

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

in re Accounts of Herman Wachtel

Claim Number: 210626/ES

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Hermann Wachtel (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 paternal grandfather, Herman Wachtel, who was born on 4 April 1885 in Kalten-Nordheim, Germany and was married to [REDACTED], née [REDACTED]. The Claimant stated that her grandparents had two children: [REDACTED] and [REDACTED]. The Claimant stated that her grandparents, who were Jewish, resided at 95 Fridrichshabe in Zerbst, Germany from 1933 to 1935. In 1935, they fled to France and lived at 2 Boulevard de Nancy in 67, Sélestat, until they fled to New York, the United States in 1941. The Claimant stated that in 1952, her grandparents left the United States and moved in Davos, Switzerland. The Claimant further indicated that in 1953 her grandparents moved to France, residing at 13 Bud Leclerc, Selestat, France where the Account Owner lived until his death on 7 February 1960. According to the Claimant, Hermann Wachtel owned a well-known factory with locations in Zerbst and Sélestat. The Claimant’s father, [REDACTED], who was born on 8 July 1916 in Zerbst, became the president of the Zerbst factory after the Account Owner's death. The Claimant's father died in Strasbourg in 1987. The Claimant stated that her aunt, [REDACTED], was married to a Swiss in St. Gallen, Switzerland around 1935.

In support of her claim, the Claimant submitted documents, including a photocopy of her parents’ marriage certificate, her grandfather’s will, her father’s death certificate, and a copy of an advertisement of the family’s factory. The Claimant indicated that she was born on 28

September 1953 in Strasbourg, France. The Claimant is representing her mother, [REDACTED], who was born on 22 July 1924 in Brno Czechoslovakia; her brother, [REDACTED], who was born on 15 April 1948 in New York, the United States; her sister, [REDACTED], who was born on 31 October 1950 in New York; and her brother, [REDACTED], who was born on 1 August 1957.

Information Available in the Bank Records

The bank records consist of a printout from the Bank's database and a form regarding correspondence dated 5 June 1936 in Sélestat. According to these records, the Account Owner was Hermann Wachtel who resided at 2, Boulevard de Nancy in Sélestat (Bas-Rhin), France. The bank records indicate that the Account Owner held a custody account and a demand deposit account, both numbered 40671. One of the accounts was opened on 5 July 1936, and a change of address was noted in connection with the other account on 5 June 1936. 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 Owner or his heirs closed the accounts 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 stated that her grandfather resided in Sélestat, France, which matches published information about the Account Owner. The Claimant identified her grandfather's address as 2, Boulevard de Nancy, which matches unpublished information about the Account Owner contained in the bank records. In support of her claim, the Claimant submitted documents, including a photocopy of her parents' marriage certificate, her grandfather's will, her father's death certificate, and a copy of an advertisement of the family's factory.

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, escaped from Germany to France in 1935, and escaped from France to the United States in 1941.

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 the Account Owner was her grandfather.

The Issue of Who Received the Proceeds

The CRT considered two plausible outcomes in this case. In the first outcome, at sometime prior to the War the Account Owners withdrew all but a small amount of their funds from their accounts at the Bank. Because closing fees may have been larger than the balances left in the accounts, the Account Owners left the remaining balances in the accounts.

Alternatively, the Account Owners held substantial funds in the accounts, but they were unable to access the accounts during the War because of the Swiss freeze of French assets in June 1940. They were similarly unable to access the accounts after the War because of the Swiss banks' practice of withholding or supplying misleading information in response to account inquiries received after the War from account owners or their heirs.

Because the Account Owners were Victims of Nazi Prosecution and had to flee from Germany to France and then from France to the United States, the CRT finds that it is more plausible that the funds were frozen and absorbed by the Bank by the charging of fees, and the accounts were eventually closed by being taken into bank profits. Given the above and the application of Presumptions (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the accounts 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.

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 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.

Amount of the Award

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 and the average value of a demand deposit account was 2,140.00 Swiss Francs. The present value of this amount is calculated by

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 181,680.00 Swiss Francs.

Division of the Award

The Claimant is representing her mother, her two brothers, and her sister in these proceedings. According to Article 29 of the Rules, if a claimant has submitted the Account Owner's will, as in this case, the award will provide for distribution among any beneficiaries named in the will who have submitted a claim. In Herman Wachtel's will, which was provided by the Claimant, he bequeathed his stocks from the Zerbster factory to his son [REDACTED], and the rest of his estate to both his children, [REDACTED] and [REDACTED]. In his will, Herman Wachtel specified that, should one of his children predecease him, that child's share should go to his or her spouse.

The Claimant has indicated that Herman Wachtel's daughter [REDACTED] is still alive. The CRT notes, however, that it has not received a claim from her. The CRT also notes that the Account Owner's son, [REDACTED], died in 1987, but he did not predecease the Account Owner, who died in 1960. Therefore, [REDACTED], the widow of [REDACTED], is not entitled to receive [REDACTED]'s share under the Account Owner's will.

According to Article 29(2)(c), when a claim is based on a chain of inheritance but the Claimant has not submitted an unbroken chain of wills, an award may be made using the general principles of distribution established in Article 29 of the Rules. Article 29(1)(c) provides that the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Article 29(1)(f) provides that the spouse of a deceased child of an account owner will be considered a child of the account owner, so long as none of the descendants of the deceased child have submitted claims to the account. Because descendants of the Account Owner's deceased child are represented in this proceeding, [REDACTED] is not entitled to share in the Award. Claimant [REDACTED], [REDACTED], [REDACTED], and [REDACTED], as descendants of the Account Owner, are therefore each entitled to one-quarter of the total award amount.

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 award amount is 118,092.00 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

December 27, 2002

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).