

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED1]

and [REDACTED2]
represented by [REDACTED]

in re Accounts of Samuel Motzen

Claim Number: 001811/ME; 223930/ME

Award Amount: 47,988.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED1] (“Claimant [REDACTED1]”) and [REDACTED2] (“Claimant [REDACTED2]”) (together the “Claimants”) to the accounts of Samuel Motzen (the “Account Owner”) at the Zurich branch of the [REDACTED] (“Bank I”) and at the [REDACTED] (Bank II).

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 banks have been redacted.

Information Provided by the Claimants

The Claimants each submitted a Claim Form identifying the Account Owner as their relative. Claimant [REDACTED1] identified the Account Owner as his great-grandfather’s cousin, and Claimant [REDACTED2] identified the Account Owner as his maternal uncle, Samuel Yehuda Motzen, who was born on 24 November 1889 in Halmeu, Romania, and was married to [REDACTED], née [REDACTED], in Oradea (or Neubrod), Romania. The Claimants stated that the couple had two children: [REDACTED] (or [REDACTED]) and [REDACTED]. The Claimants stated that Samuel Motzen lived, among other places, in Cluj and in Oradea, Romania. The Claimants further stated that their relative was the owner of the largest quill export company in Transylvania and the owner of a leather factory called *Motzenjevrau*. The Claimants indicated that their relative was Jewish, and that he studied in the Yeshiva in Oradea and later became the Vice-President of the Orthodox Jewish Community in Oradea. The Claimants noted that Samuel Motzen visited Switzerland annually, and that he was very wealthy, which is indicated in an extract from a Hebrew book submitted by the Claimants. According to the information provided by the Claimants, the Nazis confiscated their relative’s house in Oradea and confined him in the ghetto in March 1944. The Claimants further stated that, in the same year, their relative was deported to Auschwitz, where he perished on an unknown date. The Claimants indicated that

their relative's wife and two children also perished in Auschwitz in 1944. In a telephone conversation with the CRT on 3 May 2002, Claimant [REDACTED1] specified that he would like any surviving relative who has a better entitlement than his to be the beneficiary of any award rendered. Claimant [REDACTED2], who submitted a copy of a photograph of his relative in support of his claim, stated that he was aware that Claimant [REDACTED1] had filed a claim to the account of their relative. Claimant [REDACTED1] indicated that he was born on 22 September 1974 in Ramat Gan, Israel, and Claimant [REDACTED2] indicated that he was born on 1 September 1927 in Romania.

Claimant [REDACTED2] previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Samuel Motzen.

Information Available in the Bank Records

Bank I

The bank records consist of a customer card and a printout from the Bank's database. According to these records, the Account Owner was Samuel Motzen from Romania. The bank records indicate that the Account Owner held a numbered account of unknown type.¹ The bank records indicate that the account was opened in 1938 and closed unknown by whom on 27 July 1965. 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.

Bank II

The bank record consists of a list of accounts that were transferred to the Bank's free capital reserves on 30 June 1937. According to this record, the Account Owner was Samuel Motzen. The record does not indicate the type of the account that the Account Owner held, nor does it indicate his residence or nationality. According to the record, the value of the account on the date of the transfer, 30 June 1937, was 49.00 Swiss Francs. The record indicates that the account remains open and dormant.

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 claims of Claimant [REDACTED1] and Claimant [REDACTED2] in one proceeding.

¹ The bank records also indicate that the Account Owner held another account of an unknown type. This account will be addressed in a separate decision.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their relative's name matches the published name of the Account Owner. According to the information submitted by the Claimants, their relative was from Romania, which matches information about the Account Owner contained in the bank records. In support of his Claim, Claimant [REDACTED1] submitted detailed genealogical information about the Motzen family. The CRT notes that there are no other claims to the accounts of Samuel Motzen.

The CRT also notes that Claimant [REDACTED 2] filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Samuel Motzen, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED2] 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 Claimant [REDACTED2] 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 Claimants.

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 that he perished in Auschwitz.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that the Account Owner was a cousin of Claimant [REDACTED1]'s great-grandfather, and the brother of Claimant [REDACTED2]'s mother, [REDACTED] née [REDACTED].

The Issue of Who Received the Proceeds

With regard to the account at Bank I, 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 in this case that Presumptions (b), (h) and (j) apply and it is therefore plausible that the account proceeds were not paid to the Account Owner or his heirs.

With regard to the account at Bank II, the bank record indicates that the account remains open and dormant.

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

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 Claimants have plausibly demonstrated that the Account Owner was their relative and their respective relationships justify 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 accounts.

Amount of the Award

Regarding the account at Bank I, 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. Based on the ICEP Investigation, in 1945 the average value of an account of an unknown type was 3,950.00 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 an award amount for this account of 47,400.00 Swiss Francs.

Regarding the account at Bank II, the bank record indicates that the value of the account as of 30 June 1937 was 49.00 Swiss Francs. In this case, the records from Bank I indicate that the Account Owner opened another account in 1938. This indicates that the Account Owner had access to Swiss banks in 1938, and that the value of the account at Bank II reported in 1937 is likely the accurate value of the account. According to Article 35 of the Rules, if the amount in an account of unknown type was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 Swiss Francs. Given the presence of plausible evidence to the contrary, the average value provided for in Article 35 is not used in this case. 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 an award amount for this account of 588.00 Swiss Francs.

Consequently, the total award amount is 47,988.00 Swiss Francs.

Division of the Award

According to Article 29(1)(d) of the Rules, where neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED2] is the only direct descendant of the Account Owner's parents who submitted a claim, and is therefore entitled to the entire amount of the Award.

Initial Payment

In this case, Claimant [REDACTED2] is age 75 or over and is therefore entitled to receive payment of 100% of the total award amount.

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 his 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

December 31, 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).