

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Barbara Judith Tourkeltaub

Claim Numbers: 217867/IG¹

Award Amount: 9,960.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Barbara Judith Tourkeltaub (the “Account Owner”) at the Geneva 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 his maternal grandmother, Barbara Judith Tourkeltaub, née [REDACTED], who was born in April 1870 in Lodz, Poland, and was married to [REDACTED]. The Claimant stated that prior to 1930, his grandparents, who were Jewish, resided in Geneva, Switzerland, and that from 1930 until 1942 they resided at 17 or 29 rue Alphonse Renard in Brussels, Belgium. The Claimant further stated that his grandmother was a philosopher-philologist, and that she was active in Jewish organizations together with her husband, who was a vice-chairman of the Jewish Community in Brussels, and that they helped Jewish people in Brussels to escape deportation. The Claimant further stated that his maternal grandparents were arrested in 1942 by the Gestapo and deported to Auschwitz, where they were murdered. The Claimant indicated that his grandmother had two daughters: the Claimant’s mother, [REDACTED], and [REDACTED], who resided in Geneva, Switzerland. Finally, the Claimant added that he never saw the list of account owners published on 5 February 2001. The Claimant submitted his grandparents’ death certificates indicating his

¹ The Claimant submitted three Claim Forms, which were registered under the Claim Numbers 213060, 217867, 217868. The CRT has determined that the two claims 213060 and 217868 are duplicate claims and is treating them under the consolidated Claim Number 213060. Claim Number 213060 is to the account of [REDACTED] and will be treated by the CRT in a separate decision.

grandmother's name and city of residence as Brussels, his mother's death certificate, and his own birth certificate.

The Claimant indicated that he was born on 30 January 1923 in Etterbeek, Belgium.

The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by Barbara Judith Tourkeltaub, who resided in Brussels, Belgium.

Information Available in the Bank Records

The bank records consist of ledger cards. According to these records, the Account Owner was *Mme* (Mrs.) Barbara Judith Tourkeltaub, who resided in Brussels, Belgium. The bank records indicate that the Account Owner held a savings/passbook account, numbered 22820.

The account was transferred on 31 May 1948 to a suspense account after being dormant since 1939. The amount in the account on the date of its transfer was 64.05 Swiss Francs.

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. The bank records do not show when the account at issue was closed, to whom it was paid, or the value of the account on the date of its closure.

There is no evidence in the bank records that the Account Owner or her heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His maternal grandmother's name matches the published name of the Account Owner. The Claimant identified his grandmother's country and city of residence, which matches published information about the Account Owner contained in the bank records. In support of his claim, the Claimant submitted documents, including his grandmother's death certificate indicating her name and city of residence as Brussels.

Moreover, the CRT notes that the Claimant filed an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by his grandmother Barbara Judith Tourkeltaub of Brussels, Belgium, 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 an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, 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 relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

In addition, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named [REDACTED], and indicates that his date of birth was 1 January 1870 and his address was 29 rue Alphonse Renard, Brussels, Belgium, which matches the information about the Account Owner’s husband provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. Finally, the CRT also notes that there are no other claimants to this account.

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 Account Owner was Jewish, and that she and her husband were arrested by the Gestapo and transported to Auschwitz, where they were murdered. These facts are supported by the CRT database of Victims of Nazi Persecution as described above.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that he is her grandson. 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) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process (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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his maternal grandmother, 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

The bank records indicate that the value of the savings/passbook account as of 31 May 1948 was 64.05 Swiss Francs. According to Article 29 of the Rules, if the amount in a savings/passbook 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.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 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

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).