

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 Osias Nacht

Claim Numbers: 207373/MBC; 213644/MBC

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] and [REDACTED 2] (together the “Claimants”) to the account of Osias Nacht (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 claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

[REDACTED 1] submitted a Claim Form identifying the Account Owner as her father, Osias Nacht. [REDACTED 2] submitted a Claim Form identifying the Account Owner as his grandfather, Osias Nacht. The Claimants stated that Osias Nacht, who was Jewish, was born on 23 September 1895 in Romania, and was married to [REDACTED] in Bucharest, Romania, in 1920. [REDACTED 1] stated that Osias Nacht was a businessman who owned a factory named “Farola,” located in the city of Brasov, and that he traveled to Zurich, Geneva, and Lausanne on various occasions for business. [REDACTED 2] stated that his grandfather owned a steel company in Bucharest. The Claimants asserted that because of anti-Semitism, Osias Nacht sent his children, [REDACTED 1] and [REDACTED] (the father of [REDACTED 2]), to England in 1938. According to the Claimants, Osias Nacht and his wife were forced to flee Bucharest in 1940 because of the Nazi invasion, leaving behind all their property and possessions. The Claimants indicated that from May 1940 until December 1940, Osias Nacht lived in London, before travelling via Brazil to the United States, where he arrived in 1942. Osias Nacht died in 1975 in Arcadia, California. [REDACTED 2] stated that his grandfather traveled frequently to Switzerland prior to his escape from Romania to deposit money in Swiss banks and that his father tried unsuccessfully to retrieve the money after the Second World War. [REDACTED 2] also stated that his father joined the U.S. Office of Strategic Services, served clandestinely in

Europe during the Second World War, and changed the spelling of his last name from Nacht to Nasht.

Information Available in the Bank Records

The bank records consist of an extract from an account ledger and documents recording that the account was considered for registration in a 1962 survey of dormant accounts owned by Jewish victims of Nazi persecution. According to these records, the sole Account Owner was Osias Nacht, a businessman from Bucharest, Romania. The bank records do not show when the account at issue was closed, the type of the account held, 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”) did not find this account in the Bank’s system of open accounts, and they therefore presumed that it was closed. 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 claims of [REDACTED 1] and [REDACTED 2] in one proceeding.

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. The Claimants stated that their relative resided in Bucharest, Romania before the Second World War, which matches unpublished information about the Account Owner contained in the bank records. The profession of the Claimants’ relative is also consistent with unpublished information about the Account Owner contained in the bank records. In support of their claims, the Claimants submitted documents, including the wills and death certificates for the Account Owner and his wife.

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. They stated that the Account Owner was Jewish and was forced to flee Romania after the Nazi invasion.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents, including copies of the Account Owner's and his wife's death certificates, wills and family tree, demonstrating that the Account Owner was the father of [REDACTED 1] and the grandfather of [REDACTED 2]. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

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.¹ The CRT concludes in this case that one or more of these presumptions applies and it is therefore plausible that the account proceeds were not paid to the Account Owner or his 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, the Claimants have plausibly demonstrated that the Account Owner was the father of [REDACTED 1] and the grandfather of [REDACTED 2], and those 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 account.

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 an account of 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 a total award amount of 47,400.00 Swiss Francs.

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 Claimants shall be 35% of the Certified Award, and the Claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value and 35% of the total award amount is 16,590.00 Swiss Francs.

Division of the Award

The Claimants submitted the wills of the Account Owner and his wife. These wills indicate that a share of the Account Owner's assets was granted to [REDACTED], the Account Owner's son

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

and the father of [REDACTED 2]. However, the Claimants did not provide the will of [REDACTED], who died in 1983. According to Article 29(2)(c) of the Rules, if a Claimant based a claim of entitlement on a chain of inherence but has not submitted an unbroken chain of wills or other inherence documents, the CRT may use the general principles of distribution established in Article 29(1) of the Rules to make allowance for any missing links in the chain, consistent with principles of fairness and equality. Article 29(1)(c) of the Rules provides that if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Accordingly, [REDACTED 1], the Account Owner's daughter, is entitled to half the award amount, or 23,700.00 Swiss Francs, and [REDACTED 2], the son of the Account Owner's son, [REDACTED], is entitled to half of the award amount, or 23,700.00 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

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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. "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 does not exist 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).