

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Irma Braun and Felix Harry Braun

Claim Number: 600007/MBC¹

Award Amount: 401,066.88 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Irma Braun (“Account Owner Irma Braun”) and Felix Harry Braun (“Account Owner Felix Harry Braun”) (together, the “Account Owners”) at the Geneva 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 Claimant

The Claimant submitted an Initial Questionnaire to the Court in 1999 and a claim to the Holocaust Claims Processing Office (“HCPO”) in February 2000 identifying the Account Owners as her grandmother, Irma Braun, née [REDACTED], and her father, Felix Harry Braun. Her grandmother was born on 6 March 1879 in Kolin, Czechoslovakia, and was married to [REDACTED] in 1901. The Claimant stated that her grandparents had two children, [REDACTED], who was born in 1902 and died in 1978, and the Claimant’s father, Felix Harry Braun, who was born on 23 July 1908 and died in 1978. The Claimant’s grandfather died in 1929. The Claimant stated that her grandmother lived at Argentinierstrasse 36 in Vienna, Austria, and also owned a country house in Einsiedeleigasse 26 in Vienna. The Claimant identified her grandmother as a businesswoman who traded handbags and craft items. According to the Claimant, her grandmother was Jewish and was “extremely wealthy,” and the Nazis confiscated her assets and forced her to pay considerable “taxes,” including an emigration tax. The Claimant stated that her grandmother emigrated to the United States in early 1939, and she died there in 1951.

¹ The Claimant submitted a claim, numbered B-02158, on 10 February 2000 to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600007/MBC.

The Claimant's father was able to escape Austria in 1938 and fled to the United States of America. The Claimant's father died in New York on 7 January 1978. The Claimant indicated that she was born on 28 September 1938 in New York.

According to the Claimant, she tried to locate an account belonging to her grandmother in 2000. During its search for Irma Braun's accounts, the Bank located accounts belonging to the Claimant's father, Felix Harry Braun. In support of her claim, the Claimant submitted documents, including her grandparents' wedding certificate, a copy of her father's obituary, her own birth certificate, and a copy of an affidavit submitted to a New York State court by Felix Harry Braun, requesting to change the spelling of his last name from "Braun" to "Brown."

Information Available in the Bank Records

The bank records consist of an account card and a letter from the Bank to the HCPO dated 10 October 2000. According to the account card, the Account Owner was Felix Harry Braun, who held two custody accounts, numbered L14966 and L15271, and one demand deposit account. There is no indication in the records that Account Owner Felix Harry Braun or his heirs closed the accounts and received the proceeds themselves.

The records show that both custody accounts were opened on 11 March 1938 and were closed on 4 November 1938. The demand deposit account was opened on 25 February 1938 and was closed on 16 June 1939. 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 Imminent Persons ("ICEP" or the "ICEP Investigation) determined that the amount in the accounts had been paid to the Nazi authorities.

Information Available from the Austrian State Archives

Account Owner Irma Braun

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 Irma Braun. The documents show that Irma Braun, a businesswoman born on 6 March 1879, who resided at Argentinierstrasse 36 in Vienna, reported her assets to the Nazi authorities on 16 July 1938. According to the report form, Irma Braun also owned a demand deposit account 247.18 Pounds Sterling (5,282.24 Swiss Francs) at the Bank.

Account Owner Felix Harry Braun

There is no record in the Austrian State Archives regarding assets owned by Felix Harry Braun.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Irma Braun. Her grandmother's name and city of residence matches the published name and city of residence of Account Owner Irma Braun. The Claimant also provided the street address of Account Owner Irma Braun which matches information contained in the Austrian State Archives. The Claimant has also plausibly identified Account Owner Felix Harry Braun. Her father's name matches the unpublished name of the Account Owner.

Status of the Account Owners as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Irma Braun and Account Owner Harry Felix Braun were Victims of Nazi Persecution. The Claimant stated that both Account Owners were Jewish and that they both fled Austria during the Second World War. Account Owner Irma Braun was forced to leave behind all of her assets when she fled Austria in 1939.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents demonstrating that Account Owner Irma Braun was her grandmother, and that Account Owner Felix Harry Braun was her father.

The Issue of Who Received the Proceeds

The bank records indicate that the accounts held by Account Owner Felix Harry Braun were paid to Nazi authorities.

The Austrian State Archives indicate that Account Owner Irma Braun owned a demand deposit at the Bank valued at 5,282.24 Swiss Francs. The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and their accounts are consequently transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and the application of Presumptions (a), (d) and (j) contained in Appendix A,² the CRT concludes that with regard to the demand deposit account held by Account Owner Irma Braun, it is plausible that the account proceeds were not paid to the Account Owner Irma Braun or her heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to assist in determining whether or not Account Owners or their heirs received the proceeds of their accounts.

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

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 Owners were her grandmother and father, 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

With regard to the account owned by Account Owner Irma Braun, the Austrian State Archives records indicate that the value of the account held at the Bank as of 16 July 1938 was 247.18 Pounds Sterling, which was equal to 5,282.24 Swiss Francs. The present value of the amount of the Award is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules. Thus, the award amount for this account is 63,386.88 Swiss Francs.

The bank records indicate that Account Owner Felix Harry Braun owned three accounts: two custody accounts and one demand deposit account. 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, and the average value of a demand deposit account was 2,140.00 Swiss Francs. The total 1945 value of Account Owner Felix Harry Braun’s three accounts is 28,140.00 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 337,680.00 Swiss Francs for the two custody accounts and one demand deposit account.

Accordingly, the total award amount is 401,066.88 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 of the three accounts owned by Account Owner Felix Harry Braun, and 65% of that amount is 219,492.00 Swiss Francs.

Accordingly, the initial payment amount is 282,878.88 Swiss Francs, which is comprised of 100% of the award amount for the account of Irma Braun (63,386.88 Swiss Francs) and 65% of the award amount for the accounts of Felix Harry Braun (219,492.00 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 her claim to determine whether there are additional Swiss bank accounts to which she 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

23 January 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).