

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Accounts of Julije Wiener and Bela Weiss

Claim Numbers: 217359/SH; 220473/SH

Award Amount: 190,784.88 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2], née [REDACTED 2], (“Claimant [REDACTED 2]”) (together “the Claimants”) to the accounts of Julije Wiener (“Account Owner Wiener”) and Bela Weiss (“Account Owner Weiss”) (together 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 Claimants

The Claimants submitted a Claim Form identifying Account Owner Wiener as their father, Julije Wiener, and Account Owner Weiss as their father’s business associate, Bela Weiss. The Claimants’ father was born on 30 July 1891, and was married to [REDACTED], née [REDACTED], on 14 October 1925 in Zagreb, Croatia. The Claimants stated that their mother was born on 14 October 1897, that Julije and [REDACTED] Wiener had two children, the Claimants, and that the family resided at Marticeva Ul. 21, Zagreb, Croatia. The Claimants stated that their father was a businessman prior to the Second World War, and owned an import/export company dealing in semi-manufactured metals called *Julije Wiener i Drug*, which was located at the same address as their home. The Claimants further stated that the company did not carry on business after 18 April 1941. In a telephone conversation with the CRT, Claimant [REDACTED 1] stated that his father sold his business in the year prior the Nazi invasion to Yugoslavia and tried to get the family’s money out of the country. Claimant [REDACTED 1] stated that in July 1941 his father fled Zagreb to Italy, because there were no Swiss entrance permits available, and hid in Italy until the liberation by the Allied Forces. The Claimants also stated that their father died on 9 November 1962 in Chelsea, Massachusetts, and that their mother died on 19 August 1994 in Bussum, The Netherlands. In a telephone conversation with the CRT, Claimant [REDACTED 1] stated that his father’s business associate, Bela Weiss, who was Jewish, also resided in Zagreb, had no children, and fled Yugoslavia

during the Second World War to the United States, where he died. The Claimants submitted their father's passport, which indicates that the Claimants' father entered Switzerland on May 11 1940, on his way to Zurich for business reasons, and departed the country on 16 May 1940. The Claimants submitted a detailed family tree, their father's death certificate, their parents' marriage certificate, passports containing their parents' signature samples, their parents' last wills, and an autobiographical statement written by their father, referring to his business in Yugoslavia prior to the Second World War.

Claimant [REDACTED 1] indicated that he was born on 21 December 1927 in Zagreb. Claimant [REDACTED 2] indicated that she was born on 27 July 1926 in Zagreb.

The Claimants previously submitted an Initial Questionnaire with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Julije Wiener.

Information Available in the Bank Records

The bank records consist of internal correspondence of the Bank, balance sheets, and account statements. According to these records, the Account Owners were Julije Wiener and Bela Weiss of Zagreb, Croatia. The bank records indicate that the Account Owners jointly held a custody account and a demand deposit account in United States Dollars, numbered 481434, under the code name *Matterhorn*. According to a letter from the Bank to the Account Owner dated 28 December 1945, the balance of the United States Dollar account was 672.00 on 19 December 1945. A bank form dated 23 January 1940 and signed by the Account Owners shows that the Bank was instructed to hold all correspondence with the Account Owners. The demand deposit account was closed on 31 December 1970 by fees and charges. As for the custody account, the bank records do not show if or when the account at issue was closed or to whom it was paid, nor do these records indicate the value of this account. 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

Joinder of Claims

According to Article 37(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 two claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their father's name and country of residence match the published name and country of residence of the Account Owner. In a telephone conversation with the CRT, Claimant [REDACTED 1] identified his father's business associate as Bela Weiss. Despite the fact that the Account Owners were listed separately on the list of bank accounts published by the ICEP Investigation on 5 February 2001, the Claimant identified a connection between them, stating that the Account Owners were business associates

who jointly handled all business matters. Finally, the Claimants submitted a sample of their father's signature, which matches the signature sample contained in the bank records. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Julije Wiener, and indicates that his place of residence was Zagreb, 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.

Status of the Account Owners as a Victim of Nazi Persecution

The Claimants have made a plausible showing that Account Owner Wiener was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and fled Yugoslavia in December 1941 to Italy. These facts are supported by the CRT database of Victims of Nazi Persecution as described above.

Claimant [REDACTED 1] has also made a plausible showing that Account Owner Weiss was a Victim of Nazi persecution. Claimant [REDACTED 1] stated that Account Owner Weiss was Jewish and fled Yugoslavia during the Second World War.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to Account Owner Wiener by submitting documents demonstrating that Account Owner Wiener was their father. There is no information to indicate that the Account Owners has other surviving heirs, and no other claims have been submitted to this account.

The Issue of Who Received the Proceeds

With regard to the demand deposit account, the bank records indicate that account was closed due to fees and charges on 31 December 1970.

Regarding the custody deposit account, given the application of Presumption (f), (h) and (j), as provided in Article 28 of 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that Account Owner Wiener was their father, and that relationship justifies 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

According to Article 25(2) of the Rules, in cases where the joint account is claimed by relatives of only one of the joint Account Owners, it shall be presumed that the Account was owned as a

whole by the Account Owner whose shares of the account have been claimed. In this case, only descendants of Account Owner Weiner have claimed the joint account, so it is presumed that Account Owner Weiner owned the account as a whole.

With regard to the custody account, 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 a custody account was 13,000.00 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 a total award amount of 156,000.00 Swiss Francs.

With regard to the demand deposit account held in United States Dollars, the bank records indicate that the value of the account as of 19 December 1945 was 672.00 United States Dollars, which was the equivalent of 2,883.74 Swiss Francs. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of 15.00 Swiss Francs, which reflects standardized bank fees charged to the account between 1 January 1945 and 19 December 1945. Consequently, the adjusted balance of the account at issue is 2,898.74 Swiss Francs. The present value of the amount of the award is determined by multiplying the adjusted amount by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 34,784.88 Swiss Francs.

Consequently the total award amount, including both the custody and the demand deposit account, is 190,784.88 Swiss Francs.

Division of the Award

According to Article 23 of the Rules, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. As the Claimants are brother and sister, they are each entitled to one-half of the Award.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claim to determine whether there are additional Swiss bank accounts to 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
March 11, 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).