

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 Salomon Meisels and Albert Meisels

Claim Number: 215535/MBC

Award Amount: 414,720.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Salomon Meisels and Albert Meisels (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 the Account Owners as his maternal uncles, who were born in Poland and lived in Vienna, Austria, where they ran the family export and import business. The Claimant stated that he was born in 1931 and left for Israel in 1933, but he visited his uncles in 1936 with his family in Vienna. The Claimant further stated that his uncles were Jewish and were victims of Nazi persecution. According to the Claimant, his uncle Salomon was in Holland from 1940 until 1945, and then traveled to Switzerland. The Claimant indicated that he did not know where his uncle Albert went after leaving Austria in 1938, nor does he know when the Account Owners died, or whether they had children.

Information Available in the Bank Records

The bank records consist of copies of account registry cards. According to these records, Albert Meisels from Vienna was the sole owner of one demand deposit account. The bank records indicate that this account was closed on 30 April 1938, but it is unclear what the value of the account was or who received the proceeds of this account. The bank records also indicate that Salomon Meisels from Vienna was the sole owner of five accounts, including three demand deposit accounts (one in Pounds Sterling), and two custody accounts (one in Pounds Sterling). The bank records show that the custody account held in Pounds Sterling was closed on 16

December 1938 and the demand deposit account held in Pounds Sterling was closed on 20 April 1939, but the values of these accounts on these dates are unknown. The bank records do not show if or when the other accounts 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.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His uncles' names match the published names of the Account Owners, and the city of residence of the Claimant's uncles matches the unpublished city of residence of the Account Owners. In support of his claim, the Claimant submitted documents, including his driver's license and his marriage certificate. The CRT notes that there are no other claims to this account.

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 were victims of Nazi persecution who fled Austria in 1938, apparently after the German annexation (the "*Anschluss*").

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by providing a narrative and a family tree showing that the Account Owners were his mother's brothers. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

With regard to the demand deposit account held by Albert Meisels, given the Nazi confiscation of the foreign bank accounts of Austrian Jews, the closure of three of six accounts involved this case after the *Anschluss* in March 1938, and the application of Presumptions (a) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners 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.

With regard to the custody account and the demand deposit account held by Salomon Meisels, closed in 1938 and 1939 respectively, given the application of Presumptions (a) and (j) contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to

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

the Account Owners or their heirs. With regard to the other three accounts held by Salomon Meisels, given the application of Presumptions (h) and (j) contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners or their 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 Owners were his uncles and that relationship justifies an Award. Finally, the CRT 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, 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.

Account Owner Albert Meisels held a demand deposit account of unknown value. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 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 of 25,680.00 Swiss Francs.

Account Owner Salomon Meisels held three demand deposit accounts and two custody account all of unknown value. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs. The historic value of the accounts owned by Account Owner Salomon Meisels totals 32,420.00 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 of 389,040.00.

The total award amount in this case is 414,720.00 Swiss Francs.

In cases such as this one where the value of an account is based on the presumptions of Article 35 of the Rules, claimants shall receive an initial payment of 65% of the total award amount. In this case, the value of the accounts at issue is based on the Article 35 presumptions. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 35% of the total award amount. In this case, 65% of the total award amount is 269,568.00 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 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

November 26, 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).