

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED1]
also acting on behalf of [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

and

[REDACTED2]
represented by [REDACTED]

in re Accounts of Raymond Smoliak

Claim Numbers: 220318/MBC¹ and 222268/MBC

Award Amount: 196,560.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED1] (“Claimant [REDACTED1]”) and [REDACTED2] (“Claimant [REDACTED2]”) (together the “Claimants”) to the accounts of Raymond Smoliak (the “Account Owner”) at the Geneva and Lausanne branches of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as Claimant [REDACTED1] has in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by Claimant [REDACTED1]

Claimant [REDACTED1] submitted Claim Forms identifying the Account Owner as Raymond Jules Smoliak, who was born in 1898. Claimant [REDACTED1] indicated that Raymond Jules Smoliak never married, had no children, and that his mother was Blanche Smoliak, née Würmser. Claimant [REDACTED1] stated that Raymond Jules Smoliak sat on the board of directors of various companies, and lived at 18, Juranville in Saint Amand Montrond, France, until 1940 and at 2, rue de Navarin in Paris, France. According to Claimant [REDACTED1], Raymond Jules Smoliak, who was Jewish, was arrested by the Gestapo in Paris in June 1941 and was deported to Drancy. He was then deported to Auschwitz on 27 March 1942, where he perished on 15 April 1942. Claimant [REDACTED1] stated that he was born in Saint-Amand Montrond on 19 September 1932. Claimant [REDACTED1] further indicated that his siblings,

¹ Claimant [REDACTED1] submitted three Claim Forms, which were registered under the Claim Numbers 220317, 220318 and 220319. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 220318.

whom he is representing in these proceedings, were born in Saint Amand Montrond on 22 January 1934 ([REDACTED], née [REDACTED]); 22 June 1936 ([REDACTED]); 24 January 1942 ([REDACTED]); and on 24 September 1946 ([REDACTED], née [REDACTED]), respectively.

In support of his claim, Claimant [REDACTED1] submitted documents about the tragedy of Guerry (“*La tragédie de Guerry*”), which narrates how Blanche Smoliak, [REDACTED] (Raymond Jules Smoliak’s half-brother), and thirty-four other French Jews were murdered by the Nazis and the French militia on 24 July 1944 in Guerry, France.

Claimant [REDACTED1] indicated that he was not related to Raymond Jules Smoliak. However, he submitted Raymond Jules Smoliak’s and Blanche Smoliak’s wills, according to which Claimant [REDACTED1]’s parents, [REDACTED], were each entitled to one sixth (1/6) of Raymond Jules Smoliak’s Estate. Claimant [REDACTED1] also submitted documents issued by a notary public establishing that he and his siblings are entitled to their parents’ Estate.

Information Provided by Claimant [REDACTED2]

Claimant [REDACTED2] submitted a Claim Form identifying the Account Owner as Raymond Jules Smoliak, who was born on 3 December 1898 in Paris. Claimant [REDACTED2] stated that Raymond Jules Smoliak never married, had no children, and that his mother was Blanche Smoliak, née Würmser. Claimant [REDACTED2] stated that Raymond Jules Smoliak was an engineer and an officer of the French Army, and that he lived from 1925 to 1936 at 119, rue Caulaincourt in Paris and thereafter at 2, rue de Navarin. Claimant [REDACTED2] indicated that Raymond Jules Smoliak, who was Jewish, was deported to Drancy, and from there to Auschwitz on 27 March 1942, where he perished on 15 April 1942. Claimant [REDACTED2] also submitted documents relating to the tragedy of Guerry. Claimant [REDACTED2] stated that she was born on 22 July 1932 in Boulogne Billancourt, France, and that she has no siblings.

Claimant [REDACTED2] indicated that she was not related to Raymond Jules Smoliak. She submitted Raymond Jules Smoliak’s and Blanche Smoliak’s will, according to which Claimant [REDACTED2]’s mother, [REDACTED], was entitled to one sixth (1/6) of Raymond Jules Smoliak’s Estate. According to an official documents submitted by Claimant [REDACTED2], both Raymond Jules Smoliak’s Estate and his mother’s Estate were passed on to their heirs on 20 April 1948. Claimant [REDACTED2] also submitted her parents’ family book, her mother’s death certificate, and her own birth certificate demonstrating that she is [REDACTED]’s daughter.

Information Available in the Bank Records

The bank records consist of an account-opening card, a power of attorney form signed on 4 March 1937 in Geneva, printouts from the Bank’s database and documents prepared by the Bank pursuant to the 1962 Swiss Federal Decree concerning assets of missing foreigners or stateless persons persecuted due to race, religion, or politics (“the 1962 Decree”). According to these records, the Account Owner was Raymond Smoliak and the Power of Attorney Holder was Blanche Smoliak, née Würmser, the Account Owner’s mother. These records indicate that the

Account Owner lived at 119, rue Caulaincourt in Paris XVIII, France, that he perished in Auschwitz on 15 April 1942, and that his mother perished on 8 August 1944 in France. The bank records indicate that the Account Owner held a custody account and a demand deposit, both numbered 20958, as well as a safe deposit box, numbered 566, at the Geneva branch of the Bank. These accounts were closed on 17 October 1949.

The bank records do not show to whom these accounts were paid, nor do these records indicate the value of these accounts. There is no evidence in the bank records that the Account Owner or his heirs closed these accounts and received the proceeds themselves.

According to the bank records and to 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”), a safe deposit box account, numbered 209 (containing 1805 French gold coins known as *Napoléons*), valued at 64,980.00 Swiss Francs at the time of the 1962 Decree), and a demand deposit account (containing 1.90 Swiss Francs at the time of the 1962 Decree) in the name of Raymond Smoliak, which were held at the Lausanne branch of the Bank, were reported to the Swiss Authorities pursuant to the 1962 Decree, and were paid out to the Account Owner’s heirs, which appear to have been the Account Owner’s half-brother [REDACTED], who was born on 12 August 1890 in Paris, and his wife [REDACTED], whom he married on 12 March 1925 in Paris III, France.

According to the bank records and to the ICEP auditors, the accounts at issue, which were held at the Geneva branch of the Bank, were not reported to the Swiss Authorities pursuant to the 1962 Decree and, as stated above, there is no indication as to whom these accounts were paid.

The CRT’s Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. They have identified the published name and city of residence of the Account Owner. Claimant [REDACTED1] indicated that Raymond Jules Smoliak’s mother was Blanche Smoliak, née Würmser, which matches unpublished information contained in the bank records. Claimant [REDACTED2] indicated that Raymond Jules Smoliak lived at 119, rue Caulaincourt in Paris, and that his mother was Blanche Smoliak, née Würmser, which matches unpublished information contained in the bank records. The CRT notes that there are no other claims to these accounts.

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 he perished in Auschwitz on 15 April 1942.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are entitled to the Account Owner's Estate. According to the Account Owner's will, if the Account Owner should die before his mother, which was the case, she would inherit her son's Estate. The Account Owner's mother's will sets forth that her Estate should be distributed between six people, each being entitled to one-sixth (1/6) of the total Estate. According to this document, Claimant [REDACTED2]'s mother was entitled to one-sixth of the Account Owner's mother's Estate, and Claimant [REDACTED1]'s parents were each entitled to one-sixth of the Account Owner's mother's Estate. Claimant [REDACTED1] also submitted documents issued by a notary public, establishing that he and his siblings are entitled to their parents' Estates, and Claimant [REDACTED2] has submitted documents showing that she is [REDACTED]'s daughter, and stated that she is her parents' only heir.

The Issue of Who Received the Proceeds

With regard to the custody account, the demand deposit account, and the safe deposit box closed 17 October 1949, given the application of Presumption (h) and (j) contained 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. 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 claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that they are entitled to the Account Owner's Estate. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, among the accounts not paid to his brother, the Account Owner held a demand deposit account, a custody account and a safe deposit box. Pursuant to Article 29 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, the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of a safe deposit box account was 1,240.00 Swiss Francs. Thus, the total 1945 value of the accounts at issue was 16,380.00 Swiss Francs. The present value of

this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 196,560.00 Swiss Francs.

Division of the Award

Pursuant to Article 23(2)(b) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in those documents who have submitted a claim. In addition, pursuant to Article 23(2)(c) of the Rules, if a claimant bases a claim of entitlement on a chain of inheritance, but has not submitted an unbroken chain of wills or other inheritance documents, the CRT may use the general principles of distribution established in Article 23(1) of the Rules to make allowance for any missing links in the chain, consistent with principles of fairness and equity. As indicated above, the Claimants have submitted both the Account Owner's and the Account Owner's mother's will, establishing that the Claimants' respective parents are entitled to a share of the Account Owner's Estate. In addition, Claimant [REDACTED1] submitted official documents showing that he and his siblings are entitled to their parents' Estates, and Claimant [REDACTED2] has made a plausible showing that she is her parents' only daughter.

According to the wills and the inheritance documents that the Claimants submitted, Claimant [REDACTED1] is entitled to one-third (1/3) of Raymond and Blanche Smoliak's Estate (since his parents were each entitled to one-sixth (1/6) of the latter's Estate). Claimant [REDACTED2] is entitled to one-sixth of Raymond and Blanche Smoliak's Estate. As none of the other beneficiaries named in Blanche Smoliak's will have filed a claim with the CRT, the entitlement of the Claimants, and the relatives whom Claimant [REDACTED1] is representing, shall be increased to reflect their portions in the wills. Accordingly, Claimant [REDACTED1] is entitled to two-thirds (2/3) of the total award amount, and Claimant [REDACTED2] is entitled to one-third (1/3) of the total award amount. Claimant [REDACTED1]'s four siblings are each entitled to receive one-fifth (1/5) of any payment made to Claimant [REDACTED1].

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
April 21, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).