

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Dahlia Blech

in re Account of Erna Zimet-Achselrad

Claim Number: 211871/MBC¹

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of Dahlia Hanna Blech, née Hass (the “Claimant”), to the published account of Erna Zimet-Achselrad (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).²

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 her great-aunt, Erna (Ernestina) Zimet, née Axelrad (Achselrad), who was born around 1880 in Skala, Poland (now the Ukraine), and was married to Jacob Zimet in Stanislawow, Poland. The Claimant indicated that her great-aunt, who was Jewish, was a housewife and was her maternal grandfather’s sister. The Claimant indicated that great-aunt and her husband lived at Sluzewska 4 in Warsaw, Poland until the Nazis deported them in 1939.

In support of her claim, the Claimant submitted a copy of a claim her mother, Zilla Hass, née Achselrad, sent on 28 December 1964 to the *Meldestelle für Vermögen verschwundener*

¹ The Claimant submitted an additional claim, which is registered under the Claim Number 211823. The CRT will treat this claim in a separate determination.

² The CRT notes that the name Erna Zimet-Achselrad was not published on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). However, the CRT notes that the name Erna Zimet-Achselrad was published as part of the Swiss banks’ 1962 survey of dormant accounts belonging to foreigners or stateless persons believed to be victims of persecution on racial, religious, or political grounds (the “1962 Survey”) and again on a February 1997 list of 53 Polish account owners whose accounts were transferred from the Swiss Unclaimed Assets Fund and were paid to the Polish National Bank. The Unclaimed Assets Fund was established by the Swiss Government to identify dormant assets belonging to heirless non-Swiss citizens who were the victims of racial, religious, or political persecution. Finally, the name Erna Zimet-Achselrad was published on the 2005 published list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “2005 List”).

Ausländer (Registration Office for Assets of Missing Foreigners, the “Registration Office”), in Bern, Switzerland, for an account belonging to Erna (Ernestina) Zimet, née Axelrad. The Claimant also submitted the response from the Registration Office to her mother’s representative, informing her that assets in the amount of a couple thousand Swiss Francs (“SF”) held by *Frau* (Mrs.) Erna Zimet-Achselrad had been located, and that the procedure of releasing the assets would take a long time, as certain measures required by law, including the opening and processing of the estate, needed to be completed, so that the release of the assets to the entitled heir may not be counted upon any time soon. The letter continued to state that identification documents of any kind were only to be submitted upon the Registration Office’s explicit request.³ The Claimant further submitted her own birth certificate; and her inheritance decree. The Claimant indicated that she was born on 31 October 1938 in Haifa.

The Claimant previously submitted Initial Questionnaires to the Court in 1999, asserting her entitlement to a Swiss bank account owned by Erna (Ernestina) Zimet and Jacob Zimet.⁴

Information Available in the Bank’s Records

The CRT notes that 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 report an account belonging to Erna Zimet-Achselrad during their investigation of the Bank.

Information Published by the Press Office of the Polish Ministry of Finance

In the publication entitled *Nasze finanse*, published by the Press Office of the Polish Ministry of Finance, number 25, dated February 1998, there is information concerning the assets of Erna Zimet-Achselrad.

According to these records, the Account Owner was Erna Zimet-Achselrad, who initially resided at 4/8 Sluzewska in Warsaw, Poland, and later at Wspolna in Warsaw. These records indicate that, as of 23 January 1964, the Account Owner held a custody account containing 3½% bonds issued by the Bank worth SF 2,000.00 and a demand deposit account with a value of SF 493.82.

These records indicate that an amount equal to SF 2,849.00 was transferred on 15 August 1975 to the Polish National Bank.

³ The German text reads: “Wir teilen Ihnen mit, dass uns eine schweizerische Bank ein Guthaben von einigen wenigen tausend [sic] Franken auf den Namen einer Frau Erna Zimet-Achselrad, Sluzewska 4/8, Werszawa [sic], angemeldet hat.

Gemäss Art. 5 ff. Des Bundesbeschlusses vom 20.12.62 sind für die angemeldeten Guthaben die vom Gesetz vorgeschriebenen Massnahmen durchzuführen (Errichtung der Beistandschaft, Eröffnung und Durchführung des Erbganges etc.). Diese Vorkehrungen werden geraume Zeit beanspruchen, so dass vorläufig mit der Herausgabe des Vermögens an die legitimierten Berechtigten nicht gerechnet werden kann. Beweisurkunden irgenwelcher Art sind erst auf unser ausdrückliches Verlangen einzureichen.”

⁴ As noted above, the CRT will treat the claim to the account of Jacob Zimet in a separate determination.

Finally, these records indicate that Zilla Hass-Axelrad, residing at Azar 9, Nexe Shaanan, Haifa, Israel, made an application to this account.

Information Available in the Swiss Federal Archive

In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the registration of assets belonging to Erna Zimet-Achselrad. According to these records, the Account Owner was Erna Zimet-Achselrad, who initially resided at 4/8 Sluzewska in Warsaw, Poland, and later at Wspolna in Warsaw. These records indicate that, as of 23 January 1964, the Account Owner held a custody account containing 3½% bonds issued by the Bank worth SF 2,000.00 and a demand deposit account with a value of SF 493.82. The documents indicate that the assets were reported by the Bank in the course of the 1962 survey of assets held in Switzerland by foreigners or stateless persons who were or who were believed to have been victims of racial, religious or political persecution, conducted by Swiss banks pursuant to a Federal decree in 1962 (the “1962 Survey”).

In a letter to Dr. Hans Weil, an attorney representing Zilla Hass-Axelrad, dated 17 August 1965, Dr. Weber of the Registration Office, which was part of the Federal Department of Justice, wrote that he was responding to Zilla Hass-Axelrad’s inquiry, dated 28 December 1964, regarding assets deposited in Switzerland belonging to Erna (Ernestina) Zimet, née Axelrad. Dr. Weber stated that assets valued at a few thousand francs had been reported to the Registration Office, and that pursuant to 1962 Survey regulations, several legal measures must be completed. He explained that these measures would take considerable time, and that the Account Owner’s legitimate heirs should therefore not expect payment any time soon. He noted that documents showing proof of identity should only be submitted upon the expressed written request of his office.

In a letter dated 1 February 1966, Dr. Weber wrote to the Guardianship Authorities of the city of Basel (*Vormundschaftsbehörde Basel-Stadt*) and informed them that Zilla Hass-Axelrad had claimed assets belonging to Erna Zimet-Achselrad. According to a resolution of the Guardianship Authorities, dated 3 April 1967, these assets were placed under the legal care of Dr. Heinz Häberlin.⁵ Dr. Häberlin was instructed to report to the Guardianship Authorities should a credible claim be made to these assets, so that the legal representation could be rescinded.

On 23 December 1967, Dr. Weber wrote to Dr. Weil and referenced a visit Dr. Weil made to the Registration Office, accompanied by Dr. Josef Holzmann of Jerusalem, on 11 December 1967. Dr. Weber stated that on 17 August 1965 his office had informed Zilla Hass-Axelrad that assets belonging to Erna Zimet-Achselrad of Warsaw had been reported pursuant to the 1962 Survey. He explained that, in order to prove her rights to the assets, Zilla Hass-Axelrad needed to submit the documents listed in the case of Moshe Katz. (*“Zum Nachweis ihrer Erbberechtigung muss Frau Zilla Hass die im Falle des Herrn Moshe Katz aufgezählten dokumentarischen Beweise*

⁵ *“Die Beistandschaft ist deshalb zu errichten und dem vom Bundesrat bezeichneten Generalbeistand Herrn Dr. Heinz Häberlin Weinfelden zu übertragen.”*

beibringen.”)⁶ Dr. Weber referred Dr. Weil to Dr. Häberlin, who was handling the matter, and instructed him to send the relevant documents to him.

Finally, the file from the Swiss Federal Archive contains a resolution of the Guardianship Authorities, dated 9 April 1973, pertaining to the assets of Erna Zimet-Achselrad. The resolution notes that names of owners of assets reported in the 1962 Survey shall not be published and that no missing person proceedings shall be conducted for such owners in those cases in which such actions may cause difficulties for the missing person. (“*In Art. 5 Abs. 2 und Art. 8 Abs. 3 dieses Bundesbeschlusses wird bestimmt, dass jegliche Bekanntmachung oder Durchführung eines Verschollenheitsverfahrens zu unterlassen ist, wenn den gesuchten Personen dadurch Unannehmlichkeiten entstehen könnten.*”) The resolution notes that a presidential order of 8 March 1972 permitted the Registration Office to transfer funds affected by this provision to an “Heirless Assets” fund, which was administered by the Federal Department of Finance (*Eidg. Finanzverwaltung*). The resolution grants a petition from Dr. Häberlin that his legal representation over the assets be rescinded and the assets transferred to the Federal Department of Finance. A copy of the resolution was sent to Dr. Weil as the representative of Zilla Hass-Axelrad, who in 1966 was the last person to file a claim to the assets.⁷

The records from the Swiss Federal Archive do not indicate what transpired with the claim of Zilla Hass-Axelrad, nor do they refer to the ultimate disposition of the assets.

The CRT’s Analysis

Identification of the Account Owner

The Claimant’s great-aunt’s name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant identified the Account Owner’s street address, which matches further published information about the Account Owner contained in the records of the Press Office of the Polish Ministry of Finance.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Erna Zimet, née Axelrad, and indicates that she lived at Sluzewska 4 in Warsaw, which matches the information about the Account Owner provided by the Claimant.

⁶ The CRT notes that the correspondence in the file does not explain who Moshe Katz is.

⁷ The difficulties Zilla Hass-Axelrad and her legal representatives encountered in establishing her rights to her aunt’s account seem to have been in line with the general circumstances referred to in Peter Hug and Marc Perrenoud, *In der Schweiz liegende Vermögenswerte von Nazi-Opfern und Entschädigungsabkommen mit Oststaaten*, Bundesarchiv Dossier 4, Bern, 13 December 1996/January 1997. The conditions laid down by the Swiss authorities represented a veritable Catch-22: with regard to account owners from behind the Iron Curtain, no search was undertaken, nor were account owner names publicized, in order to protect these persons from their own governments’ pressure to then transfer these funds; for heirs of account owners, who in the meantime had moved to the West, the general procedure of first proving that the disappearance of the account owners was such that death could legally be assumed (*Verschollenheitsverfahren*) and then providing the necessary inheritance documentation was virtually impossible. All this helps to explain why the ultimate amount transferred to Poland by Swiss authorities, SF 463,954.55, was about equal to the approximately SF 500,000.00 that had been registered in 1962 as dormant accounts belonging to Polish account owners considered victims of Nazi persecution.

The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the name Erna Zimet-Achselrad appears only once on the 2005 published list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “2005 List”). The CRT further notes that there are no other claims to these accounts. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

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 that she was deported to an extermination camp in 1939. As noted above, a person named Erna Zimet was included in the CRT’s database of victims.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information demonstrating that the Account Owner was the Claimant’s great-aunt. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT notes that the Claimant also identified information that matches information contained in the Yad Vashem records. The CRT further notes that the Claimant submitted a copy of her mother’s claim to this account in 1964. The CRT notes that it is plausible that this document is a document that most likely only a family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Form.

The Issue of Who Received the Proceeds

The CRT notes that the Polish – Swiss Compensation Agreement of 25 June 1949 (the “Agreement”) called for the payment of dormant assets held in Swiss banks by Polish nationals to the government of Poland in return for compensation to Swiss banks and Swiss life insurance companies that had suffered financial loss as a result of nationalizations in Poland. The records from the Swiss Federal Archive indicate that the Guardianship Authorities were granted permission to transfer the funds to the Heirless Assets Fund administered by the Federal Department of Finance, though these records do not indicate the ultimate disposition of the assets. The records from the Press Office of the Polish Ministry of Finance indicate that the amounts in the accounts were paid to the Polish National Bank on 15 August 1975. The CRT notes that these accounts were paid to the Polish National Bank in 1975 even though the Account Owner’s heir contacted the Registration Office and claimed the account over ten years previously, in 1964.

In its Memorandum and Order of February 19, 2004, the United States District Court for the Eastern District of New York specifically addressed the practice of Swiss banks fending off inquiries about Holocaust-era accounts under the pretext of protecting property rights and banking secrecy, while abandoning these principles when it served their own economic interests, as in the case of the Polish-Swiss agreement:

It is important to reiterate that the Swiss banks' devotion to secrecy and their repeated acts of stonewalling were not based on principles – they were profit-driven. Put differently, “the banks' rhetorical efforts to uphold the existing ‘legal system,’ guarantee the [v]iability of the law and protect ‘property rights’ on the basis of banking secrecy” were merely that – rhetoric. As the Bergier Commission found, “it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of banking secrecy and a clear preference for continuity in private law. Over the many years of such rejections, a large number of accounts were reduced to zero or almost.” Where economics counseled against upholding secrecy, private law and property rights, however, the banks were quick to abandon their supposedly entrenched values.

A particularly telling example of profits being placed over “banking secrecy” is the secret post-war deals reached by the Swiss with Poland and Hungary to loot unclaimed accounts belonging to Holocaust Victims. “[T]he primary aim of [these deals] was to favour Swiss interests in the wake of nationalization of assets in Poland and Hungary.” The Bergier Commission was conservative when it wrote that this was “the primary aim” of the deals. What actually happened was that money was taken from dormant accounts of murdered Polish and Hungarian citizens and transferred to Swiss citizens to ameliorate the claims these citizens were raising against the Polish and Hungarian governments after their assets had been nationalized. And yet, “[t]he agreement[s] got no or very little publicity. It was therefore virtually impossible even for heirs living abroad to assert their claims.” Gerhard Weinberg, an eminent historian of the Nazi era, explained the deal with Poland as follows:

[I]n 1949 the Swiss government signed a secret agreement with the Communist government of Poland under which the Swiss government with the agreement of the regime in Warsaw located the accounts in Swiss financial institutions of those Polish citizens who had been murdered and who either had no heirs or whose heirs had been stonewalled. The proceeds of this looting operation were then paid over to Swiss citizens who had claims on Poland arising out of the nationalization and / or confiscation of their property in Communist Poland.

The deal with Hungary was similar in operation. While the “primary aim” of “favour[ing] Swiss interests” through these deals is clear, it is hard to imagine what secondary aim there could have been.

What is most striking about these secret agreements is that, as the Bergier Commission pointed out, “[s]urprisingly, it was now apparently possible to conduct an internal investigation so that a list of dormant accounts relating to these countries could be drawn up.” Indeed, “[n]either private property rights nor banking secrecy

had been a barrier to the release of these assets.” Dr. Weinberg explained: [A]ccounts which previously have been announced in diplomatic negotiations as either not existing or incapable of being located, and which have been withheld from the heirs either for those reasons or because the heirs cannot produce documents acceptable to the financial institutions, can suddenly be identified, their contents removed, and legal title to the assets transferred to Swiss citizens whose claims against Poland or Hungary might hinder future profitable Swiss trade with those countries. The United States opposed the agreement with Poland because “such an agreement would be inconsistent with the declarations previously made by Swiss officials regarding the disposition of heirless assets found in Switzerland.” But its opposition was to no avail. Again, the banks’ focus was on profits, and the deals went forward.⁸

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 18 of the Rules Governing the Claims Resolution Process (the “Rules”). Second, the Claimant has plausibly demonstrated that the Account Owner was her great-aunt, and that relationship justifies an Award. Third, the CRT has determined that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one custody account and one demand deposit account. The publication of the Press Office of the Polish Ministry of Finance, number 25, dated February 1998, indicates that the value of the custody account as of 23 January 1964 was SF 2,000.00 and the value of the demand deposit account as of that date was SF 493.82. In accordance with Article 31(1) of the Rules, the amount of the custody account is increased by an adjustment of SF 1,000.00, which reflects standardized bank fees charged to the custody account between 1945 and 1964. Consequently, the adjusted balance of the custody account is SF 3,000.00. Furthermore, also in accordance with Article 31(1) of the Rules, the amount of the demand deposit account is increased by an adjustment of SF 300.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1964. Consequently, the adjusted balance of the demand deposit account is SF 793.82. According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00 and the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amounts in these accounts shall be determined to be SF 13,000.00 and SF 2,140.00, respectively, the average values for those types of accounts. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 189,250.00.

⁸ *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 59, ___ (E.D.N.Y. 2004), *amended*, 319 F. Supp. 2d 301 (E.D.N.Y. June 1, 2004) (internal cites omitted).

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 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
6 May 2006