

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED] and [REDACTED],

Claimant [REDACTED 2]
also acting on behalf of [REDACTED],

and Claimant [REDACTED 3]
also acting on behalf of [REDACTED], [REDACTED], and [REDACTED]

in re Accounts of Georg Mendershausen

Claim Numbers: 213427/IG; 213583/IG; 215809/IG

Award Amount: 51,360.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”), and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the accounts of Georg Mendershausen (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 [REDACTED 1] submitted a Claim Form identifying the Account Owner as her paternal great- grandfather, Georg Mendershausen, who was born on 26 June 1858 in Nienburg, Germany and was married to [REDACTED] in Kassel, Germany. According to Claimant [REDACTED 1], her great-grandfather had four children, all of whom are now deceased: [REDACTED], née [REDACTED], born in 1883 in Kassel; [REDACTED], née [REDACTED], born in Kassel; [REDACTED], née [REDACTED], born on 5 January 1892 in Kassel; and [REDACTED], born on 1 January 1900 in Kassel. The Claimant stated that her great-grandfather, who was Jewish, was a businessman who owned a shoe store in Kassel that had business contacts with *Bally* shoe company, based in Switzerland. The Claimant provided specific street addresses for her great-grandfather, including addresses on Kölnischestrasse, Amalienstrasse, Schillerstrasse, and Mombachstrasse in Kassel between 1908 and 1942. In 1942 he was deported to Theresienstadt and later to Minsk, where he and his wife were murdered by

the Nazis. Claimant [REDACTED 1] submitted copies of family photographs, her mother's birth certificate, a letter from the Department of Collections and Documentations at Theresienstadt regarding the fate of Georg and [REDACTED] Mendershausen, and a family tree. Claimant [REDACTED 1] indicated that she was born on 14 January 1952 in Cape Town, South Africa and is the daughter of [REDACTED], who is the son of Georg Mendershausen's daughter [REDACTED], who had two children: [REDACTED] and [REDACTED], who is deceased. Claimant [REDACTED 1] is representing her father, [REDACTED], who was born on 3 March 1919 in Dortmund, Germany, and his maternal cousin, [REDACTED], the daughter of Georg Mendershausen's daughter [REDACTED], née [REDACTED], who was born on 4 March 1911 in Tatrahaza, Hungary.

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as his grandfather, Georg Mendershausen, and provided information identical to that provided by Claimant [REDACTED 1]. Claimant [REDACTED 2] submitted a detailed family tree and copies of his father's birth certificate, family photographs, including a photo of his grandfather's shoe store in Kassel, and copies of his own birth certificate. Claimant [REDACTED 2] indicated that he was born on 22 February 1929 in Kassel and is the son of Georg Mendershausen's son [REDACTED], who had two children: the Claimant and his sister, [REDACTED], née [REDACTED]. Claimant [REDACTED 2] is representing [REDACTED], his sister, who was born on 2 September 1927 in Kassel.

Claimant [REDACTED 3] submitted a Claim Form identifying the Account Owner as her great-grandfather, Georg Mendershausen, and provided information identical to that provided by Claimants [REDACTED 1] and [REDACTED 2]. Claimant [REDACTED 3] submitted a detailed family tree and copies of her grandmother's birth and death certificates, her father's birth and death certificates, and her own birth certificate. Claimant [REDACTED 3] indicated that she was born on 15 April 1947 in Cape Town and is the daughter of [REDACTED], who was the son of Georg Mendershausen's daughter [REDACTED]. Claimant [REDACTED 3] is representing [REDACTED], her mother, who was born on 14 December 1922 in Johannesburg, South Africa, [REDACTED], her brother, who was born on 26 December 1949 in Newlands, South Africa, and [REDACTED], her sister, who was born on 20 September 1953 in Cape Town.

Information Available in the Bank Records

The bank records consist of a number of inventory lists of suspended dormant accounts. According to these records, the Account Owner was Georg Mendershausen, who resided in Germany. The bank records indicate that the Account Owner held two demand deposit accounts. One demand deposit account was transferred to a suspense account on 4 February 1941 and closed by bank fees on 22 February 1982. The amount in this demand deposit account on the date of its transfer to the suspense account was 334.00 Swiss Francs, and on the date of its closure was 5.50 Swiss Francs. The amount in the second demand deposit account was 209.00 Swiss Francs on 31 December 1980. This second account was closed unknown when and unknown by whom. 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 the second demand deposit 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 or his heirs closed the account 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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have all plausibly identified the Account Owner. Their relative's name matches the published name of the Account Owner. The Claimants identified their relative's country of residence, which matches published information about the Account Owner contained in the bank records. The Claimants submitted identical information regarding Georg Mendershausen's domiciles in Kassel, occupation, descendants, and fate during the Second World War. In support of her claim, Claimant [REDACTED 1] provided copies of family photographs, her mother's birth certificate, a letter from the Department of Collections and Documentations at Theresienstadt regarding the fate of Georg and [REDACTED] Mendershausen, and a family tree. In support of his claim, Claimant [REDACTED 2] provided a detailed family tree and copies of his father's birth certificate, family photographs, including a photo of his grandfather's shoe store in Kassel, and copies of his own birth certificate. In support of her claim, Claimant [REDACTED 3] provided a detailed family tree and copies of her grandmother's birth and death certificates, her father's birth and death certificates, and her own birth certificate.

The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and was deported with his wife to Theresienstadt and subsequently to Minsk, where he and his wife were murdered. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Georg Mendershausen, and indicates that he was born on 26 June 1858 in Nienburg, Germany, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimants' Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is the Account Owner's great-granddaughter. Claimant [REDACTED 2] has plausibly demonstrated that he is related to the Account Owner by

submitting documents demonstrating that he is the Account Owner's grandson. Claimant [REDACTED 3] has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is the Account Owner's great-granddaughter. There is no information to indicate that the Account Owner has any surviving heirs other than the Claimants and the represented parties.

The Issue of Who Received the Proceeds

With regard to the first demand deposit account, the bank records indicate that it was closed by bank fees, therefore it is clear that the Account Owner nor his heirs received the proceeds.

With regard to the second demand deposit account, given the application of Presumptions (f), (h), and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, or his 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.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their relative, and those relationships justify an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

The bank records indicate that the value of the demand deposit account closed in 1982 was 334.00 Swiss Francs as of 2 April 1941, and the value of the demand deposit account that was presumed closed by the auditors was unknown. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in each of the accounts 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. Consequently, the total award amount for the two demand deposit accounts is 51,360.00 Swiss Francs.

Division of the Award

Article 29(c) of the Rules provides that if the Account Owner's spouse has not submitted a claim to the account, the award will provide for equal division between the children of the Account Owner who have submitted claims to the account. If a child of the Account Owner has not filed a claim to the account, his or her share will be divided equally between any of his or her children or their descendants who have submitted claims to the account. In accordance with these principles of distribution, the CRT has determined that each of the descendants of the Account

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

Owner who has made a claim or is represented by a Claimant is entitled to the following share of the Award:

[REDACTED]: one-third (1/3)
[REDACTED]: one-sixth (1/6)
[REDACTED 3]: one-eighteenth (1/18)
[REDACTED]: one-eighteenth (1/18)
[REDACTED]: one-eighteenth (1/18)
[REDACTED 2]: one-sixth (1/6)
[REDACTED]: one-sixth (1/6)

The CRT notes that represented party [REDACTED] has better entitlement to the accounts than his daughter Claimant [REDACTED 1]. Additionally, represented parties [REDACTED] and [REDACTED] as well as Claimant [REDACTED 3] have better entitlement than their mother [REDACTED], as they are direct descendants of the Account Owner. Accordingly, the CRT has reached the conclusion that Claimant [REDACTED 1] and represented party [REDACTED] are not entitled to an award.

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 the represented parties [REDACTED], [REDACTED], and [REDACTED] are age 75 or older, they are entitled to receive payment of 100% of their portion of the total award amount. Accordingly, the initial payment amount is 45,368.00 Swiss Francs, which is comprised of 100% of that portion of the award allocated to the parties who are 75 or over (34,240.00 Swiss Francs) and 65% of that portion of the Award allocated to those parties who are under 75 (11,128.00 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

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).