

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Alfred Voss

Claim Number: 218405/ZP¹

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 Alfred Voss (the “Account Owner”) at the Basel 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 uncle and adoptive father, Alfred Voss, who was born after 1883 in Gelsenkirchen, Germany, and was married to [REDACTED]. The Claimant stated that her biological parents, [REDACTED] and [REDACTED], née [REDACTED], divorced on 8 March 1926. The Claimant indicated that after her parents divorced, she was raised by her biological mother, who owned a hotel in Bad Neuenahr, Germany, near the French border. The Claimant’s father remarried and lived in Berlin with the Claimant’s step-mother, [REDACTED], née [REDACTED].

The Claimant stated that in 1938, she was sent to Belgium in the “*Kindertransport*” and from there was sent to the concentration camp located in Gurs, France. The Claimant was able to escape the camp and live with a local family who provided her with forged papers of residence. The Claimant and the family with whom she was living paid a local resident to drive them in a borrowed van over the Pyrenees mountains into Spain. Although the Claimant was arrested upon her entry into Spain, she eventually made her way to Montevideo, Uruguay, where she was adopted by her uncle and aunt, who had fled Germany for Montevideo sometime in the mid-1940s. According to the Claimant, her mother, father and stepmother, who were Jewish, were

¹ The Claimant submitted additional claims to the accounts of [REDACTED] and [REDACTED], which are registered under the Claim Numbers 218404 and 218432, respectively. The CRT will treat the claims to these accounts in separate decisions.

murdered by the Nazis in the ghetto in Riga, Latvia. The Claimant stated that her uncle and aunt, who were Jewish, lived in Montevideo until their deaths. The Claimant stated that she was not certain of her uncle's profession, but that she had heard family stories that her uncle and aunt owned two successful music stores in Berlin prior to the War.

The Claimant indicated that she was born on 31 August 1923 in Berlin, Germany. In support of her claim, the Claimant provided the death declaration of her stepmother issued by the German authorities, indicating that stepmother was married to the Claimant's father and that she was murdered in the Riga ghetto; her own birth certificate; and an identification card issued by the Montevideo Police on 5 July 1947, which identifies the Claimant as [REDACTED]. The Claimant previously submitted Initial Questionnaires with the Court in 1999, asserting her entitlement to Swiss bank accounts owned by her mother, [REDACTED], née [REDACTED], her father [REDACTED], and her stepmother, [REDACTED], née [REDACTED].

Information Available in the Bank Record

The bank record consists of a printout from the Bank's database dated 19 November 1999. According to this record, the Account Owner was Alfred Voss, a building contractor, who resided at Paulsenstrasse 27, Berlin-Steglitz, Germany. The bank record indicates that the Account Owner held an account of an unknown type.

The bank record indicates that the account was frozen pursuant to the Swiss Freeze on 16 February 1945 of German Assets (the "1945 Freeze") based on the determination that this account belonged to a German national. The balance at the time of the 1945 Freeze was 267.00 Swiss Francs. The bank record does not show when the account at issue was unfrozen, 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 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. There is no evidence in the bank record that the Account Owner or his 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. Her adoptive father's name and city of residence match the published name and city of residence of the Account Owner. The CRT notes that the bank record indicates that the Account Owner was a building contractor while Claimant identifies her adoptive father as owning a music business. However, the CRT notes that the Claimant has only anecdotal knowledge of her adoptive father's profession, and that the Claimant stated that she was unsure of his profession prior to the War. In support of her claim,

the Claimant submitted documents including her own birth certificate and an identification card issued by the Montevideo Police identifying the Claimant as [REDACTED].

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999 asserting her entitlement to a Swiss bank account owned by a member of the [REDACTED] family, 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 a relationship to the [REDACTED] family. 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 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 fled Germany for Uruguay.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that Alfred Voss was her adoptive father. 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 his 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 her adoptive father and uncle, and those relationships justify 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.

Amount of the Award

In this case, the Account Owner held one account of unknown type. The bank record indicates that the value of the account of unknown value of 16 February 1945 267.00 Swiss Francs. According to Article 29 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. 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. Consequently, the total award amount in this case is 47,400.00 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 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
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).