

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Giovanni Bass

in re Account of Eduard Bass

Claim Number: 200027/MBC¹

Award Amount: 312,000.00 Swiss Francs

This Certified Award is based upon the claim of Giovanni Bass (the “Claimant”) to the account of Eduard Bass (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 paternal grandfather, Eduard Bass, and the Power of Attorney Holder as his father, Franz Bass. According to the Claimant, his grandfather was born on 20 July 1861 in Hermanestec, Czechoslovakia, and was married to Alice Bass, née Hammerschlag, on 7 April 1895. The Claimant stated that his grandparents, who were Jewish, had two sons, Hans, who was born in 1897 and died in 1926, and Frantisek (Franz), who was born in 1900 in Prague.

The Claimant stated that his grandfather was a doctor and held the title “MUDr.” and that his father, Franz Bass, was a gynecologist. According to the Claimant, his grandfather lived at 1358-VII in Prague until 1941, when he was arrested by the Nazis and deported to Theresienstadt, where he perished in 1942. The Claimant stated that his father was also deported to Theresienstadt and witnessed his own father’s death there. The Claimant stated that his father survived the Second World War and died on 26 January 1962 in Prague. The Claimant stated that he is the son of Franz Bass and that he was born on 6 April 1934 in Prague.

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 215939 and 200027. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 200027.

Information Available in the Bank Records

The bank records consist of two power of attorney forms and several printouts from the Bank's database. According to one of the power of attorney forms, dated 20 November 1930, Dr. Eduard Bass held a custody account numbered 881 jointly with another account owner. Dr. Franz Bass held power of attorney over the account. The bank records indicate that the Dr. Eduard Bass was a district doctor ("*Distriktsarzt*") in Ketzelsdorf, Czechoslovakia and that Dr. Franz Bass resided in Prague.

The second power of attorney form, dated 8 February 1934, indicates that Dr. Eduard Bass was the sole owner of a custody account² and that Dr. Franz Bass held power of attorney over the account. This power of attorney form indicates that Dr. Eduard Bass resided at Sternberkove 1358 in Prague VII and that Dr. Franz Bass resided in Prague.

The bank records do not show if the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of the 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") did not find these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. The 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, the Power of Attorney Holder, or their 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. The names of his grandfather and father match the published names of the Account Owner and Power of Attorney Holder. The Claimant stated that both his grandfather and father were medical doctors, which matches unpublished information about the professions of the Account Owner and Power of Attorney holder contained in the bank documents. The Claimant also stated that his grandfather lived at 1358-VII in Prague, and this address substantially matches the unpublished address of the Account Owner contained in the bank records. In support of his claim, the Claimant submitted documents, including his birth certificate showing his parents' and grandparents' names and a detailed family genealogy.

² The bank records contain a power of attorney form that references a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the CRT concludes that it is plausible that she held such an account.

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 he perished in Theresienstadt. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named MUDr. Eduard Bass and indicates that his date of birth was 20 July 1861, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

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 the Account Owner is his grandfather and that the Power of Attorney Holder is his father.

The Issue of Who Received the Proceeds

In this case, the bank records do not provide any information regarding the date on which the accounts were closed, which raises the question as to whether or not the Account Owner or Power of Attorney Holder could have accessed the accounts during or after the War. The CRT notes that, in this case, the Account Owner was killed in the Holocaust and the Power of Attorney Holder, although he survived, was also detained in a concentration camp. Given these circumstances, the fact that it would have been extremely difficult and dangerous to access the accounts after the War from communist Czechoslovakia, the Swiss banks' practice of withholding and misstating account information in their responses to inquires by account owners and heirs, and the fact that there is no indication in the bank records that the Account Owner or his heirs received the proceeds of the accounts in this case, the CRT concludes that Presumptions (h), (i), and (j) contained in Appendix A² apply and it is therefore plausible that the account proceeds were not paid to the Account Owners or their 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.

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 his grandfather, 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.

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

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 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. The value of two custody accounts is therefore 26,000.00 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 312,000.00 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. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account values, and 65% of the total award amount is 202,800.00 Swiss Francs.

Division of the Award

The CRT notes that the account at issue was a joint account. However, the CRT has received no claim with respect to the unpublished joint account owner. Therefore, pursuant to Article 31(2) of the Rules, the Claimant is solely entitled to receive a payment in these proceedings.

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/her claim to determine whether there are additional Swiss bank accounts to which he/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.

Claim Resolution Tribunal
October 24, 2002

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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).