

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Bernhard Singer

Claim Number: 206301/MG ¹

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED] (the “Claimant”) to the account of [REDACTED].² This Award is to the accounts of Bernhard Singer (the “Account Owner”) 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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her paternal grandfather, Bernhard Singer, who was married to [REDACTED], née [REDACTED]. Her grandparents had one child, [REDACTED], the Claimant’s father, who was born on 7 February 1893 in Pohrlit, Czechoslovakia, and was married to [REDACTED], née [REDACTED] on 10 July 1930 in Vienna, Austria. The Claimant stated that her father, who was Jewish, was an attorney at law and resided at Praterstrasse 25 in Vienna between 1930 and 1938. The Claimant further stated that her mother, [REDACTED], was a Doctor of Pharmacy who owned a large pharmacy in Vienna, which she operated with her father, [REDACTED]. The Claimant stated that in August 1938, after the *Anschluss*, she and her parents fled Austria to Paris, France. At the time, the Claimant was only seven years old. In 1939, the Claimant’s parents sent her into hiding with the “*Oeuvre de Protection aux Enfants*”. The Claimant’s parents were interned in the concentration camp in Drancy, and on 7 September 1942 the Nazis deported them to Auschwitz, where they were murdered. The Claimant, who was the only child of her parents and the only member of her family to survive Nazi persecution, indicated that she was only eight years old

¹ The Claimant submitted additional claims to the accounts of [REDACTED] and [REDACTED], which are registered under the Claim Numbers 206300 and 206302, respectively. The CRT will treat the claims to these accounts in separate decisions.

² The CRT will treat the claim to this account in a separate decision.

when she was separated from her parents, and therefore has no further information about her paternal grandfather. The Claimant submitted various documents, including her own birth certificate indicating the names of her parents, her parents' marriage certificate indicating the name of her paternal grandfather, Bernhard Singer, requests for visas to travel to France for the Claimant and her parents, dated 18 July 1938, and samples of her parents' signatures. The Claimant indicated that she was born on 13 July 1931 in Vienna.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her parents, [REDACTED] and [REDACTED], née [REDACTED].

Information Available in the Bank Records

The bank records consist of a customer card, a bank memo dated 17 June 1952, and printouts from the Bank's database. According to these records, the Account Owner was Bernhard Singer, who resided at Goldschmidgs 10 in Vienna I, Austria. The bank records indicate that the Account Owner held a safe deposit box account numbered 477, which was opened on 16 March 1935, and an account of unknown type. The safe deposit box was frozen in the 1945 Swiss Freeze of German assets and was closed on 6 April 1946 after the Bank, according to the memorandum, forced open the safe deposit box and found it empty. The value of the account of unknown type in 1945 was 1.00 Swiss francs. The bank records do not show when the account of unknown type was closed, or to whom it was paid. 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 account of unknown type 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 records that the Account Owner, or his heirs closed the account of unknown type and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her grandfather's name matches the published name of the Account Owner. The Claimant identified her parents' city of residence, Vienna, which is likely to have been the residence of her grandfather, which matches unpublished information about the Account Owner contained in the bank records. In support of her claim, the Claimant submitted documents, including her parents' marriage certificate indicating the name of her paternal grandfather, Bernhard Singer. The only two other claims to the Account of Bernhard Singer were disconfirmed based on a different country of residence and a different marital status.

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 child of the Account Owner, who was the Claimant's father, was Jewish, that her parents were deported to Auschwitz where they were murdered, and that she herself survived Nazi persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting her own birth certificate indicating the names of her parents, and her parents' marriage certificate indicating the name of her paternal grandfather, Bernhard Singer.

The Issue of Who Received the Proceeds

With respect to the account of unknown type, given the existence of Nazi confiscatory legislation in Austria at that time³ and the application of Presumptions (h) and (j) contained in Appendix A,⁴ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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.

With respect to the safe deposit box account, it was forcibly opened by the Bank in 1946, at which time it was found empty. The account was then closed by the Bank on 6 April 1946.

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 her paternal grandfather, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account of unknown type.

Amount of the Award

The bank records indicate that the value of the account of unknown type in 1945 was 1.00 Swiss Francs. According to Article 35 of the Rules, if the amount in an account of unknown type was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 Swiss Francs.

³ As described in the expanded version of Appendix A (see II. A. 2), which appears on the CRT II website -- www.crt-ii.org.

⁴ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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 produce a total award amount of 47,400.00 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, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value, and 65% of the total award amount is 30,810.00 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 her claim to determine whether there are additional Swiss bank accounts to which she 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

23 January 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).