

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Robert Weiss and Emil Weiss

Claim Number: 218507/MO¹

Award Amount: 393,120.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Robert Weiss (“Account Owner Robert Weiss”) and Emil Weiss (“Account Owner Emil Weiss”) (together, the “Account Owners”) at the Zurich branch of the [REDACTED] (“Bank I”) and at the Zurich branch of the [REDACTED] (“Bank II”).

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 Owners as his great-uncles, Robert Weiss and Emil Weiss. The Claimant stated that his great-uncles had four sisters, including the Claimant’s maternal grandmother, [REDACTED], née [REDACTED]. The Claimant indicated that his great-uncles owned a jewelry store at Annenstrasse 5/6, Graz, Austria, and they resided at Jakominigasse 19, Graz. The Claimant stated that great-uncles traveled to Bern, Zurich, and Basel, Switzerland for business reasons and that their sister, [REDACTED], née [REDACTED], resided in Bern. The Claimant further stated that Robert Weiss, who was Jewish, was interned in Dachau, but he survived and immigrated with his brother to the United States in 1947. Furthermore, he asserted that both brothers, Robert and Emil, did not marry or have any children and that they passed away in the United States. Finally, the Claimant indicated that he was born on 12 April 1946 in Maribor, Slovenia, and that he is the son of [REDACTED], who is in turn the daughter of [REDACTED], née [REDACTED].

¹ The Claimant submitted an additional claim to the account of his great aunt, [REDACTED], which is registered under the Claim Number 218507. The CRT will treat the claim to this account in a separate decision.

Information Available in the Bank Records

The bank records of Bank I consist of a power of attorney form dated 3 June 1931 in Graz. According to these records, the Account Owner was Robert Weiss from Annenstrasse 56, Graz, and the Power of Attorney Holder was Emil Weiss (the “Power of Attorney Holder”), who gave the same address. The bank records indicate that the Account Owner held a custody account² and a demand deposit account. The bank records do not show when the accounts at issue were opened or 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 Bank I’s system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on this account after 1945.

The bank records of Bank II consist of account opening cards. According to these records, the Account Owners were Robert Weiss and Emil Weiss from Graz. These records indicate that the Account Owners rented jointly one safe deposit box, numbered 1034, in 1931. The rental of this safe deposit box was terminated on 15 June 1935. It is also indicated that Robert Weiss held two custody accounts and two demand deposit accounts. The custody accounts were closed on 4 February 1936 and on 31 August 1938 and the demand deposit accounts were closed on 20 February 1936 and on 31 August 1938. Furthermore, the bank records indicate that Emil Weiss held two safe deposit boxes, numbered 2271 and 2272. These safe deposit boxes were rented in 1935 and the accounts were closed on 25 March 1939 and on 28 May 1938, respectively. The bank records do not indicate to whom the accounts at issue were paid, nor do these records indicate the value of these accounts.

With respect to all bank accounts at issue, there is no evidence in the bank records that the Account Owners or their heirs closed them and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Robert Weiss and Emil Weiss, numbered 42485 and 38557, respectively. These documents show that Robert Weiss, who was born on 24 September 1881, and Emil Weiss, who was born on 23 September 1883, both gave the address Schmiedgasse 34, Graz. These records make no mention of assets held in a Swiss bank account.

² The bank records contain a power of attorney form that references a “*Titeldepot*,” which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. The CRT concludes that it is plausible that the Account Owner held such an account.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His great-uncles' names match the published names of the Account Owners. The Claimant identified his great-uncles' business address, which matches unpublished information about the Account Owners and the Power of Attorney Holder contained in the bank records of Bank I. He also identified his great-uncle's city of residence, which matches published information about Account Owner Robert Weiss contained in the bank records of Bank II. Additionally, the Claimant indicated that his great-uncles traveled to Zurich, Switzerland, which was the unpublished location of the branch of Bank I and Bank II where the accounts were held.

Status of the Account Owners 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, lived in Austria after the *Ausschluss* and that Account Owner Robert Weiss was interned in Dachau.

The Claimant's Relationship to the Account Owners

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

The Issue of Who Received the Proceeds

With respect to the custody and demand deposit accounts held by Account Owner Robert Weiss at Bank I and the custody and demand deposit accounts closed 31 August 1938 held by Account Owner Robert Weiss at Bank II, the CRT concludes that given Account Owner Robert Weiss' internment at Dachau, the existence of confiscatory legislation in Austria, and the application of Presumptions (h) and (j) contained in Appendix A³ to the accounts at Bank I, and the application of Presumptions (a) and (j) to the accounts at Bank II, it is plausible that Account Owner Robert Weiss, Power of Attorney Holder Emil Weiss, and their heirs did not receive the proceeds of these accounts. 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.

With respect to the two safe deposit boxes held by Account Owner Emil Weiss at Bank II, given the existence of confiscatory legislation in Austria at the time the safes were closed and the application of Presumptions (a) and (j), the CRT concludes that it is plausible that Account Owner Emil Weiss and his heirs did not receive the proceeds of these accounts.

With respect to the custody account and demand deposit account that were held by Account Owner Robert Weiss at Bank II and were closed on 4 February 1936 and 20 February 1936, respectively, and with respect to the safe deposit box held jointly by the Account Owners, the rental of which was

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

terminated on 15 June 1935, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owners or their heirs received the proceeds of these 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 Owners were his great-uncles, 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

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, the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of a safe deposit box account was 1,240.00 Swiss Francs. In this case, Account Owner Robert Weiss held two custody accounts and two demand deposit accounts. Account Owner Emil Weiss held two safe deposit boxes. The present value of these amounts are calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an award amount of 312,000.00 Swiss Francs for the two custody accounts, an award amount of 51,360.00 Swiss Francs for the two demand deposit accounts, and an award amount of 29,760.00 Swiss Francs for two safe deposit box accounts. The total award amount is therefore 393,120.00 Swiss Francs.

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 values and 65% of the total award amount is 255,528.00 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 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

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).