

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]¹

in re Accounts of Richard Taussig and Dora Taussig

Claim Number: 601155/JT²

Award Amount: 191,640.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Richard Taussig, Dora Taussig, and [REDACTED].³ This Award is to the accounts of Richard Taussig and Dora Taussig (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 Claimant

The Claimant submitted a claim to the Holocaust Claims Processing Office (“HCPO”) in October 1997 identifying the Account Owners as his maternal great-uncle and great-aunt, Richard Taussig and Dora Taussig, née [REDACTED]. Richard Taussig was born on 12 December 1870 to [REDACTED] and [REDACTED], and Dora Taussig was born on 2 August 1878 to [REDACTED]. Both Richard and Dora Taussig were born in Hlinkso, Bohemia. The Claimant stated that his great-uncle and great-aunt first lived in Hlinsko and then moved to Vienna, Austria, where they lived at Loquaiplatz 12, Vienna VI. The Claimant stated that Richard and Dora Taussig did not have any children.

¹ [REDACTED], originally filed a claim to the accounts of her father, [REDACTED], and her uncle, Richard Taussig. [REDACTED] passed away in October 2000, her son, Claimant [REDACTED], has assumed his late mother’s claim.

² The Claimant submitted a claim, numbered B-00080, on 24 October 1997, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This Claim was referred by the HCPO to the CRT and has been assigned Claim Number 601155. The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 201375. The CRT will treat the claim to this account in a separate decision.

³ The CRT will treat the claim to the account of [REDACTED] in separate decision.

The Claimant indicated that his great-uncle was involved in the textile business with his brother, [REDACTED], the Claimant's maternal grandfather, who resided in Hlinsko. The Claimant further indicated that his great-uncle and grandfather manufactured upholstery fabrics for trains. The Claimant stated that his great-uncle and grandfather traveled to Switzerland on business, that his grandfather opened a Swiss bank account in Zurich in 1938, and that it was likely his great-uncle did as well. In a telephone conversation with the CRT on 10 September 2002, the Claimant's self-help assistant (whom the Claimant requested speak on his behalf because he was too ill) stated that the Claimant's great-uncle and great-aunt fled to England in the autumn of 1938, around the same time the Claimant and his parents left Vienna. The Claimant further stated that his relatives both died in England sometime after the Second World War.

In support of his claim, the Claimant submitted documents including a copy of his mother's birth certificate identifying her as [REDACTED], and showing that her father was [REDACTED] and that her godfather was Richard Taussig. The Claimant also submitted a copy of his mother's death certificate showing that he is the son of [REDACTED]. The Claimant indicated that he was born on 8 September 1933 in Vienna.

Information Available in the Bank Records

The bank records consist of printouts from the Bank's database and a joint bank account contract signed on 10 November 1931 in Zurich. According to these records, the Account Owners were Richard and Dora Taussig of Hlinsko, Czechoslovakia. The bank records indicate that the Account Owners held a custody account, a savings/passbook account, and a demand deposit account. 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 Owners or their heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Richard Taussig and Dora Taussig. These records include an Austrian census form for Richard Taussig, numbered 44775, and an Austrian census form for Dora Taussig, numbered 44776, dated 15 July 1938 and 14 July 1938, respectively. These records indicate that Richard Taussig was Jewish, that he was born on 12 December 1870, and that he was married to Dora Taussig, who was born on 2 August 1878. The records show that Richard and Dora Taussig resided at Loquaipplatz 12 in Vienna VI. The records also show that Richard Taussig owned real

estate in Prague, as well as a considerable number of stocks and bonds in foreign companies. These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His great-uncle and great-aunt's names match the published names of the Account Owners. The Claimant identified the Account Owners' marital relationship, despite the fact that the Account Owners were published separately on the list of bank accounts published by the ICEP Investigation on 5 February 2001. In support of his claim, the Claimant submitted documents, including a copy of his mother's death certificate identifying her father as [REDACTED]. Additionally, the street address and the dates of birth of the Account Owners provided by the Claimant match the address and dates of birth of the Account Owners listed in the Austrian census data.

The CRT notes that the Claimant filed a claim to the Swiss Banking Ombudsman in July 1996 and to the HCPO in October 1997, asserting his entitlement to the accounts owned by his relatives, 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 the Claimant has based his present claim not simply on the fact that individuals identified on the ICEP List as owning Swiss bank accounts bear the same name as his relatives, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his relatives owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they fled from Vienna after the *Anschluss*.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

Given the existence of Nazi confiscatory legislation in Austria at that time⁴ and the application of Presumptions (h) and (j) contained in Appendix A, the CRT concludes that it is plausible that the

⁴ As described in the expanded version of Appendix A (see II.A.2), which appears on the CRT II website -- www.crt-ii.org

account proceeds were not paid to the Account Owners or their heirs. Based on its precedent and the Rules, the CRT applies presumptions to determine whether 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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules Governing the Claims Resolution Process (the “Rules”). Second, the Claimant has plausibly demonstrated that the Account Owners were his great-uncle and great-aunt, 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 accounts.

Amount of the Award

The Account Owners in this case held a custody account, a demand deposit account, and a savings account. 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 a custody account was 13,000.00 Swiss Francs, a demand deposit account was 2,140.00 Swiss Francs, and a savings account was 830.00 Swiss Francs. Thus, the total amount for one of each of these types of accounts is 15,970.00 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 191,640.00 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 values, and 65% of the total award amount is 124,566.00 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 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

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).