

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by [REDACTED]

in re Account of Martha Neumann

Claim Number: 221250/MBC¹

Award Amount: 2,170.80 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Martha Neumann (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 Claimant submitted a Claim Form identifying the Account Owner as her mother, Martha Neumann-Brown, née [REDACTED], who was born on 17 October 1878 in Vienna, Austria, and was married to [REDACTED], with whom she had four children: the Claimant, [REDACTED], [REDACTED], and [REDACTED]. The Claimant indicated that her mother, who was Jewish, was part owner of the firm *M. Neumann* and lived in Vienna at Johannesgasse 22, Karntnerstrasse 19, Karolinengasse 5 and Rauhensteingasse 6/8. She also had a business address at Museum Krt. 1 in Budapest, Hungary. The Claimant stated that her sister lived in Zürich, Switzerland at one time, and that her mother, Martha Neumann, owned stocks in the company *Moravia Holding A.G. Zurich*. According to the Claimant, her mother immigrated to the United States in 1938. She died in New York, New York in 1964. The Claimant indicated that she is the only surviving child of Martha Neumann, and that she was born on 1 October 1910 in Vienna.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Martha Neumann of Johannesgasse 22 in Vienna.

¹ The Claimant submitted additional claims to the claimed accounts of [REDACTED], [REDACTED], [REDACTED], and [REDACTED], which are registered under the claim numbers 221251, 221252, 221253, and 221254, respectively. The CRT will treat these claims in separate decisions.

Information Available in the Bank Records

The bank records consist of a bank customer card and printouts from the Bank's database. According to these records, the Account Owners were Martha Neumann and Josef Neumann of Karntnerstrasse 19 in Vienna. The bank records indicate that the Account Owners held a custody account. The account was closed on 14 March 1939. The amount in the account on the date of its closure was 180.90 Swiss Francs. There is no evidence in the bank records that the Account Owner or her heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Martha Neumann of Johannesgasse 22, Vienna. These documents include detailed inventories of personal property, real property, and holdings in various domestic and foreign banks. According to these documents, Martha Neumann held a custody account at the Zurich branch of the Bank that had a value of 79.80 Reichmarks as of 21 December 1938.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her mother's name matches the published name of the Account Owner. The Claimant included specific street addresses in Vienna for her mother, one of which matches unpublished information about the Account Owner contained in the bank records. In support of her claim, the Claimant submitted documents, including records from the Austrian State Archives concerning the assets of the Claimant's siblings, containing one of the Claimant's addresses.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999 asserting her entitlement to a Swiss bank account owned by Martha Neumann, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her 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 her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

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 lived in Austria during the Second World War.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is the daughter of Martha Neumann. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given the application of Presumptions (a), (d), and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (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 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 Owner was her mother, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account.

Amount of the Award

The bank records indicate that the value of the custody account was 180.90 Swiss Francs as of 14 March 1939. The Austrian State Archives records indicate that the value of the custody account was 79.80 Reichmarks as of 21 December 1938. According to Article 35 of the Rules, if the amount in a custody account was less than 13,000.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to have been 13,000.00 Swiss Francs. In this case, the CRT notes that the value of the account as reported in the Account Owner's Austrian census records is similar to that as recorded in the bank documents, and therefore considers it plausible that the actual balance of the account is reflected in the bank record, or 180.90 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic balance by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case is 2,170.80 Swiss Francs.

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

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research her claim to determine whether there are additional Swiss bank accounts to which she 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).