

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]
acting on behalf of Julius Winter¹

in re Accounts of Julius Winter

Claim Numbers : 000640/AH ; 002219/AH

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2], née [REDACTED] (“Claimant [REDACTED 2]”) to the account of [REDACTED].² This Award is to the accounts of Julius Winter (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 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 two similar Claim Forms, identifying the Account Owner as their oldest brother, Julius Winter, whom they represent in their claims.³ Julius Winter was born on 5 July 1920, in Kopyczywce, Poland, was married to [REDACTED] in 1946, and had three children: [REDACTED], [REDACTED], and [REDACTED]. The Claimants indicated that their father, [REDACTED], lived in Vienna, Austria, where he worked as a textile merchant and owned a business by the name of [REDACTED]. In a telephone conversation with the CRT on 30 September 2002, Claimant [REDACTED 1] indicated that their father was first married to

¹ The Claimants provided their names and the names of some of their relatives 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.

³ The Claimants indicated, in their Claim Forms, that their brother, Julius Winter, also submitted a Claim Form to the CRT regarding their father’s accounts. Since that Claim Form was never received by the CRT, the CRT Julius Winter authorized them to represent him in their claims. The Claimants have submitted such a Power of Attorney Form.

Julius's mother, who died in childbirth, and he then got remarried to a woman by the name of [REDACTED], with whom he had one son, [REDACTED]. He then divorced his second wife and, following their divorce, [REDACTED] stayed with his mother. [REDACTED] then married the Claimants' mother, and they lived at 13 Rembrandtstrasse, Vienna. Claimant [REDACTED 2] indicated that following the *Anschluss*, her father was arrested by the Nazis, and upon his release, illegally crossed the border to Switzerland, where he had a childhood friend. He later arranged for the escape to Switzerland in March 1939 of his son Julius, his wife, and the Claimants. The family had to deposit a bail of 1,000.00 Swiss Francs with the border police in Basel as guarantee for their departure. They lived in hiding until 31 October 1939, when they were deported from Switzerland to Italy and went from there to Palestine. The Claimants submitted several documents, including letters from the Luzern police dated 11 March 1939 and 15 December 1939, their parents' passports and death certificates, and a letter to Julius Winter dated 12 June 1997 from the Swiss Bankers Association, informing him that their bail money was lost. Claimant [REDACTED 1] indicated that he was born on 31 March 1928, in Vienna and Claimant [REDACTED 2] indicated that she was born on 26 March 1931, in Vienna. The Claimants are representing Julius Winter in these proceedings.

Claimants [REDACTED 1] and [REDACTED 2] previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by their father.

Information Available in the Bank Record

The bank record consists of an account registry card. According to this record, the Account Owner was Julius Winter of Vienna, Austria. The bank record indicates that the Account Owner held two accounts: a demand deposit account and a custody account, numbered L43667. According to the bank record, the demand deposit account was opened on 31 May 1931 and was closed on 31 March 1938, and the custody account was opened on 15 June 1931 and was closed on 30 July 1938. The bank record does not show to whom the accounts at issue were paid, nor does this record indicate the value of these accounts. There is no evidence in the bank record that the Account Owner or his heirs closed the accounts 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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their brother's name and country of residence match the published name and country of residence of the Account Owner. The Claimants also identified their brother's city of residence, which matches unpublished information about the Account Owner contained in the bank records. In addition, the Claimants indicated that their family was living in Vienna in 1931, which matches unpublished information contained in the bank records that the accounts were opened in 1931 and were registered under an address in Vienna. In support of their claim, the Claimants submitted several documents, including a letter to Julius Winter from the Swiss Bankers' Association, dated 12 June 1997, letters from the Luzern police dated 11 March 1939 and 15 December 1939, and their parents' passports and death certificates.

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, that following the *Anschluss*, their father was arrested by the Nazis, and that upon his release, their family illegally crossed the border to Switzerland and lived in hiding until their deportation to Italy in 1939.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that the Account Owner is their older brother. The Claimants are representing their brother, Julius Winter in these proceedings. According to the principles of distribution set forth in Article 29 of the Rules, Julius Winter, who is the Account Owner, is entitled to the entire award amount for the claimed accounts.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which account owners are interned or imprisoned by the Nazis for a relatively short period of time and then, near the time of their release, Swiss accounts held by the account owners are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates it is plausible in such situations that the account proceeds were paid to Nazis, and the application of Presumptions (a), (g), (h), and (j) contained in Appendix A,⁴ 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 the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the

⁴ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Claimants have plausibly demonstrated that the Account Owner is their brother, 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 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 demand deposit account was 2,140.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs, creating a 1945 total value of 15,140.00 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 a total award amount of 181,680.00 Swiss Francs.

Division of the Award

As indicated above according to the principles of distribution set forth in Article 29 of the Rules, Julius Winter is entitled to the entirety of the claimed accounts at issue, and the Claimants are not.

Initial Payment

In this case, however, the Claimant is age 75 or older and is therefore entitled to receive payment of 100% of the total award amount.

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 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

December 31, 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).