

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Gerhart Bendix
also acting on behalf of Günter Bendix and Monika Margarete Gomes

in re Account of Gertrud Bendix

Claim Number: 210988/ES¹

Award Amount: 216,000.00 Swiss Francs

This Certified Award is based upon the claim of Gerhart Bendix (the “Claimant”) to the account of Gertrud Bendix (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 father’s second wife, Gertrud Bendix, née Gurschke, who was born on 7 January 1902 in Berlin, Germany and was married to his father, Otto Bendix, on 24 August 1925. The Claimant stated that he and his brother and sister, whom he is representing, are the children of Otto Bendix and his first wife, Gertrude Bendix, née Stern, who was married to his father on 26 December 1911 in Innsbruck, Austria and was divorced from him on 24 July 1925.

The Claimant stated that his father and his second wife lived at Emserstrasse 19/20 in Berlin, Germany. The Claimant stated that his father was a wealthy man and that he inherited a linen factory named “*Julius Bendix Söhne*” located in Friedland, Kreis Waldenburg Germany. The Claimant explained that his father’s second wife was considered to be “Aryan” and that his father, who was Jewish, divorced her on 8 July 1941 in an effort to save her from being persecuted by the Nazis because she was married to a Jewish man. The Claimant stated that he

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 210988 and 210989. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 210988/ES.

believed that his father was the true owner of the account, and that he probably opened the account in his wife's name out of fear of persecution. The Claimant stated that his father was deported by the Nazis and perished in Theresienstadt on 8 January 1943.

In support of his claim, the Claimant submitted a list of his father's confiscated assets, among them the family's factory, the house at Emserstrasse 19/20 and a house in Friedland. The Claimant also submitted a letter from his father dated 12 October 1937 in which his father mentions the existence of a safe deposit box. The Claimant also submitted the divorce contract signed by his mother and father, in which Otto Bendix's children with Gertrude Bendix, née Stern, are named the sole heirs of his estate, should he not have children from another marriage. The Claimant also submitted documents indicating that he and his siblings are Otto Bendix's only children.

The Claimant stated that his father's second wife died in 1965 in Berlin and did not have any children. The Claimant indicated that he was born on 1 January 1913 in Berlin Germany. The Claimant is representing his brother, Günter Bendix, who was born on 21 March 1914 in Berlin, and his sister, Monika Gomes, née Bendix, who was born on 2 October 1918.

Information Available in the Bank Records

The bank records consist of a customer card, a list of German-domiciled custody accounts dated 31 January 1937, internal bank documents and correspondence, printouts from the Bank's database, and correspondence between the *Deutsche Bank und Disconto-Gesellschaft* (the "*Deutsche Bank*") and the Bank regarding foreign assets held in Switzerland by German citizens. According to these records, the Account Owner was Gertrud Bendix, née Gurschke, and the Power of Attorney Holder was Otto Bendix, the Account Owner's husband, who lived at Emserstrasse 19/20 in Berlin, Germany. The bank records indicate that the Account Owner held two custody accounts. One custody account, numbered 30287, was opened on 16 August 1928. Printouts from the Bank's database indicate that the second custody account was opened on 22 November 1930.

The internal bank documents and correspondence refer to the Seventh Implementation Order to the Law of Foreign Exchange Control of 19 November 1936 ("*Siebente Durchführungsverordnung zum Gesetz über die Devisenbewirtschaftung vom 19. November 1936*"). These foreign currency restriction measures mandated that German owners of foreign securities must deposit their securities at a German bank or, if in a bank outside Germany, into a German bank account there. According to the correspondence in the records, the original deadline for such transfers was 4 December 1936. The bank correspondence dated 16 February 1937 indicates that, in the period from the effective date of the Foreign Exchange Control Law until 31 January 1937, securities from 291 customer custody accounts in the amount of 6,266,760.00 Swiss Francs were transferred to various banks in Germany.

The bank records include a letter to the Bank's branch managers indicating that they are to charge customers a transaction fee for such transfers, in addition to the usual fees for custody accounts, ranging from one-half to one percent of the value of the securities, but no less than 5.00 Swiss Francs per transfer.

With regard to custody account numbered 30287, the records indicate that securities in the amount of 5,000.00 Swiss Francs were transferred from the account to the *Deutsche Bank* in Berlin on 7 December 1936. The records indicate that as a result of this transfer, the account was closed.

With regard to the second custody account, the bank records do not show when the account was closed or to whom it was paid, nor do these records 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. There is no indication in the bank records that the Account Owner closed the account and received the proceeds herself.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father’s second wife’s name matches the published name of the Account Owner, and his father’s name matches the published name of the Power of Attorney Holder. The Claimant identified the couples' address, which matches unpublished information about the Account Owner and the Power of Attorney Holder contained in the bank records. In support of his claim, the Claimant submitted documents, including a list of his father’s assets indicating that the father owned an apartment in Emserstrasse 19/20.

Status of the Account Owner as a Victim of Nazi Persecution

In this case, the Account Owner's husband was the Power of Attorney Holder and apparently opened the account in his wife's name to avoid Nazi persecution. The Claimant has made a plausible showing that his father, the apparent beneficial owner of the account, was a Victim of Nazi Persecution. The Claimant stated that the his father, who was Jewish, was killed in Theresienstadt on 8 January 1943.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner and the apparent beneficial owner of the account by submitting documents indicating that they were his father and his father's second wife. In support of his claim, the Claimant submitted a list of his father’s assets and the divorce contract between his father and his mother. There is no indication that the Account Owner has surviving heirs. There is no indication that the apparent beneficial owner of the account has surviving heirs other than the Claimant and his siblings, whom the Claimant represents.

The Issue of Who Received the Proceeds

With regard to custody account numbered 30287, the bank records indicate that the account was transferred to the Nazi-controlled *Deutsche Bank*.

With regard to the second custody account, given the application of Presumptions (f), (h) and (j) as provided in Article 28 (see Appendix A) of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs. Moreover, the CRT presumes that if one account of the Account Owner was paid to Nazis, other accounts of the same Account Owner were also paid to the Nazis. Based on its precedent and 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his father’s second wife and that his father was the beneficial owner of the account, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that, neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held two custody accounts. With regard to the custody account numbered 30287, the bank records indicate that the value of the account as of 7 December 1936 was 5,000.00 Swiss Francs. As for the second custody account, pursuant to Article 29 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 total for the two accounts is therefore 18,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 216,000.00 Swiss Francs.

Division of the Award

The Claimant is representing his brother and sister in these proceedings. According to the principles of distribution set forth in Article 23 of the Rules, they are each entitled to one-third of the award amount.

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 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
March 11, 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).