

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] (represented by [REDACTED]),
[REDACTED 2] and [REDACTED 3]

in re Accounts of Artur Weisl

Claim Numbers: 208188/MO; 221041/MO; 601132/MO¹; 601284/MO²

Award Amount: 971,970.60 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the accounts of Artur Weisl (the “Account Owner”) 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 claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1] submitted a claim to the Holocaust Claims Processing Office (“HCPO”) and a Claim Form to the CRT identifying the Account Owner as his maternal grandmother’s brother (his great-uncle), Artur Weisl, who was born on 27 January 1881 in Pilsen, Bohemia, and was the son of [REDACTED] and [REDACTED], née [REDACTED]. The Claimant stated that his great-uncle, who was a merchant and an owner of real estate and certain brewing rights, resided until 1942 in Pilsen. Claimant [REDACTED 1] further stated that his great-uncle, who was Jewish, was deported by the Nazis in 1942 and that he perished in a concentration camp. He submitted official documents indicating that his great-uncle was missing as of 11 March 1942 and that in a court proceeding in Pilsen, he was declared dead as of 1 January 1945. In support of his claim, Claimant [REDACTED 1] submitted documents, including his great-uncle’s birth certificate and a certificate of inheritance from the District Court

¹ Claimant [REDACTED 1] submitted a claim, numbered B-00299, on 7 November 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 601132.

² Claimant [REDACTED] 2 submitted a claim, numbered B-02230, on 2 June 2000 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 601284.

of Charlottenburg indicating that the Account Owner's possessions and those of his sister, [REDACTED], were bequeathed to the Account Owner's niece, [REDACTED], Claimant [REDACTED 1]'s mother, and to the Account Owner's nephew, [REDACTED], Claimant [REDACTED]'s uncle, whose possessions were in turn bequeathed to Claimant [REDACTED 1]. Claimant [REDACTED 1] stated that he was born on 18 May 1932 in Prague, Czechoslovakia, and that he is the son of [REDACTED] and [REDACTED] (also known as [REDACTED]) [REDACTED], née [REDACTED], who in turn is the daughter of [REDACTED], née [REDACTED], the sister of Artur Weisl.

Claimant [REDACTED 1] asserted that his great-uncle traveled for business to Switzerland and that his great-uncle's lifelong secretary told his mother, [REDACTED], after the Second World War that Artur Weisl had an account with a Swiss bank, where he deposited a substantial amount of money and left some securities in safekeeping. Claimant [REDACTED 1] stated that during the 1950s and 1960s his mother made inquiries at Swiss banks, which replied consistently that no account or safe deposit box existed under the name of his great-uncle. In 1996 and in 1997 further inquiries were initiated, and again the answers were negative. However, in 2001, after yet another inquiry on the part of Claimant [REDACTED 1], the Bank provided him with all the information in the bank records, as described below. Claimant [REDACTED 1] submitted copies of the correspondence with the Bank to support the aforementioned record of contacts with the Bank concerning his great-uncle's account.

Claimant [REDACTED 1] previously submitted a claim to the HCPO in November 1997 and an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Artur Weisl.

Claimant [REDACTED 2] submitted a claim to the HCPO in June 2000 identifying the Account Owner as the cousin of her father-in-law, [REDACTED]. According to Claimant [REDACTED 2], Artur Weisl was the son of [REDACTED], who was the brother of [REDACTED], the father of [REDACTED], and paternal grandfather of her husband, [REDACTED]. Claimant [REDACTED 3], who is the son of Claimant [REDACTED 2], submitted a Claim Form identifying the Account Owner as the son of [REDACTED] and the brother of Claimant [REDACTED 3]'s paternal great-grandfather, [REDACTED]. Claimants [REDACTED 2] and [REDACTED 3] stated that Artur Weisl was born on 27 January 1881 in Pilsen, Bohemia. Furthermore, they stated that he was a businessman in the textile industry. According to a letter submitted by Claimant [REDACTED 3], written by his father, [REDACTED], and dated 3 March 1995, Artur Weisl was a partner in the family's textile business by the name of *Bratri Weislove Plzen*. Based on information provided by Claimant [REDACTED 2], Artur Weisl was transported from Pilsen, where he resided at 8 Dominikánská, to Theresienstadt on 22 January 1942, and from there to Izbica on 11 March 1942, never to be heard from again. Claimant [REDACTED 3] asserted that Artur Weisl had two children, [REDACTED] and [REDACTED]([REDACTED]), who perished in a concentration camp. In support of her claim, Claimant [REDACTED 2] submitted a copy of a letter from her husband, [REDACTED], to the Swiss Federal Authorities, Department of Justice, dated 8 March 1993, in which [REDACTED] asserted that he had tried for years to exercise his rights in Artur Weisl's Swiss bank account and asked the Department of Justice's assistance in locating the aforementioned account. In support of his claim, Claimant [REDACTED 3] submitted copies of the transportation documents of

Artur Weisl and [REDACTED] to Theresienstadt and Izbica. Finally, Claimant [REDACTED 2] indicated that she was born on 1 March 1920 in Merthyr Tydfil, South Wales, England, and that she is the daughter of [REDACTED] and [REDACTED]. Claimant [REDACTED 3] indicated that he was born on 14 November 1947 in Merthyr Tydfil and that he is the son of [REDACTED] and [REDACTED].

Information Available in the Bank Records

The bank records consist of an account card, custody account sheets, and a hold-mail instruction card. According to these records, the sole Account Owner was Artur Weisl from Pilsen, Czechoslovakia. The bank records indicate that the Account Owner held two demand deposit accounts, one of which was numbered 54090, and a custody account, numbered 41597. The bank records also indicate that the unnumbered demand deposit account and the custody account were opened in November 1930, however they do not indicate when the numbered demand deposit account was opened. Furthermore, the Bank records indicate that 4.50% Swiss Federal Railway 1928 bonds of a nominal value of 71,000.00 Swiss Francs, which were deposited in the custody account in 1931, were sold on 25 April 1935 and that the proceeds were transferred to the numbered demand deposit account. The Bank records further indicate that 3.50% British War Loans of a nominal value of 700.00 Sterling Pounds that were deposited in the custody account on 30 April 1935, were sold on 7 May 1935 and that the proceeds were transferred to the numbered demand deposit account as well. The hold-mail instruction card for the numbered demand deposit account indicates that in urgent cases, the Bank might, after consultation with a certain [REDACTED], deliver the correspondence to [REDACTED], attorney-at-law, of Schillergasse 5, Vienna.

The bank records indicate that the custody account was closed on 27 April 1935 and that the unnumbered demand deposit account was closed at a later date, unknown when, however it is not indicated if or when the numbered demand deposit account was closed. Furthermore, in a letter to Claimant [REDACTED1]'s representatives from 31 May 2001, the Bank stated that at the present time it was not possible for the Bank to reconstruct when exactly the numbered account was closed. 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 the numbered demand deposit 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 to whom the accounts at issue were paid, nor do these records indicate the value of these accounts. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts at issue and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion.

In this case, the CRT determines it appropriate to join the four claims of the Claimants in one proceeding. The joinder of the claims at issue is supported by information obtained from the Central State Archives in Prague, indicating that Artur Weisl was a businessman from Pilsen, who was born there on 27 January 1881 and was married to [REDACTED], née [REDACTED]. Additional information indicates that Artur Weisl was the son of [REDACTED] and [REDACTED], née [REDACTED], and the father of [REDACTED], who was born on 13 April 1914 in Pilsen, and [REDACTED], who was born there on 24 November 1922.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their relative's name matches the published name of the Account Owner. The Claimants identified the Account Owner's city of residence, which matches unpublished information about the Account Owner contained in the bank documents. Furthermore, Claimant [REDACTED 1] asserted that the Account Owner had accounts with the Bank, which also matches unpublished information about the location of the Account Owner's assets.

The CRT notes that Claimant [REDACTED 1] filed an Initial Questionnaire with the Court in 1999 and an HCPO claim form in 1997, asserting his entitlement to a Swiss bank account owned by Artur Weisl, 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"). An HCPO claim form in 2000 was also filed by Claimant [REDACTED 2]. This indicates that Claimant [REDACTED 1] and Claimant [REDACTED 2] have based their present claims not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as their relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that Claimant [REDACTED 1] and Claimant [REDACTED 2] had reason to believe that their relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 1] and Claimant [REDACTED 2].

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and that he was deported in 1942 and perished in a concentration camp.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Artur Weisl, and indicates that his date of birth was 27 January 1881, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner. Claimant [REDACTED 1] submitted documents, including a Certificate of Inheritance from the

District Court of Charlottenburg, indicating that the Account Owner's possessions in Germany as well as his sister's, [REDACTED], were bequeathed to the Account Owner's niece, [REDACTED], Claimant [REDACTED 1]'s mother, and to his nephew, [REDACTED], Claimant [REDACTED 1]'s uncle, whose possessions in turn were bequeathed to Claimant [REDACTED 1].

The CRT notes that, according to the principles of distribution set forth in Article 29 to the Rules, Claimant [REDACTED 1], who is the grandchild of the Account Owner's sister and thus a descendant of the Account Owner's parents, has a better entitlement to the account than Claimant [REDACTED 3], who is the grandchild of the Account Owner's cousin and thus a descendant of the Account Owner's grandparents, and Claimant [REDACTED 2], who is the spouse of the child of the Account Owner's cousin.

The Issue of Who Received the Proceeds

Regarding the custody account closed on 27 April 1935, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner or his heirs received the proceeds of that account.

Regarding the two demand deposit accounts, given the application of Presumptions (e), (h), and (j) contained in Appendix A,³ 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 Claimant [REDACTED 1]. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was his great-uncle, 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 demand deposit accounts.

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here with respect to the unnumbered demand deposit account, 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 demand deposit account was 2,140.00 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 an award amount of 25,680.00 Swiss Francs for the unnumbered demand deposit account.

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

As indicated above, the Bank records show that the value of 4.50% Swiss Federal Railway 1928 bonds of nominal value of 71,000.00 Swiss Francs was transferred on 25 April 1935 to the numbered demand deposit account and that the value of 3.50% British War Loans of nominal value of 700.00 Sterling Pounds was transferred to the numbered demand deposit account on 7 May 1935. The market value of the 4.50% Swiss Federal Railway 1928 bonds as of 25 April 1935 was 65,515.00 Swiss Francs⁴ and the market value of the 3.50% British War Loans as of 7 May 1935 was 11,202.55 Swiss Francs.⁵ In the absence of evidence to the contrary, the CRT assumes that the balance of the numbered demand deposit account as of 7 May 1935 was the sum of the aforementioned amounts, which is equal to 76,717.55 Swiss Francs, plus the average value of a demand deposit account. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs. Therefore, the value of the numbered demand deposit account was 78,857.55 Swiss Francs. The present value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an award amount of 946,290.60 Swiss Francs for the numbered demand deposit account.

Consequently, the total award amount in this case is 971,970.60 Swiss Francs.

Division of the Award

As noted above, according to the principles of distribution set forth in Article 29 to the Rules, Claimant [REDACTED 1] is entitled to the entire 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 of the unnumbered demand deposit account. Accordingly, the initial payment amount shall be 962,982.60 Swiss Francs, which is composed of 100% of the award amount for the numbered demand deposit account (946,290.60 Swiss Francs) plus 65% of the award amount for the unnumbered demand deposit account (16,692.00 Swiss Francs).

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to

⁴ Based on the quote that was published for this bond in the *Kursblatt der Züricher Effektenbörse* for the relevant date.

⁵ Based on the quote that was published for this security in the Stock Exchange Daily Official List and the exchange rate for the relevant date.

which they 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).