

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

and to Claimant [REDACTED 2]
represented by [REDACTED]

in re Account of Melitta Nobl

Claim Numbers: 002503/MG; 222833/MG

Award Amount: 203,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED] (hereinafter “Claimant [REDACTED 1]”) to the accounts of Josef Nobl² and the claim of [REDACTED 2] (hereinafter “Claimant” [REDACTED 2]) (together the “Claimants”) to the accounts of Melitta Nobl. This Award is to the accounts of Melitta Nobl (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as Claimant [REDACTED 2] has, 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

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her grandmother, Melitta Nobl, who was married to Prof. Gabriel Gabor Nobl. Claimant [REDACTED 1] stated that her father, Dr. Josef Nobl, who was Melitta Nobel’s son, was a lawyer who worked and resided until 1938 at Liechtensteinstrasse 2 in Vienna, Austria. Claimant [REDACTED 1] further stated that in 1938, her father fled Vienna and went to Palestine. Claimant [REDACTED 1] submitted various documents, including her own birth

¹ The Claimant provided her name and some of her relatives’ names only in Hebrew characters in the Claim Form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the Claim Form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

² The CRT will treat the claim to this account in a separate decision.

certificate indicating that her father's name is Dr. Joseph Nobl. Claimant [REDACTED 1] indicated that she was born on 25 October 1943 in Palestine. The Claimant is representing the children of her deceased sister: her niece [REDACTED], née [REDACTED], who was born on 6 May 1960 in Israel, and her nephew [REDACTED], who was born on 22 October 1963 in Israel.

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as his maternal aunt, Melitta Nobl née Elias, who was married to Dr. Gabriel Nobl. Claimant [REDACTED 2] stated that his aunt was a housewife who resided at Liechtensteinstrasse 2 in Vienna. Claimant [REDACTED 2] stated that his uncle died on 14 March 1938, and his aunt died four days later on 18 March 1938.

Claimant [REDACTED 1] previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Dr. Josef Nobl.

Information Available in the Bank Records

The bank records consist of a customer card and printouts from the Bank's database. According to these records, the Account Owner was Melitta Nobl and the Power of Attorney Holders were Prof. Dr. G. Nobl and Dr. Josef Nobl who resided in Vienna, Austria. The bank records indicate that the Account Owner held a custody account numbered 32501 and an unknown type of account. According to these records, the accounts were opened in 1931 and were closed on 29 November 1938 unknown by whom. 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, the Power of Attorney Holders, or their heirs closed the accounts 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 Dr. Josef Nobl. According to these documents, Dr. Josef Nobl was a lawyer who was born on 28 September 1899, was married to [REDACTED], resided at Liechtensteinstrasse 2 in Vienna, Austria, and was of Jewish origin. These documents indicate that Dr. Josef Nobl is the sole heir of Melitta Nobl, née Elias and that his assets include the estates of Dr. Gabor Nobl and Melitta Nobl who died on 14 and 18 March 1938 respectively. According to these documents, the personal assets of Dr. Josef Nobl were worth 93,437.00 Reichsmarks; the estate of Gabor Nobl, which included various securities of a nominal value of 111,227.52 Reichsmarks, had a total value of 136,934.14 Reichsmarks; and the estate of Melitta Nobl, which included securities of a nominal value of 37,564.22 Reichsmarks, including Swiss bonds 4% *Anleihe der Schweiz Bundesbahnen* of nominal value of 16,000.00 Swiss Francs, and a house at Rueppgasse 14, Vienna with a value of 27,000.00 Reichsmarks, had a total value of 109,116.00 Reichsmarks. These documents indicate that the above estates values were subject to fees and

tax deductions. Furthermore, a document issued by the Austrian authorities, dated 12 November 1941, indicates that at that time, Dr. Josef Nobl was not present in Austria.

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 two claims of the Claimant in one proceeding.

Identification of the Account Owner

Claimant [REDACTED 1] has plausibly identified the Account Owner. Her grandmother's, grandfather's, and father's names match the published names of the Account Owner and the Power of Attorney Holders. The Claimant identified her father's title, which matches unpublished information contained in the bank records. In support of her claim, Claimant [REDACTED 1] submitted documents, including her own birth certificate indicating that her father's name is Dr. Joseph Nobl.

Claimant [REDACTED 2] has plausibly identified the Account Owner. His aunt's name matches the published name of the Account Owner. In addition, Claimant [REDACTED 2] identified the maiden name and the street address of his aunt, which matches information contained in the Austrian State Archive documents.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 1] and Claimant [REDACTED 2] have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that her father, the Account Owner's son, was Jewish, and that he fled Austria in 1938 and went to Israel. Claimant [REDACTED 2] stated that his aunt was Jewish.

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 her father's name is Dr. Josef Nobl who, according to the Austrian State Archive documents, is the son of Melitta Nobl. Claimant [REDACTED 2] has plausibly demonstrated that he is related to the Account Owner.

According to the principles of distribution set forth in Article 29 of the Rules, an award will provide for division among the descendants of the Account Owner in equal shares by representation. Claimant [REDACTED 1], as a descendant of the Account Owner, has a better entitlement to the account than Claimant [REDACTED 2], who is a descendant of the Account Owner's parents.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, within the same year, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and the application of Presumptions (a) and (j) contained in Appendix A,³ the CRT concludes that it is plausible that the account proceeds in this case were not paid to the Account Owner, the Power of Attorney Holders, or their heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to assist in determining 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 Claimant [REDACTED 1]. First, the claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was her grandmother, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that the Account Owner, the Power of Attorney Holders, and their heirs did not receive the proceeds of the claimed accounts.

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of accounts are 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 accounts being awarded. Based on the Independent Committee of Eminent Persons Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs, and the average value of an unknown type of account was 3,950.00 Swiss Francs. The present values of these amounts are calculated by multiplying them by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 203,400.00 Swiss Francs.

Division of the Award

According to Article 29 of the Rules, descendants of an Account Owner will divide the award amount in equal shares by representation. Claimant [REDACTED 1] is representing both children of her deceased sister in these proceedings. According to Article 29 of the Rules, each of these children is entitled to receive one quarter of any payment made to Claimant [REDACTED 1].

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

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account values, and 65% of the total award amount is 132,210.00 Swiss Francs.

Scope of the Award

Claimant [REDACTED 1] and Claimant [REDACTED 2] 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

December 27, 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).