

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of Lisa Pollak, Moriz Pollak, Ilka Bellak, and Bruno Bellak

Claim Numbers: 214165/IG, 214175/IG, 216706/IG, 216710/IG

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] and [REDACTED 2] (the “Claimants”) to the account of Lisa Pollak, Moriz Pollak, Ilka Bellak, and Bruno Bellak (the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owners as his sister, Lisa (also known as Elisabeth, Alzbeta, Eliska, or Lisbet) Pollak, née [REDACTED], who was born on 5 October 1911 in Miroslav, Czechoslovakia, and her spouse, Moriz (Moric) Pollak, who was born on 16 September 1898. Claimant [REDACTED 1] further stated that Lisa and Moriz Pollak were married in 1936 in Prague, Czechoslovakia. Claimant [REDACTED 1] stated that Moriz Pollak was a bank director, and that Lisa Pollak was a housewife. Claimant [REDACTED 1] indicated that his sister and her spouse, who were Jewish, lived in Brno, Czechoslovakia and in Prague, before they were deported with their son, [REDACTED], and Lisa Pollak’s parents, [REDACTED] and [REDACTED], to Theresienstadt in 1941. Claimant [REDACTED 1] further stated that on 28 October 1944, they were deported to Auschwitz, where they were later murdered. Claimant [REDACTED 1] submitted an extract from the Theresienstadt Memory Book indicating that [REDACTED], [REDACTED], Alzbeta Pollakova, Moric Pollak, and [REDACTED] were sent to Auschwitz on 28 October 1944. Claimant [REDACTED 1] indicated that he was born on 19 September 1918 in Miroslav.

Claimant [REDACTED 2], the son of Claimant [REDACTED 1], submitted a Claim Form identifying the Account Owners as his father’s aunt (his great-aunt), Ilka Bellak, née [REDACTED], who was born on 4 October 1897 in Miroslav, and her spouse, Bruno Bellak, who was born on 14 August 1892 in Lipnik, Czechoslovakia. Claimant [REDACTED 2] stated that his great-uncle and great-aunt were married on 5 December 1930 in Mor. Ostrava,

Czechoslovakia. Claimant [REDACTED 2] stated that Bruno Bellak was a sales manager and that Ilka Bellak was a housewife. Claimant [REDACTED 2] indicated that his great-aunt and her husband, who were Jewish, lived in Miroslav and in Prague. Claimant [REDACTED 2] further stated that the Germans confiscated all of their property, and they had to flee to Shanghai, China in 1940, where they stayed until the end of the Second World War. They returned to Miroslav in 1946. Claimant [REDACTED 2] indicated that Bruno Bellak died on 17 July 1958 in Brno and that Ilka Bellak died on 18 February 1979 in Miroslav. Claimant [REDACTED 2] submitted Ilka and Bruno Bellak's marriage certificate, Bruno Bellak's death certificate, Ilka Bellak's inheritance certificate in which her spouse bequeaths his estate to her, and Ilka Bellak's will, naming Claimant [REDACTED 2] as the main beneficiary. Claimant [REDACTED 2] indicated that he was born on 22 September 1948 in Brno.

Information Available in the Bank Record

The bank record consists of a customer card. According to this record, the Account Owners were Ilka and Bruno Bellak and Lisa and Moriz Pollak, who resided in Czechoslovakia. The bank record indicates that the Account Owner held an account of an unknown type, numbered 7383. The bank record does not show when the account at issue was closed, or to whom it was paid, nor do this record indicate the value of this account.

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 this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the bank record that the Account Owners or their heirs closed the account and received the proceeds themselves.

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 two claims of Claimant [REDACTED 1] and the two claims of Claimant [REDACTED 2] in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The names of Claimant [REDACTED 1]'s sister and her spouse match the published names of Account Owners Lisa and Moriz Pollak. The names of Claimant [REDACTED 2]'s paternal great-aunt and her spouse match the published names of Account Owners Ilka and Bruno Bellak.

Despite the fact that the Account Owners were listed separately on the list of bank accounts published by the ICEP Investigation on 5 February 2001, Claimant [REDACTED 1] was able to identify a connection between Account Owners Lisa and Moriz Pollak, and Claimant [REDACTED 2] was able to identify a connection between Account Owners Ilka and Bruno Bellak. The credibility of the information provided by the Claimants is supported by the fact that the two Claimants connected the four account owners.

In support of his claim, Claimant [REDACTED 1] submitted an extract from the Theresienstadt Memory Book indicating that [REDACTED], [REDACTED], Alzbeta Pollakova, Moric Pollak, and [REDACTED] were sent to Auschwitz on 28 October 1944.

In support of his claim, Claimant [REDACTED 2] submitted Ilka and Bruno Bellak's marriage certificate, Bruno Bellak's death certificate, an inheritance certificate of Ilka Bellak in which her spouse bequeaths his estate to her, and Ilka Bellak's will, naming Claimant [REDACTED 2] as the main beneficiary.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners were Jewish, that Lisa and Moriz Pollak were murdered in Auschwitz with their son and Lisa Pollak's parents, and that Ilka and Bruno Bellak's property was confiscated and they had to flee Czechoslovakia to China.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Moric Pollak, and indicates that his date of birth was 16 September 1898 and his place of birth was Czechoslovakia, which matches the information about Account Owner Moriz Pollak provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that he is related to Account Owners Lisa and Moriz Pollak by submitting documents demonstrating that Lisa Pollak was his sister. There is no information to indicate that Account Owners Lisa and Moriz Pollak have other surviving heirs.

Claimant [REDACTED 2] has plausibly demonstrated that he is related to the Account Owners Ilka and Bruno Bellak by submitting Ilka Bellak's will naming him as her main beneficiary and by stating that she was his father's aunt. There is no information to indicate that Account Owners Ilka and Bruno Bellak have other surviving heirs.

The Issue of Who Received the Proceeds

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

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

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 the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that Account Owners Lisa and Moriz Pollak were his sister and her spouse, respectively, and Claimant [REDACTED 2] has plausibly demonstrated that Account Owner Ilka Bellak, who inherited her spouse Bruno Bellak's estate, named him as the main beneficiary in her will, and those relationships justify 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 account.

Amount of the Award

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 an account of unknown type was 3,950.00 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 47,400.00 Swiss Francs.

Division of the Award

Article 31(1) provides that if an account is a joint account and Claimants related to each of the Account Owners have submitted claims to the account, it shall be presumed that each Account Owner was the owner of an equal share of the Account. In this case, it is presumed that each of the four Account Owners owned one-quarter of the account.

According to Article 29(1)(d), if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. Claimant [REDACTED 1] is a direct descendant of Account Owner Lisa Pollak's parents and therefore is entitled to the one-half of the account that was owned by the Account Owners Lisa and Moriz Pollak. Accordingly, Claimant [REDACTED 1] is entitled to the award amount of 23,700.00 Swiss Francs.

Article 29(2)(a) provides that if a claimant has submitted the Account Owners' will or inheritance documents, an award will provide for distribution among beneficiaries named in those documents who have submitted a claim. Claimant [REDACTED 2] is named as the main beneficiary in Account Owner Ilka Bellak's will. Ilka Bellak inherited the estate of her husband, Account Owner Bruno Bellak. Accordingly, Claimant [REDACTED 2] is entitled to the one-half of the joint account that was owned by Account Owners Ilka and Bruno Bellak, or an award amount of 23,700.00 Swiss Francs.

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, however, because Claimant [REDACTED 1] is age 75 or older, he is entitled to receive payment of 100% of his portion of the total award amount. Accordingly, the initial payment amount is 39,105.00 Swiss Francs, which is comprised of 100% of Claimant [REDACTED 1]'s portion of the award (23,700.00 Swiss Francs) and 65% of Claimant [REDACTED 2]'s portion of the award (15,405.00 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

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).