

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED]
represented by [REDACTED]

in re Accounts of Jenö Weinreb and Oskar Weinreb

Claim Number: 221389/SA

Award Amount: 142,200.00 Swiss Francs

This Certified Award is based upon the claim of Claimant [REDACTED] (the “Claimant”) to the accounts of Jenö Weinreb and Oskar Weinreb (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 Form identifying Jenö (Eugen) Weinreb as his father, who was born 27 October 1896 in Felsüelefant, Czechoslovakia. According to the Claimant, his father, who was Jewish, worked as a banker in Budapest, Hungary, where he married [REDACTED], the Claimant’s mother. The Claimant indicated that at some time during the 1930s, his father moved with his family to Paris, France; then after the outbreak of the Second World War to Monte Carlo, Monaco, where his father was arrested in 1944. After the War they moved back to Paris, where the Claimant’s mother died on 24 October 1956. The Claimant stated that his father had business dealings in Switzerland, and that at some time during the 1960s, he moved to Geneva, Switzerland, where he married [REDACTED], née [REDACTED], his second wife and the Claimant’s stepmother, on 5 November 1969. The Claimant indicated that his father died in Geneva on 10 November 1976.

The Claimant also identified Oskar Weinreb as his paternal uncle. The Claimant stated that his uncle was married twice and had children from both marriages. The Claimant further indicated that his uncle fled to New York, New York, where he died some time after 1950. Due to the Claimant’s move from Hungary to Paris and the subsequent years of the Second World War, he has had no contact with any of his father’s relatives, and was therefore unable to furnish additional information regarding Oskar Weinreb.

The Claimant submitted a marriage certificate, issued 23 June 1997 in Geneva, evidencing his father's Hungarian nationality and his second marriage to the Claimant's stepmother. He also submitted a death certificate for his father, issued 29 April 1997, evidencing his father's death on 10 November 1976 in Geneva, his Hungarian nationality and naming the Claimant and his stepmother as his only surviving son and spouse. The Claimant also submitted his father's will of 1 November 1976 and probate proceedings of 12 November 1977 in Geneva, naming the Claimant and his stepmother as the only surviving heirs and specifying their rights as heirs. In that will, the Claimant's father specified that the Claimant should receive 60% of his estate and his second wife should receive 40% of his estate.

The Claimant indicated that he was born on 28 January 1929 in Budapest under the name [REDACTED], later changed to [REDACTED], and that his stepmother, [REDACTED], was born on 25 February 1930 in Paris. The Claimant and his stepmother have provided power of attorney forms enabling their legal representative to act on their behalf in this matter.

Information Available in the Bank Records

The bank records consist of a bank ledger listing three accounts of unknown type. According to the bank records, Jenö Weinreb and Oskar Weinreb, both from Budapest, were sole account owners of one account each, and joint account owners together of a third 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.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His father's name matches the published name of one of the Account Owners. The Claimant identified his father as Jenö Weinreb, of Hungarian nationality, which matches published information about Account Owner Jenö Weinreb contained in the bank records. The Claimant also identified his uncle as Oskar Weinreb, of Hungarian nationality, which matches published information about Account Owner Oskar Weinreb contained in the bank records. In addition, the Claimant identified Account Owner Oskar Weinreb as his father's brother, which provides a connection between the Account Owners and a reason for the Account Owners to jointly own the unpublished joint account. In

support of his claim, the Claimant submitted documents including his father's marriage certificate and death certificate, which also identify his father's nationality as Hungarian. The CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim 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 Account Owner Jenö Weinreb was arrested during the Second World War in Nazi-controlled Monaco.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Jenö Weinreb. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents demonstrating that he is Account Owner Jenö Weinreb's child and that his stepmother was Account Owner Jenö Weinreb's second wife. The Claimant also identified Account Owner Oskar Weinreb as his father's brother. There is no information to indicate that the Account Owner Jenö Weinreb 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, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners or their 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 Owners were brothers, and that Account Owner Jenö Weinreb was his father, 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

In this case, the Account Owners held three accounts of unknown type. 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 an account of unknown type was 3,950.00 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 an award amount of 47,400.00 Swiss Francs for each of the three accounts separately, and a total combined award amount of 142,200.00 Swiss Francs for the three accounts combined.

Division of the Award

With regard to the award amount for the account owned solely by Account Owner Jenö Weinreb, Article 23(2)(a) of the Rules provides that, where the Claimant has submitted the account owner's will, as in this case, the award shall be distributed among any named beneficiaries who have submitted a claim. Accordingly, the award pertaining to this account shall be distributed in accordance with the Account Owner's will as provided by the Claimant, with 60% (28,440.00 Swiss Francs) going to the Claimant and 40% (18,960.00 Swiss Francs) going to his stepmother.

With regard to the award amount for the account owned solely by Account Owner Oskar Weinreb, Article 23(1)(d) of the Rules provides that, where neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim. Accordingly, the Claimant, who is the grandson of the Account Owner's parents, is entitled to the entire award amount for this account, or 47,400.00 Swiss Francs.

With regard to the account of unknown type that was held jointly by Oskar Weinreb and Jenö Weinreb, Article 25(1) of the Rules provides that if an account is a joint account and claimants related to each of the account owners have submitted claims to the account, it shall be presumed that each account owner was the owner of an equal share of the account. Accordingly, as for the half of the joint account presumed to have been owned by Oskar Weinreb, the Claimant, who is the descendant of Oskar Weinreb's parents, is entitled to this half of the award amount, or 23,700.00 Swiss Francs. As for the half of the joint account presumed to have been owned by Jenö Weinreb, the award amount shall be distributed in accordance with Account Owner Jenö Weinreb's will, with 60% (14,220.00 Swiss Francs) to the Claimant, and 40% (9,480.00 Swiss Francs), to the Claimant's stepmother. Accordingly, of the 47,400.00 Swiss Francs for this joint account, the Claimant is entitled to receive 37,920.00 Swiss Francs (the entire share of Oskar Weinreb's half and 60% of Jenö Weinreb's half) and his stepmother is entitled to receive 9,480.00 Swiss Francs (40% of Jenö Weinreb's half).

In accordance with the above, the Claimant is entitled to 113,760.00 Swiss Francs, and the Claimant's stepmother is entitled to 28,440.00 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

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal

March 28, 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).