

CLAIMS RESOLUTION CRT

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

Certified Award

to Claimant Sreëko Pustisek
represented by Janez Pustisek

in re Account of Josef Novakovic

Claim Number: 222530/EZ

Award Amount: 229,680.00 Swiss Francs

This Certified Award is based upon the claim of Sreëko Pustisek (the “Claimant”) to the account of Josef Novakoviæ (the “Account Owner”) at the Zurich branch of the [REDACTED](the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his grandfather (adoptive mother’s father), Josef Novakoviæ, who was born in Virovitica, Croatia, on 3 May 1881, and who was married to Olga Skopal, who was born on 19 July 1897, in Zagreb, Croatia. The Claimant stated that his grandfather, who was a qualified engineer and who worked as a representative for Siemens, had one child, the Claimant’s mother Tanja Pustisek, née Novakoviæ, who was born in Zagreb in 1923. The Claimant provided a street address in Zagreb where his grandparents, who were Jewish, lived from 1935 onwards. The Claimant stated in his Claim Form and in a telephone conversation with the CRT that during the Second World War his grandfather was taken from Zagreb and interned for a period in a concentration camp in Rab, before he was able to return to Zagreb at the end of the Second World War. The Claimant’s grandfather died in Zagreb in 1962 and his grandmother died in Zagreb in 1989. The Claimant submitted documentation, including copies of his adoption certificate, his parents’ marriage certificate, his mother’s birth and death certificates and his grandfather’s spouse’s birth and death certificates. The Claimant was born on 26 August 1955 in Croatia.

Information Available in the Bank Records

The bank records consist of a Power of Attorney form, a form containing the Account Owner’s details, a ledger card and statements indicating that the Account Owner owned bonds.

According to these records, the Account Owner was Josef Novakoviæ, an engineer who was born on 3 May 1881 in Virovitica, and who held a demand deposit account and a custody account, and the Power of Attorney Holder was Olga Novakoviæ, the Account Owner's wife, who was born in Zagreb on 19 July 1897. These records show that the demand deposit account was opened on 29 January 1942, and that the Power of Attorney authorization was signed in Zagreb in 1942. These records also show that the Account Owner and Power of Attorney Holder lived in Zagreb.

The bank records show that the account balance of the demand deposit account on 30 June 1956 was 469.00 Swiss Francs, and that the custody account, numbered L4197, contained five bonds of the Swiss Federal Railway Company. In May 1939, the Account Owner owned three bonds for a total value of 15,000.00 Swiss Francs, and in March 1941 he owned two additional for a total value of 2,000.00 Swiss Francs. The bank records show that the interest for these bonds should have been paid to the Account Owner every six months. The bank records do not show whether the interest of the bonds was paid to the Account Owner or his heirs, or whether the bonds had been sold by the Account Owner before the bonds matured.

The bank records do not indicate when the accounts at issue were closed, or to whom they were paid. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder or their heirs closed the accounts and received the proceeds themselves. 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" or the "ICEP Investigation") did not find these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His grandfather's name matches the published name of the Account Owner, and his grandmother's name matches the published name of the Power of Attorney Holder. The Claimant has correctly identified the unpublished relationship between the Account Owner and the Power of Attorney Holder. Moreover, the dates and cities of birth the Claimant indicated for his grandparents exactly matches unpublished information recorded in the bank records for the Account Owner and the Power of Attorney Holder, as does the occupation the Claimant provided for his grandfather and the city of residence he provided for his grandparents.

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 was taken from Zagreb and interned in a concentration camp in Rab during the Second World War.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents, including his adoption certificate and the birth and death certificates of his grandmother and his mother, demonstrating that his adopted mother was the daughter of the Account Owner. 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 Governing the Claims Resolution Process (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 demand deposit account and custody account bond proceeds were not paid to the Account Owner, the Power of Attorney Holder or their heirs.

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 his grandfather, and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

The bank records indicate that the value of the demand deposit account as of 30 June 1956 was 469.00 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 180.00 Swiss Francs, which reflects standardized bank fees charged to the account between 1945 and 1956. Consequently, the adjusted balance of the account at issue is 649.00 Swiss Francs. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, the presumed value for a demand deposit account, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The bank records indicate that the values of the bonds in the custody account as of May 1939 and March 1941 were 15,000.00 Swiss Francs and 2,000.00 Swiss Francs, respectively. The total value of these accounts is 19,140.00 Swiss Francs.

The present value of the amount of the award is determined by multiplying the historic values by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total amount of the award is 229,680.00 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 Claimant 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 the case of the demand deposit

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

account, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value and 35% of its award amount is 8,988.00 Swiss Francs.

As a result, the total initial payment to the Claimant shall be 212,988.00 Swiss Francs.

Scope of the Award

The Claimant 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 he 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. 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).