

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Marion Turnovszky

and Claimant Thomas Mauder

in re Account of Ida Perutz

Claim Numbers: 211886/MD;¹ 219098/MD

Award Amount: 414,720.00 Swiss Francs

This Certified Award is based upon the claims of Marion Turnovszky, née Perutz, (“Claimant Turnovszky”) and Thomas Mauder (“Claimant Mauder”) (together the “Claimants”) to the accounts of Ida Perutz (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 Claimants

Information Provided by Claimant Turnovszky

Claimant Turnovszky submitted a Claim Form identifying Ida Perutz, née Elias, as her paternal grandmother, who was born in Bucharest, Romania. Claimant Turnovszky indicated that Ida Elias was married to Friedrich Perutz, and that the couple had three children: Felix (Claimant Turnovszky’s father), who was born in 1900 in Prague in what is now the Czech Republic; Lilly, who was born in 1902 in Prague; and Edith, who was born in 1914 in Prague. According to the information provided by Claimant Turnovszky, Friedrich Perutz, who was the owner of a company named *Gebrüder Perutz*, died in 1918 in Prague, and Claimant Turnovszky’s father took over the management of the company. According to the information provided by Claimant Turnovszky, Ida Perutz, who was Jewish, was a housewife and lived Prague and later in Vienna. Claimant Turnovszky stated that her grandmother, fearing Nazi persecution, took her own life in 1938.

¹ The Claimant submitted an additional claim to the account of Felix Perutz, which is registered under the Claim Number 211884. The CRT will treat the claim to this account in a separate decision.

In support of her claims, Claimant Turnovszky submitted documents, including her father's birth certificate, her parents' marriage certificate, her parents' death certificates, her own birth certificate, and probate orders regarding her father's and mother's estates. The Claimant stated that she was born on 15 August 1938 in Prague.

Information Provided by Claimant Mauder

Claimant Mauder filed a Claim Form identifying the Account Owner as his maternal grandfather's sister-in-law, Ida Perutz. Claimant Mauder stated that Ida Perutz, née Elias, was born in 1878, was married to Fritz (Friedrich) Perutz, and that the couple had three children: Felix, Lilly, and Edith. Claimant Mauder stated that Fritz Perutz, who was the owner of a textile company named *Gebrüder Perutz*, died in 1918. According to the information provided by Claimant Mauder, Ida Perutz, who was Jewish, was a Victim of Nazi Persecution and died approximately in 1941. In support of his claim, Claimant Mauder submitted a detailed family tree demonstrating that he is the grandson of Ida Perutz's brother-in-law, Richard Perutz. The Claimant stated that he was born on 31 October 1932 in Prague, Czechoslovakia.

Information Available in the Bank Records

The bank records consist of bank customer cards and printouts from the Bank's computer databases. According to these records, the Account Owner was Ida Perutz, a widow who lived at 11 Wohllebengasse in Vienna. The bank records indicate that the Account Owner held a custody account, numbered 36277, a demand deposit account denominated in a foreign currency, and a demand deposit account denominated in Swiss Francs. The bank records indicate that the Power of Attorney Holders to these accounts were Felix Perutz who used addresses in Vienna and in Prague, and Ludwig Pick. The custody account was opened in 1933 and was closed on 14 June 1938. The value of the custody account on the date of its closure is unknown.

The bank records also indicate that the Account Owner held another custody account, numbered 30984, a demand deposit account in Pounds Sterling and another demand deposit account denominated in Swiss Francs. The Power of Attorney Holders to these accounts were Felix Perutz who used addresses in Vienna and in Prague and Mrs. Brunhilde Perutz. The custody account was opened no later than 1930 and was closed on 14 June 1938. The value of the custody account on the date of its closure is unknown.

The bank records do not show when the four demand deposit accounts were closed, or to whom they were paid, nor do these records indicate the value of these accounts. 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 the demand deposit 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, the Power of Attorney Holders, or their heirs closed the custody accounts or demand deposit 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 Ida Perutz, who was born in 1877 and lived in Vienna at 11 Wohllebengasse. These records indicate that Ida Perutz, who was a widow, was a citizen of Czechoslovakia. According to the census report filed by Ida Perutz, she had rights over securities that were deposited in a bank in Austria connected with a company named *Gebrüder Perutz*. These records indicate further that Ida Perutz may have been entitled to the estate of her uncle, Ludwig Russo. There is no mention of accounts in Switzerland in this census form.

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 Claimant Turnovszky and Claimant Mauder in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their relatives' names match the published names of the Account Owner and Power of Attorney Holder Felix Perutz. The Claimants indicated that Ida Perutz's husband died in 1918, and this information matches the unpublished information about the Account Owner's marital status contained in the bank records. Claimant Turnovszky stated that Felix Perutz lived in Prague, which matches the unpublished address of one of the Power of Attorney Holders contained in the bank documents. Both Claimants indicated that their relative's husband owned a company named *Gebrüder Perutz*, which is consistent with the unpublished information contained in the records of the Austrian State Archives.

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. The Claimants stated that the Account Owner was Jewish. Claimant Turnovszky stated that the Account Owner lived in Vienna and committed suicide out of fear of Nazi persecution. The census form filed by the Account Owner also demonstrates that the Account Owner was Jewish and lived in Vienna, Austria, after the *Anschluss*.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner. Claimant Turnovszky submitted documents, including her and her father's birth certificates,

demonstrating that the Account Owner was her paternal grandmother, and Claimant Mauder provided a detailed family tree demonstrating that the Account Owner was his maternal grandfather's sister-in-law.

According to the principles of distribution set forth in Article 29 of the Rules Governing the Claims Resolution Process (the "Rules"), in absence of the Account Owner's will, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares, by representation. Claimant Turnovszky, as the Account Owner's granddaughter and the only blood relative who has submitted a claim to the account, has a better entitlement to the account than does Claimant Mauder, who is related to the Account Owner through marriage. Consequently, pursuant to Article 29 of the Rules, Claimant Turnovszky is entitled to the entire amount of the Award.

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, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. The CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis. In this situation and given the application of Presumptions (a) and (j) contained in Appendix A² to the two custody accounts closed in 1938, and the application of Presumptions (h) and (j) contained in Appendix A to the four demand deposit accounts closed at an unknown date, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holders, or their heirs. Based on its precedent and 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 Claimant Turnovszky. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, Claimant Turnovszky has plausibly demonstrated that the Account Owner was her grandmother, and this relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held four demand deposit accounts and two custody accounts, all of unknown value. 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 a custody account was 13,000.00 Swiss Francs, and the average value of a demand deposit account was 2,140.00 Swiss Francs. The total average

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

value of the two custody accounts and four demand deposit accounts is therefore 34,560.00 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 414,720.00 Swiss Francs.

Division of the Award

As indicated above, Claimant Turnovszky is entitled to 100% of the award amount.

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 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 269,568.00 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

January 28, 2003

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).