

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Frederick Allen Wolff
also acting on behalf of Ernest Wolff and Joseph Wolff

in re Accounts of Max Mendel Wolff

Claim Number: 205803/JT¹

Award Amount: 48,000.00 Swiss Francs

This Certified Award is based upon the claim of Frederick (Fritz) Allen Wolff (the “Claimant”) to the accounts of Max Mendel Wolff (the “Account Owner”) at the Zurich 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 identifying the Account Owner as his father, Max Mendel Wolff, who was born on 4 December 1890 in Zell, Germany, and was married to Sophie Wolff, née Gotthold, on 18 September 1922 in Wurzburg, Germany. The Claimant stated that his father, who was Jewish, had three sons: the Claimant, Ernest Wolff, and Joseph Wolff, whom the Claimant is representing in these proceedings. The Claimant indicated that his father was a printer and a farmer, and that he lived at Via Camillo Hajeck 37 in Milan, Italy from 1936 until 1939. The Claimant stated that his father, seeking to avoid persecution by the Fascists and Nazis, immigrated with his family in 1939 to Livingstone, Northern Rhodesia, where he operated a poultry farm. The Claimant further stated that his father had a distant relative, Hugo Sussmann, who lived at Gartenstrasse 23 in Zurich, Switzerland. The Claimant stated that his father used Hugo Sussmann’s address when he opened a bank account in order to avoid persecution and confiscation of his assets by the Italian and German authorities. The Claimant further stated that his father died of cancer on 24 August 1942 in Rhodesia, and that his mother died on 18 October 1972 in New York, New York, the United States. The Claimant indicated that his family did not previously attempt to retrieve his father’s assets. The Claimant indicated

¹ The Claimant submitted an additional claim to the account of Sigmund Seligsberger, which is registered under the claim number 212582. The CRT will treat the claim to this account in a separate decision.

that he was born on 24 June 1926 in Wurzburg, Germany. The Claimant is representing his two brothers, Ernest and Joseph Wolff, in these proceedings.

The Claimant submitted a copy of a letter to his father from the Zurich branch of the Bank, dated 4 November 1938, confirming the existence of a demand deposit account held in Pounds Sterling. According to the letter, the account held 190.11 Pounds Sterling, valued at 4,000.00 Swiss Francs as of 5 November 1938, which he paid in cash to the Bank. The document submitted by the Claimant does not show when the account at issue was closed, or to whom it was paid. The Claimant submitted his father's and mother's birth certificates, his own and his brother's birth certificates and his mother's death certificate.

Information Available in the Bank Records

The bank records consist of a Power of Attorney form and printouts from the Bank's database. According to these records, the Account Owner was Max Mendel Wolff and the Power of Attorney Holder was Sophie Wolff, the Account Owner's wife. The bank records show that the Account Owner lived at Via Cam. Hajech 37 in Milan, Italy. The bank records also indicate that the Account Owner used his relative's address in Zurich as the address for his account. The bank records indicate that the Account Owner held an account of unknown type.

The account of unknown type was closed on 20 January 1939, unknown to whom. The amount in the account on the date of its closure is unknown. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father's name matches the published names of the Account Owner and his mother's name matches the published name of the Power of Attorney Holder. The Claimant identified his father's Milan address and his distant relative's name and Swiss address, which matches unpublished information about the Account Owner contained in the bank records. In support of his claim, the Claimant submitted documents, including a copy of a letter from the Zurich branch of the Bank confirming the existence of a demand deposit account in the name of Max Mendel Wolff, copies of his parents' birth certificates, a copy of his mother's will, and a copy of his own birth certificate.

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 fled to Rhodesia to escape persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he and those he represents are related to the Account Owner by submitting documents demonstrating that they are his sons. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner and his wife were Germans, the Nazi campaign to confiscate the foreign assets of its Jewish nationals, and the applicability of Presumption (j) contained in Appendix A,² the CRT concludes in this case that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs.

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 Governing the Claims Resolution Process (the "Rules"). Second, the Claimant has plausibly demonstrated that the Account Owner was his father, 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

In cases where the bank records do not contain information on account values, the CRT uses the average values of the type of account as specified in Article 35 of the Rules. However, in this case the Claimant has submitted documentation from the Bank regarding the value of the claimed account. The Claimant's submissions indicate that the account was a demand deposit account held in Sterling Pounds, valued at 4,000.00 Swiss Francs on 20 January 1939. 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 48,000.00 Swiss Francs.

Division of the Award

The Claimant is representing his two brothers in these proceedings. According to Article 29 of the Rules, the Claimant and each of his brothers are entitled to one-third (1/3) of the total award amount.

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

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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

November 26, 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).