

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Dr. Paolo Giulio Fortunato Parin
also acting on behalf of Emma Cecilia Felicitas Weiss

in re Account of Otto W. Pollack

Claim Number: 219908/AH

Award Amount: 165,960.00 Swiss Francs

This Certified Award is based upon the claim of Dr. Paolo Giulio Fortunato Parin (the “Claimant”) to the account of Otto W. Pollack (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 father, Otto Guglielmo Parin, born Otto Wilhelm Pollack, who was born on 3 March 1876 in Trieste, Italy, and was married to Renee Jacqueline Baumgarten on 24 July 1912, in Budapest, Hungary. The couple had three children: the Claimant; his sister Emma Weiss, whom he represents; and Otto Ferdinand Parin, who was born on 16 April 1919 in Polzela, Slovenia. The Claimant stated that his father, who was Jewish, resided in Sempeter Savinjski Dolini, Yugoslavia and worked as a farmer, and that in 1941, he escaped with his family to Lugano-Cassarate, Switzerland, where he lived until his death on 28 May 1971. The Claimant indicated that his mother died on 1 April 1963 in Lugano, and that his brother Otto Ferdinand died in 1993 in Pennsylvania, the United States.

In support of his claim, the Claimant submitted various documents including his father’s inheritance records, pursuant to which the Claimant’s father bequeathed his estate to his three children in equal parts. The Claimant submitted the family’s records from the city of Linescio, Ticino, Switzerland, indicating that the Claimant’s father changed his name from Pollack to Parin on 21 January 1930. The Claimant also submitted a letter written to him by his sister, Emma Weiss, on 20 February 1974. In that letter, Emma stated that she obtained certain bank documents indicating the existence of bank accounts in their father’s name at the Bank in Zurich. The Claimant’s sister further stated that she was very angry to learn of the existence of those documents, since they were issued by the same bank that had never before provided them with

any information. In her letter, Emma Weiss added that she confronted the Bank with the documents, but the Bank refused to provide any information until it received the inheritance records of Otto Pollack. The Claimant further added that he believes that his father owned several different accounts and a safe with gold bars.

In a telephone conversation with the CRT on 4 November 2002, the Claimant indicated that he did not remember much about his family's assets except that they owned several houses in Trieste, and that his father owned shares of stock worth approximately 20,000.00 Swiss Francs in a custody account at a Swiss bank, which was likely the Bank's branch in Zurich. The Claimant indicated that he did not know what happened to this account but that it was used by his father as a guarantee for the repayment of bank loans used to cover the family's expenses between 1941 and 1946. The Claimant added that his father lived as a refugee in Switzerland for many years, and that only in 1974, after his father's death and years of receiving no information from the banks, did he and his sister learn that their father possibly had other accounts. The Claimant stated that he and his sister did not retrieve the account since the Bank led them to believe that it was a minor account with no money in it. The Claimant indicated that he was born on 20 September 1916 in Polzela, Slovenia. The Claimant is representing his sister, Emma Cecilia Felicitas Weiss, née Parin, who was born on 13 August 1913 in Polzela.

Information Available in the Bank Records

The bank records consist of a power of attorney form dated 17 June 1929, signed by the Account Owner and the Power of Attorney Holder, and printouts from the Bank's database. According to these records, the Account Owner was Otto W. Pollack and the Power of Attorney Holder was Renée Pollack, the Account Owner's wife, both of whom resided in Sv. Peter v. Savinjski Dolini, Schloss Neukloster, Yugoslavia. The bank records indicate that the Account Owner held a custody account¹ and a savings/passbook account, which were opened on an unknown date. The bank records do not show when the accounts at issue 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 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, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

¹ The bank records contain a power of attorney form that references a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. The CRT concludes that it is plausible that the Account Owner held such an account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner and the Power of Attorney Holder. His parents' names match the published names of the Account Owner and the Power of Attorney Holder. The Claimant identified his parents' city and country of residence, which match published information about the Account Owner's city and country of residence contained in the bank records. The Claimant also submitted a letter dated 20 February 1974, in which his sister identified both the Bank and the branch in which the account was held, which matches unpublished information about the accounts contained in the bank records. The Claimant's sister also identified the marital relationship between the Account Owner and the Power of Attorney Holder, which matches unpublished information about the Account Owner and the Power of Attorney Holder contained in the bank records. In support of his claim, the Claimant also submitted a document that evidences his father's change of name from Pollack to Parin.

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 fled Yugoslavia to Switzerland in 1941.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner and Power of Attorney Holder by submitting documents demonstrating that they were his parents. There is no information to indicate that the Account Owner has surviving heirs other than the Claimant's sister, whom he represents.

The Issue of Who Received the Proceeds

The CRT notes that the Claimant's family resided in Switzerland as of 1941, and could have accessed the account. However, the Claimant submitted a letter dated 20 February 1974 that describes the Claimant's family's attempts to retrieve his father's accounts and the failure of those efforts because the Bank refused to reveal any information about the accounts. The Claimant stated that the accounts were then regarded by the family as lost. These facts are consistent with the application of Presumptions (e), (h), and (j) contained in Appendix A.² Accordingly, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder or their 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.

² 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 his father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed account.

Amount of the Award

The Claimant noted that the account had shares worth 20,000.00 Swiss Francs that were used as a guarantee of bank loans for the family's expenses from 1941 to 1946. Because there is no record of either the repayment of the loan or a draw down on the guarantee, the CRT concludes that the balance of the account is unknown. Pursuant to Article 35 of the Rules, when the value of an account is unknown, 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 savings/passbook account was 830.00 Swiss Francs. The present value of these amounts 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 165,960.00 Swiss Francs.

Division of the Award

The Claimant is representing his sister, Emma Cecilia Felicitas Weiss, in these proceedings. According to the principles of distribution set out in Article 29 of the Rules, the Account Owner's descendants who have submitted claims are entitled to the account in equal shares by representation. Therefore the Claimant and Emma Cecilia Felicitas Weiss are each entitled to one-half of their father's account.

Initial Payment

In this case, the Claimant and the represented party are aged 75 or older, and are therefore entitled to receive payment of 100% of their respective portions 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 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

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).