

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Janosne Klara Judit Kellner and Laszlonge Eva Katalin Devenyi¹

in re Account of Jenone Rona

Claim Numbers: 206156/ME, 206157/ME

Award Amount: 9,960.00 Swiss Francs

This Certified Award is based upon the claims of Janosne Klara Judit Kellner, née Rona, (“Claimant Kellner”) and Laszlonge Eva Katalin Devenyi, née Rona, (“Claimant Devenyi”) (together the “Claimants”) to the account of Jenone Rona (the “Account Owner”) at the Zurich branch of [REDACTED] (the “Bank”).

All awards are published. Where claimants have not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimants

The Claimants (who are sisters) each submitted a Claim Form identifying the Account Owner as their aunt by marriage, Jenone Julianna (Juliska) Rona, née Csapo, who was born in 1896. In 1923 in Debrecen, Hungary, Jenone Csapo married the Claimant's paternal uncle, Dr. Jenó Rona, was born in 1890 in Debrecen. According to the information provided by the Claimants, their uncle and aunt had no children. The Claimants stated that their uncle, who was a dermatologist, lived with his wife at Garay utca 6 in Debrecen, and that their uncle's office was located at Piac utca in Debrecen. The Claimants stated that their uncle and aunt, who were Jewish, were detained in the Debrecen Ghetto and deported to Auschwitz in 1944, where they perished. Finally, the Claimants indicated that they are the only living relatives of their aunt. The Claimants submitted bank statements from before and during the Second World War from a bank in Debrecen identifying their uncle as the owner of four different bank accounts, and indicating that this Hungarian bank's headquarters were in Budapest. The Claimants stated that they were born and live in Budapest, Hungary, and that their place of residence was bombed during the Second World War. Consequently, all documents indicating a direct family relationship to their aunt and uncle were destroyed.

¹ Although Janosne Kellner indicated that she is representing her sister, Laszlonge Devenyi, with respect to the account of Jenone Rona, the CRT will disregard the power of attorney form executed by Laszlonge Devenyi in favor of Janosne Kellner because Laszlonge Devenyi submitted a separate claim form to the account at issue.

Claimant Kellner indicated that she was born on 20 November 1924 in Budapest. Claimant Devenyi indicated that she was born on 8 November 1929 in Budapest. The Claimants indicated in their claim forms that they did not see their relative's name on the list of bank accounts published by 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") on 5 February 2001 (the "ICEP List").

Claimant Kellner previously submitted an Initial Questionnaire with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Jenone Julianna Rona and her husband Dr. Jenő Rona from Hungary.

Information Available in the Bank Record

The bank record consists of an extract from a suspense account ledger dated 18 November 1949. According to this record, the Account Owner was *Frau* (Mrs.) Jenone Rona, who resided in Budapest, Hungary. The bank record indicates that the Account Owner held a savings/passbook account numbered 18071. The bank record does not indicate when the account was opened or closed. The account was transferred to a suspense account, which is a grouping of open and dormant accounts, on or before 18 July 1949. The value of the account on 18 July 1949 was 10.45 Swiss Francs.

The ICEP auditors 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 but that it was dormant for at least ten years since 1945. There is no evidence in the bank record that the Account Owner or her heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(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 the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their aunt's name and country of residence matches the published name and country of residence of the Account Owner. The CRT notes that the Claimants identified their aunt's name and country of residence despite the fact that the Account Owner's name was published incorrectly on the ICEP List, with "Jenone" listed as her last name and "Rona" as her first name. Because their aunt's name was published incorrectly, the Claimants indicated in their Claim Form that they did not see their aunt's name

on the published ICEP List. Although the Claimants identified their aunt's city of residence as Debrecen, the CRT notes that their aunt had close relatives (the Claimants and their father) living in Budapest, that Debrecen and Budapest are only approximately 100 kilometers apart, and that their uncle owned several accounts at a bank in Debrecen which had its headquarters in Budapest.

The CRT notes that Claimant Kellner filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Jenone Julianne Rona and Dr. Jenő Rona from Hungary, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant Kellner has based her present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that Claimant Kellner had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant Kellner. The CRT also notes that there are no other claims to this account.

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, and that she was detained at the Debrecen Ghetto and deported to Auschwitz in 1944, where she perished.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting a family tree demonstrating that she was their aunt. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h), (i) and (j) as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her 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 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their aunt, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one savings/passbook account. The bank records indicate that the value of the savings/passbook account as of 18 July 1949 was 10.45 Swiss Francs. According to Article 29 of the Rules, if the amount in a savings account was less than 830.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 830.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 9,960.00 Swiss Francs.

Division of the Award

According to Article 23(1)(g) of the Rules, the CRT may make an award to any relative of the Account Owner, whether by blood or marriage, who has submitted a claim, consistent with principles of fairness and equity. In this case, the Claimants are the only two relatives of the Account Owner who have submitted claims to the account. Therefore, the two Claimants, who are siblings, are each entitled to one-half of the award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 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
March 11, 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).