

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of Richard Morawetz

Claim Numbers: 223352/ME, 600047/ME¹

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (Claimant [REDACTED 2]) (together the “Claimants”) to the account of Richard Morawetz (the “Account Owner”) at 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 Claimants each submitted a claim to the Holocaust Claims Processing Office (“HCPO”) and a Claim Form identifying the Account Owner as their father, Richard Morawetz, who was Jewish and was born on 21 May 1881 in Upice, Czechoslovakia. According to the Claimants, on 10 January 1915 in Prague, Czechoslovakia, Richard Morawetz married [REDACTED], née [REDACTED], who was born on 13 June 1894 and died on 30 August 1997. The Claimants stated that Richard Morawetz had four children with [REDACTED], all born in Czechoslovakia: [REDACTED], born 16 October 1915 in Prague; [REDACTED 1], born 17 January 1917 in Svetla nad Sazavou; [REDACTED], born 4 May 1919 in Svetla nad Sazavou; and [REDACTED 2], born 3 December 1921 in Upice.

The Claimants stated that Richard Morawetz lived at Upice 265 in Bohemia, a region of the Austro-Hungarian Empire from 1881-1920, after which he moved to Washingtonova Street in Prague, Czechoslovakia where he lived from 1920-1939. The Claimants further stated that Richard Morawetz escaped to Toronto, Canada in 1939, where he lived until he died on 18 October 1965. According to the information provided by the Claimants, Richard Morawetz was a 50% shareholder in, and president of a textile factory in Upice, Czechoslovakia named *Texta*

¹ The Claimant submitted a claim, numbered B-O2213, in February 2001, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600047.

AG, as well as the president of the association of jute manufacturers named *Juta AG*. Additionally, the Claimants stated that Richard Morawetz had a post-war legal representative named [REDACTED], whose office was located at Revolucni 1 in Prague, and who traveled to Switzerland to conduct business on behalf of Richard Morawetz.

In support of their claims, the Claimants provided copies of their birth certificates which refer to Richard Morawetz as their father, as well as copies of Richard Morawetz's birth and death certificates. Additionally, the Claimants provided a copy of a document from the Gestapo dated 21 October 1941, requiring Richard Morawetz to turn over all of his assets to the Nazis. This document was issued pursuant to a law effective on 4 October 1939. The document listed Richard Morawetz's date of birth, as well as the dates of birth of his wife and four children, and his family's address, listed as Prag II, Washingtonst. 19 and an additional residence in England.

Claimant [REDACTED 2] was born on 3 December 1921 and Claimant [REDACTED 1] was born 17 January 1917.

Information Available in the Bank Record

The bank records consist of a bank registry card. According to this record, the Account Owner was Richard Morawetz of Prague, Czechoslovakia. The bank record shows that the Account Owner held a custody account with the number L46679.

The account was closed on 28 April 1939. The amount in the account on the date of its closure is unknown. 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 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 claims of [REDACTED 1] and [REDACTED 2] in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner as their father, Richard Morawetz. Their father's name and country of residence matches the published name and country of residence of the Account Owner. The Claimants identified their father's city of residence during the relevant time period as Prague, which matches unpublished information about the Account Owner contained in the bank records. The CRT notes that there was one other claim to this account, but it was disconfirmed the claimed account owner lived in a different country.

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 that he fled to Toronto, Canada to avoid Nazi persecution in 1939. Additionally, the Claimants provided a copy of the Gestapo document dated 21 October 1941, which required the Account Owner to turn over all his valuables to the Nazi authorities.

The Claimant's Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents including copies of their father's birth and death certificates, as well as their own birth certificates, which refer to the Account Owner as their father.

The Issue of Who Received the Proceeds

Given that the Account Owner's account was closed on 28 April 1939, the Nazi occupation of all of Czechoslovakia in March 1939, the Account Owner's flight from the Nazis in 1939 subsequent to the Nazi occupation, the Nazi document dated 21 October 1941 which demanded that the Account Owner relinquish his assets, and the application of Presumptions (a), (d), (h) and (j) as provided in Article 28 (see Appendix A), 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 claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody account. Pursuant to Article 29 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 investigation carried out pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or 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 31(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

Division of the Award

According to Article 23 of the Rules, the award should be divided equally between the two Claimants.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claim 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
March 5, 2003

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).