

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Paula Papousado
represented by Denis Delcros and Christophe Aubrun

in re Accounts of Samuel Papousado

Claim Number: 221852/LK

Award Amount: 177,159.36 Swiss Francs

This Certified Award is based upon the claim of Paula Papousado, née Adam, (the “Claimant”) to the accounts of Samuel Papousado (the “Account Owner”) at the Geneva 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 her husband, Samuel Perahia-Papousado, who was born on 29 March 1910 in Thessalonika, Greece, and was married to Paula Papousado, née Adam, on 30 March 1929 in Paris, France. The Claimant stated that she and her husband lived at 8 Rue Popincourt in Paris II during the Second World War and that her husband had an account at the Geneva branch of the Bank which he had tried unsuccessfully to access after the War. The Claimant further stated that her husband, who was Jewish, was summoned to the Prefector’s office regularly during the Second World War and advised not to flee because he was a naturalized French citizen and was married to a Catholic woman. According to the Claimant, her husband remained in Paris during the War and was never arrested but was forced to wear a yellow star. The Claimant explained that her husband died on 5 September 1973 in Paris, and, in support of her claim, she submitted a family tree and her husband’s marriage and death certificates. The Claimant indicated that she was born on 7 August 1912 in Halanzy, Belgium.

Information Available in the Bank Records

The bank records consist of extracts from the Bank’s ledger and a letter addressed to the Bank by the Swiss Compensation Office, dated 17 April 1948. According to these records, the Account Owner was Samuel Perahia-Papousado, who resided at 149 avenue Ledru Rollin in Paris. The

bank records indicate that the Account Owner held a demand deposit account that had a balance of 20.15 Swiss Francs on 21 June 1951 and an account of unknown type numbered 76559 that had a balance of 2,872.92 United States Dollars in 1948. The accounts were transferred to a suspense account on or before 21 June 1951 and were dormant for over five years between 1945 and 1955. The bank records indicate the account in United States Dollars was frozen in the 1941 U.S. freeze of all Swiss assets in the United States and/or other assets denominated in United States Dollars. 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. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her husband’s name and city of residence match the published name and city of residence of the Account Owner. The Claimant identified the branch and the bank where her husband had an account, which matches unpublished information about the account. In support of her claim, the Claimant submitted documents, including her husband’s marriage and death certificates. The CRT notes that there were no other Claimants to this account.

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, was in France during the Nazi occupation, and was forced to wear a Jewish star.

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 was his wife.

The Issue of Who Received the Proceeds

Given the application of Presumptions (b), (e), (h), and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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.

¹ 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 Claimant has plausibly demonstrated that the Account Owner was her husband, and that relationship justifies 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

The bank records indicate that the value of the demand deposit account as of 21 June 1951 was 20.15 Swiss Francs and the value of the account of unknown type as of 17 April 1948 was 2,872.92 United States Dollars. In accordance with Article 37(1) of the Rules, the amount in the demand deposit account is increased by an adjustment of 429.85 Swiss Francs, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1951. Hence, the adjusted balance of the demand deposit account at issue is 450.00 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, 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.

Regarding the account of unknown type, the value of the account of 2,872.92 United States Dollars was equal to 12,563.28 Swiss Francs in 1948. In accordance with Article 37(1) of the Rules, the amount in the account of unknown type is increased by 60.00 Swiss Francs, which reflects standardized bank fees charged to the account of unknown type between 1945 and 1948. The adjusted account value for the account of unknown type is therefore 12,623.28 Swiss Francs.

The total 1945 value of both accounts, therefore, is 14,763.28 Swiss Francs. The present value of the amount of the award is determined by multiplying the total 1945 value of both accounts by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 177,159.36 Swiss Francs.

Initial Payment

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

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 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

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).