friedrich Mayer, transferred 349.00 Swiss Francs from his account at a Bank in Zurich on 22 September 1937 to the account of his son, [REDACTED], at a Bank in Brussels, Belgium.

Information Available in the Bank Records

The bank records consist of a customer card and printouts from the Bank's database. According to these records, the Account Owner was Friedrich Mayer and the Power of Attorney Holder was Frau Anna Mayer who resided at Guidostrasse 25, Speyer (Bayern), Germany. The bank records indicate that the Account Owner held a custody account numbered 36977 and a demand deposit account, both opened in 1933. The custody account was closed on 25 October 1938 by an unknown entity. The amount in the custody account on the date of its closure is unknown.

The bank records do not show when the demand deposit account 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 accounts and received the proceeds themselves.

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 Owner

The Claimants have plausibly identified the Account Owner. Their relatives' names match the published names of the Account Owner and the Power of Attorney Holder. The Claimants identified their relatives' street address, which matches unpublished information about the Account Owner and the Power of Attorney Holder contained in the bank records. In support of his claim, Claimant [REDACTED1] submitted documents, including a bank document indicating the name of the Bank, the bank branch, and his father's street address, which matches unpublished information contained in the bank records. In support of her claim, Claimant [REDACTED2] submitted documents, including her grandparents' death certificates issued by the city of Speyer, identifying her mother, [REDACTED], as Friedrich Mayer's daughter.

The CRT notes that Claimant [REDACTED1] filed an ATAG Ernst & Young claim form in 1999, asserting his entitlement to a Swiss account owned by Friedrich Mayer, 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, in addition to the Claimant's provision of the Account Owner's unpublished street address in Speyer, indicates that the Claimant has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his 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 Claimants have made a plausible showing that the Account Owner and the Power of Attorney Holder were Victims of Nazi Persecution. The Claimants stated that the Account Owner and the Power of Attorney Holder were Jewish, and that they perished in concentration camps.

The Claimants' Relationship to the Account Owner

Claimant [REDACTED1] has plausibly demonstrated that he is related to the Account Owner by submitting his own birth certificate and his parents' marriage certificate, demonstrating that Friedrich Mayer was his father. Claimant [REDACTED2] has plausibly demonstrated that she is related to the Account Owner by submitting documents, including her grandparents' death certificates issued by the city of Speyer, Germany identifying her mother, [REDACTED], as Friedrich Mayer's daughter.

The Issue of Who Received the Proceeds

Regarding the custody account, given the existence of Nazi confiscatory legislation in Germany at this time, the application of Presumption (j) contained in Appendix A,¹ and the Account

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

Owner's imprisonment and death in a concentration camp, 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, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Regarding the demand deposit account, given the application of Presumptions (h) and (j) contained in Appendix A,² 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.

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, Claimant [REDACTED1] has plausibly demonstrated that the Account Owner was his father, and Claimant [REDACTED2] has plausibly demonstrated that the Account Owner was her grandfather, and these relationships justify 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 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. 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 amount for the custody account of 156,000.00 Swiss Francs.

The bank document that Claimant [REDACTED1] submitted indicates that on 22 September 1937, the Account Owner transferred 349.00 Swiss Francs from his demand deposit at the Bank to his son in Brussels, but it does not contain information on the total value of his account. According to Article 35 of the Rules, if the value of a demand deposit account is unknown, in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules to produce a total amount for the demand deposit account of 25,680.00 Swiss Francs. Consequently, the total award amount in this case is 181,680.00 Swiss Francs.

Division of the Award

According to Article 29 (c) of the Rules, because Claimant [REDACTED1] is the Account Owner's son he is entitled to one-half of the award amount. Claimant [REDACTED2] and her

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

brothers, the represented parties [REDACTED] and [REDACTED], as the children of the Account Owner's daughter, are each entitled to one-sixth of the total award amount.

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 Claimant [REDACTED1] is age 75, he is entitled to receive payment of 100% of his portion of the total award amount. Accordingly, the initial payment amount is 149,886.00 Swiss Francs, which is comprised of 100% of [REDACTED1]'s portion of the award (90,840.00 Swiss Francs) and 65% of Claimant [REDACTED2]'s, [REDACTED]'s and [REDACTED]'s portion of the award (19,682.00 Swiss Francs each, for a total of 59,046.00 Swiss Francs).

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

December 27, 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).