

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED]

in re Accounts of Frl. Lilli Adler

Claim Number: 004829/ES

Award Amount: 14,880.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Frl. Lilli Adler (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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her third cousin, Lilli Adler, who was born on 1 August 1926 in Berlin, Germany and who was never married. The Claimant stated that Lilli Adler’s father, [REDACTED], was born on 24 December 1892 in Budapest, Hungary, and lived in Berlin. The Claimant stated that Lili Adler’s mother, [REDACTED], was born on 13 May 1892 in Burg, Germany and lived in Berlin. According to the Claimant, Lilli Adler and both of her parents perished in the Holocaust. The Claimant believes that her third cousin’s parents opened an account on her behalf. The Claimant submitted a family book in which her mother entered the fate of all of her relatives after the Second World War.

The Claimant indicated that she was born on 22 June 1929 in Leipzig, Germany. The Claimant is representing her brother [REDACTED], now [REDACTED], who was born on 3 June 1924 in Leipzig. They both now reside in Haifa, Israel.

Information Available in the Bank Records

The bank records consist of a protocol for opening a safe deposit box account and printouts from the Bank's database. According to these records, the Account Owner was Ms. Lilli Adler who resided in Germany. The bank records indicate that the Account Owner held a safe deposit box account numbered 309, which was opened on 13 February 1939. The safe deposit box was frozen under the 1945 Swiss freeze of German assets on 21 March 1946. It was released from the freeze on 20 September 1951. The safe deposit box was forced open on 21 March 1946 by bank officials, without the presence of the Account Owner, who found there the following items:

- 1 golden powder tin
- 1 golden cigarette case
- 1 precious stone (probably a diamond)
- 280.00 Swiss Francs
- 1 large diamond brooch (possibly platinum)
- 1 small old diamond brooch (probably gold)

The bank records indicate that the 280.00 Swiss Francs were transferred into a blocked demand deposit account of the Account Owner Lilli Adler. There has been no account for the disposition of the remainder of these assets. The bank records do not show when the accounts at issue was closed, or to whom the proceeds were paid, nor do these records indicate the value of these accounts.

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 find these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945.

There is no evidence in the bank records that the Account Owner or her heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her third cousin's name, country of residence and marital status match published information about the Account Owner contained in the bank documents. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Lilli Adler, and indicates that her address was Berlin, Germany, which matches the information about the Account Owner provided by the Claimant. The database indicates that Lilli Adler was deported in 1943. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. Finally, the CRT notes that there are no other claims to the account of Lillie Adler. In support of

her claim, the Claimant submitted documents, including the family book including information about the Claimant and 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 and both of her parents perished in the Holocaust as noted above.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is the Account Owner's third cousin. Claimant submitted the family's book which lists all members of the family from 1823. There is no information to indicate that the Account Owner has other surviving heirs, apart from the Claimant and her brother.

The Issue of Who Received the Proceeds

Given that the Account Owner perished in the Holocaust, that the Account Owner was German with a German address recorded in the bank document, the Nazi campaign to confiscate the domestic and foreign assets of its Jewish nationals through enforcement of confiscatory legislation, that the Account Owner's safe deposit account was frozen and forced open in 1946 and not released until the freeze in 1951, and the applicability of Presumptions (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds and the safe deposit box were not paid to the Account Owner, or her heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules Governing the Claims Resolution Process. Second, the Claimant has plausibly demonstrated that the Account Owner was her third cousin, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

The bank records indicate that the Account Owner held a safe deposit box. 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

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

account being awarded. Based on the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a safe deposit box was 1,240.00 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 14,880.00 Swiss Francs.

Division of the Award

The claimant is representing her brother, [REDACTED], in these proceedings. According to Article 29 of the Rules, her brother is entitled to receive one half of any payment made to the Claimant.

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, however, because [REDACTED] is age 75 or older, he is entitled to receive 100% of the total award amount. Accordingly, the initial payment amount is 12,276.00 Swiss Francs, which is comprised of 100% of [REDACTED]’s portion of the award (7,440.00 Swiss Francs) and 65% of the Claimant’s portion of the award (4,836.00 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

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).