

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Richard Moreau
represented by Denis Delcros

in re Accounts of Maurice and Rose Pfeiffer

Claim Numbers: 220335/MBC, 220336/MBC

Award Amount: 337,680.00 Swiss Francs

This Certified Award is based upon the claims of Richard Moreau (the “Claimant”) to the accounts of Maurice and Rose Pfeiffer (the “Account Owners”) at the Basel 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 is redacted.

Information Provided by the Claimant

The Claimant submitted Claim Forms identifying the Account Owners as his maternal grandparents, Moritz (or Maurice) Pfeiffer and Rose Pfeiffer, née Kuntz, who were born respectively on 15 September 1890 in Mulhouse, France and 3 January 1895 in Liepvre, France. The Claimant indicated that his grandparents were married in Lyon, France, on 28 April 1923. The couple had three children: France Pfeiffer, who was born on 20 September 1922 and died on 24 May 1946, Renée Pfeiffer, who was born on 3 March 1919 and died on 3 September 1949, and Ginette Moreau (the Claimant’s mother) who was born on 1 August 1930 and died on 21 December 1992. The Claimant further indicated that his grandparents lived in Lyon at rue d’Egypte, 5, until 1930 and then in Mulhouse, France, at rue des Bonnes-Gens, 20. According to the Claimant, his grandfather, who was Jewish, was a chemical engineer and owned a factory called “Produits Chimiques de la Mer Rouge.” The Claimant further stated that his grandparents and their family moved to the region of Lyon, where they hid until the Liberation. They then went back to Mulhouse, where the Claimant’s grandfather and grandmother passed away on 29 March 1969 and 27 November 1964, respectively. According to the Claimant, he is his grandparents’ only living heir. The Claimant was born on 17 April 1953.

In support of his claims, the Claimant submitted various documents, such as his birth and marriage certificates, his parents' family booklet, and his grandparents' birth, marriage and death certificates.

Information Available in the Bank Records

The bank records consist of registry cards, internal bank correspondence, and memoranda referring to the Bank's policy with respect to dormant accounts and accounts worth less than one thousand Swiss Francs. According to these records, the joint Account Owners were Maurice Pfeiffer and Rose Pfeiffer, née Kuntz, who resided in Mulhouse, France, at rue des Bonnes Gens, 20. The bank records indicate that the Account Owners held a demand deposit account in Swiss Francs and two custody accounts. The demand deposit account was closed by fees on 15 March 1952. The amount in the account on the date of its closure was 31.00 Swiss Francs. The bank records do not show if or when the custody accounts were closed, or to whom they were paid. Neither 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 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

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 discretion of the Claims Judges. In this case, the CRT determines it appropriate to join the Claimant's claims in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His grandparents' names and city of residence match the published names and city of residence of the Account Owners. The Claimant indicated that his grandparents lived at rue des Bonnes Gens, 20, which matches unpublished information about the Account Owners contained in the bank documents.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and that his grandparents had to live in hiding during the occupation of France by the Nazis.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents demonstrating that he is his grandparents' grandchild. There is no information to

indicate that the Account Owners have any other surviving heirs.

The Issue of Who Received the Proceeds

The bank records indicate that the demand deposit account was closed on 15 March 1952, as a result of the imposition of bank fees. It is therefore clear that neither the Account Owners nor their heirs have received the proceeds of this account.

Regarding the two custody accounts, based on its precedent and 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 proceeds of the two custody accounts were not paid to the Account Owners 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 Owners were his grandparents, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

Regarding the two custody accounts, 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. Since the Account Owner held two custody accounts, their total 1945 average value is 26,000.00 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 present value of 312,000.00 Swiss Francs for the two custody accounts.

The bank records indicate that the value of the demand deposit account was 31.00 Swiss Francs as of 15 March 1952. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 520.00 Swiss Francs, which reflects numbered account fees and standardized bank fees charged to the account between 1945 and 15 March 1952. Consequently, the adjusted balance of the demand deposit account is 551.00 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. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to product a total present value of 25,680.00 for the demand deposit account.

Thus, the total award amount for the three accounts is 337,680.00 Swiss Francs.

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

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 this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account values and 35% of the total award amount is 118,188.00 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 claims 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).