

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Shalom Weiss¹

in re Account of Léon Weiss

Claim Number: 000407/AY

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Shalom Weiss (the “Claimant”) to the account of Isaak Weiss.² This Award is to the account of Léon Weiss (the “Account Owner”) at the Lausanne branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form and an Initial Questionnaire identifying the Account Owner as his brother, Leon Weiss, who was born in Poland in 1904. The Claimant stated that his family was originally from Berlin, Germany, but his father, Isaak Weiss, moved to Zywiec in the region of Bielsko-Biala, Poland. The Claimant indicated that as a Jewish family, they were required by law to live in a certain area outside of Zywiec itself, but they were allowed to work in the town and attend its gymnasium, where the Claimant was a student. Since the town was near the German border, the family spoke German at home, which proved to be an advantage for the Claimant during the Holocaust. According to the Claimant, his father worked as a marketing and local distribution manager for a brewery named *Arcyvsiazecy Browar Zywiec*, which belonged to the Austrian sovereigns. The Claimant stated that although there were six children in the family, they were always well provided for and used to have generous meals on Friday evenings and on Jewish holidays. The Claimant further stated that his father was a very respected member of the community. The Claimant stated that he, as a talented pupil, was chosen by his father to fill in bank deposit forms. The Claimant did not remember the name of

¹ The Claimant provided his name and some of his relatives’ names only in Hebrew characters in the Claim Form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the Claim Form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

² The CRT will treat the claim to this account in a separate decision.

the bank, but he explained that he used to fill in green forms once a month for his father, who then signed them. The Claimant stated that his father explained that there was a need to save the money for a “*Schwarze Stunde*” (literally a “black hour,” *i.e.*, a time of need). The Claimant stated he had four sisters and one brother, Leon Weiss, who was fifteen years his senior. The Claimant further stated that his brother owned a clothing business located at Kosciuszki Street 8, Katowice, Poland. The Claimant explained that his brother had a Polish business partner, and that they sold clothes to Polish army officers. The Claimant stated that he lost contact with his brother and his other family members during the Second World War. The Claimant explained that he was imprisoned in the Plaszow camp, where he was forced to clean the toilets, and that he was taken to work for the Nazis in a bullet factory until it was liberated by the Russians. He subsequently discovered that his parents, sisters and brother were all murdered by the Nazis. The Claimant stated that since had been a member of a youth Zionist movement before the Second World War, he joined a group of other young men who survived the Holocaust. They organized and prepared a group of 60 young men and women for immigration (*Aliya*) to Israel. Illegally crossing the Polish border to the Czech Republic and travelling via Austria, they entered Italy. In Italy, the Claimant married his wife, whom he had met in Krakow, Poland, while organizing the *Aliya*. With the help of the *Joint* (the American Jewish Joint Distribution Committee), they boarded a boat, the *Af Al Pi Chen*, and secretly tried to reach the shores of Israel, but they were caught by the British army and deported to a camp in Cyprus, where the Claimant’s eldest daughter was born. When the Claimant finally reached Israel, he managed to locate his aunt, who had fled from Germany when the Nazis came to power. The Claimant stated that he was born on 16 April 1919 in Bochnia, Poland.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1997, asserting his entitlement to a Swiss bank account owned by his father, Isaak Weiss.

Information Available in the Bank Records

The bank records consist of printouts from the Bank’s database dated 8 October 1998. According to these records, the Account Owner was Léon Weiss. The bank records do not show the type of account held by the Account Owner, nor do they indicate when it was opened. The bank records indicate that on 25 October 1961, the account was transferred to a suspense account, which is a grouping of dormant and open accounts. The account balance on the transfer date was 24.30 Swiss Francs, and the account remains open and dormant.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His brother’s name matches the published name of the Account Owner. The CRT notes that the bank records do not contain any specific information about the Account Owner other than his name. Thus, the additional information provided by the Claimant cannot be compared with the bank information. Additionally, the CRT notes that a database containing the names of victims of Nazi persecution

includes a person named Leon Weiss, and indicates that his place of birth was Zywiec, Poland, and that he was a tailor who resided in Katowice, Poland, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT also notes that the Claimant filed an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1997, asserting his entitlement to a Swiss bank account owned by his father, Isaak Weiss, 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 had reason to believe that members of his family owned a Swiss bank account. This supports the credibility of the information provided by the Claimant. The CRT notes that no other claims to this account were filed.

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 he and his relatives were taken to different Nazi concentration camps where they were murdered.

Moreover, the CRT notes that the database discussed above containing the names of victims of Nazi persecution includes a person named Leon Weiss, and indicates that his place of birth was Zywiec, Poland, and that he was a tailor who resided in Katowice, Poland, which matches the information about the Account Owner provided by the Claimant.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The bank records indicate the account was transferred to a suspense account on 25 October 1961 and remains open and dormant today.

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 Governing the Claims Resolution Process, as amended (the “Rules”). Second, the Claimant has plausibly demonstrated that the Account Owner was his brother, and that relationship justifies an Award. Finally, the CRT has determined 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 records indicate that the value of the account as of 25 October 1961 was 24.30 Swiss Francs. According to Article 29 of the Rules, if the amount in an unknown type of account 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, to produce a total award amount of 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 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
April 1, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).