

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Christophe Brauer
acting on behalf of himself and Cecile Brauer, Sophie Brauer,
Catherine Brauer, and Jean Brauer

in re Account of Alfred Aftalion

Consolidated Claim Number: 219239/JT¹

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Christophe Brauer (the “Claimant”) to the account of Alfred Aftalion (the “Account Owner”) at 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 grandmother’s brother-in-law and his great-uncle by marriage, Alfred Aftalion, who was born on 29 November 1879 in Roustchouk, Bulgaria, and was married to Fryda Fareanu on 31 July 1925 in Paris, France. The Claimant stated that his great-uncle, who was Jewish, lived in Paris until 1926, and that he was a bank associate at several banks, including [REDACTED], [REDACTED], and [REDACTED], where he was the President. The Claimant further stated that his great-uncle’s assets in Germany were confiscated by the Nazi regime, and that in order to protect his businesses in France from being “aryanized,” he became a Spanish national. The Claimant stated that the Spanish Embassy in Paris succeeded in gaining administration over his affairs in France from the authorities in an effort to protect them. The Claimant further stated that, because his Spanish nationality did not offer him complete protection from the Nazis, his great-uncle tried to escape to Switzerland, but was arrested on a train between Lyon and Chambéry in France. The Claimant stated that his great-uncle was transferred to the Drancy concentration camp, and from there he was deported to Auschwitz-Birkenau on 7 March 1944 on convoy number 62. The Claimant further stated that his great-uncle died in Birkenau on 13 March 1944.

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 219239 and 221768. The CRT has determined that these claims are duplicate claims and is treating them under the Consolidated Claim Number 219239.

The Claimant submitted an official document authorized by a notary public on 11 March 1947 that indicates that his great-uncle named the Claimant's grandmother, Amanda Fareanu, as his heir. The Claimant's grandmother's heir was her son, the Claimant's father, Georges Brauer. The Claimant also provided an official document certified by a notary public on 6 November 1978 that indicates that his father's heirs were his wife Cecile Brauer, née Chaligné, and his four children: Jean, Catherine, Christophe and Sophie. The Claimant is representing himself, his mother, and his three siblings in this claim. The Claimant indicated that he was born in Angers, France on 16 February 1957.

Information Available in the Bank Record

The bank record consists of an extract from the Bank's ledger. According to this record, the Account Owner was Alfred Aftalion, of Paris, France. The bank record indicates that the Account Owner held an account of an unknown type.

The bank records do not show if or when the account at issue was closed, or to whom it was paid, and they do not indicate the value of this account. 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 this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His great-uncle's name matches the published name of the Account Owner. The city of residence of the Account Owner as provided by the Claimant--Paris--also matches 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 Alfred Aftalion, and indicates that his place of birth was Roustchouk, Bulgaria, which matches the information about the Account Owner provided by the Claimant. The database indicates a date of birth of 11 December 1879, which differs somewhat from the date provided by the Claimant (29 November 1879). Nevertheless, the CRT deems this record to be a substantial match. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

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 perished in the

Auschwitz-Birkenau concentration camp in 1944. The Claimant also submitted a number of documents, including correspondence by the Account Owner with Vichy officials attempting to forestall confiscation of his property and businesses, as well as documentation of his deportation to Auschwitz.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that he is the grandson of the Account Owner's sister-in-law and that he and his siblings are entitled to the assets of the Account Owner through a chain of wills.

The Issue of Who Received the Proceeds

Given that the Account Owner was killed by the Nazis while imprisoned in Birkenau in 1944, the persecution of French Jews and the Nazi enforcement of confiscatory legislation designed to obtain their assets, and the application of Presumptions (h) and (j) contained in Appendix A,² 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 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. Second, the Claimant has plausibly demonstrated that the Account Owner was the Claimant's great-uncle, 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 account.

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 of similar type or 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 an account of unknown type was 3,950.00 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 47,400.00 Swiss Francs.

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. However, in this case, Cecile Brauer is age 75 or older and is therefore entitled to 100% of her portion of the award.

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

Accordingly, the initial payment amount is 34,128.00 Swiss Francs, comprised of 100% of Cecile Brauer's portion of the award amount (9,480 Swiss Francs), and 65% of the other parties' portions of the award amount (24,648.00 Swiss Francs).

Division of the Award

The Claimant is representing his mother, Cecile Brauer, and siblings Sophie Brauer, Catherine Brauer, and Jean Brauer, in these proceedings. The CRT notes that the notary document of 6 November 1978 provided that the Claimant and his siblings are entitled to a one-quarter share each of their father's estate subject to Cecile Brauer's residual spousal rights. However, this document does not clearly define Cecile Brauer's spousal rights on its face. Therefore, the CRT applies Article 29(2)(a) of the Rules, which provides for distribution among any beneficiaries named in an inheritance document who have submitted a claim. Accordingly, the CRT concludes that Cecile Brauer, Sophie Brauer, Catherine Brauer and Jean Brauer are each entitled to one-fifth of the award to the Claimant.

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 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).