

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Hedwig Bendix

Claim Number: 207110/MG

Award Amount: 183,780.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Hedwig Bendix (the “Account Owner”) at 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 paternal aunt by marriage, Hedwig Bendix, née [REDACTED] who was born on 20 May 1895 in Berlin, Germany, and was married to [REDACTED], the brother of the Claimant’s father [REDACTED], in Berlin. According to the Claimant her aunt and uncle had a child, [REDACTED], the Claimant’s cousin, who was born on 5 July 1925. The Claimant stated that her aunt, who was Jewish, resided at Wollmanstr. 42/92 in Berlin, until she moved to Qualisch B/Trutnov (Trutenau), Czechoslovakia, where she resided with her husband and daughter. According to the Claimant her uncle owned a business named “*Julius Bendix & Söhne*” in Qualisch B/Trutnov. The Claimant stated that the Nazis deported her aunt together with her family, in 1941, to the Ghetto of Lodz, Poland, where there or in the concentration camp in Terezin, they were murdered. The Claimant stated that she is the only living heir of her aunt. The Claimant submitted a list of a transport of Jews from Prague, Czechoslovakia to Lodz, dated 21 October 1941, indicating the names of her aunt, her uncle and her cousin. The Claimant indicated that she was born on 7 February 1921 in Berlin.

Information Available in the Bank Records

The bank records consist of a customer card, correspondence between an Account Owner’s heir and the Bank, correspondence between a representative of that heir and the Bank,

correspondence between The National City Bank in New York, New York, United States of America and the Bank, and an internal note made by the Bank indicating that account proceeds were transferred to the Reichsbank. According to these records, the Account Owner was Hedwig Bendix, who resided in Qualish B/Trutnov, Czechoslovakia. The bank records indicate that the Account Owner held a demand deposit account and two accounts of unknown type. These records indicate that the demand deposit account was closed on 28 February 1939 and transferred, per request of a letter, dated 20 February 1939, via Berlin, to the Reichsbank. The amount in the demand deposit account on the day of its closure was 7,415.00 Swiss Francs. The accounts of unknown type were closed, one on 29 July 1939 and the second in 1945. The amounts in both accounts of unknown type on the dates of their closure are unknown. The bank records contain several letters: A letter, dated 23 November 1945, from [REDACTED] to the Bank, representing himself as the son of the Account Owner and inquiring about deposited assets held at the Bank by Hedwig Bendix or her husband, [REDACTED], the owner of “*Julius Bendix & Söhne*,” who had resided in Qualisch Trutnov, and emphasizing that they were both killed in a concentration camp during The Second World War. A reply letter dated 4 December 1945, from the Bank to [REDACTED] saying that the persons mentioned by him in his letter have no relations with the Bank. A letter to the bank dated 29 November 1945, from [REDACTED], an attorney in Zurich, and the representative of [REDACTED], inquired again about the accounts belonging to Hedwig and [REDACTED] at the Bank. A reply letter dated 7 December 1945, from the Bank to [REDACTED], this time admitting the existence of clients by the name of Hedwig and [REDACTED] Bendix, but informing him that the couple Hedwig and [REDACTED] Bendix no longer had any business relations with the Bank. Moreover, there is also a letter, dated 21 October 1947, from The National City Bank in New York to the Bank, inquiring, on behalf of their client, [REDACTED], about accounts belonging to his parents, Hedwig and [REDACTED] Bendix who were killed during The Second world War. Finally, there is a reply dated 5 November 1947, from the Bank to The National City Bank in New York stating, “*We are in receipt of your letter of October 21st 1947 and inform you, that actually in the name of [REDACTED] or Mrs. Hedwig Bendix no assets are deposited with our head-office*”.

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”) determined that the amount in the demand deposit account had been paid to the Nazi authorities. The bank records do not show when the two accounts of unknown type were closed, or to whom they were paid, nor do these records indicate the value of these accounts.

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

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her aunt’s name matches the published name of the Account Owner. The Claimant identified the exact place of residence,

Qualisch B/Trutnov, which matches unpublished information about the Account Owner's residence contained in the bank records, as only the word "Trutnov" was published. The Claimant identified her aunt's husband name, [REDACTED], and the name of his business, "*Julius Bendix & Söhne*", which matches unpublished information about the Account Owner's husband as indicated in the correspondence with the Bank. In support of her claim, the Claimant submitted a list dated 21 October 1941, of Jews transported from Prague, Czechoslovakia to Lodz, containing the names of her aunt, her uncle and her cousin.

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 the Nazis deported her to the ghetto in Lodz, where she was murdered, either there or in the concentration camp in Terezin.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner.

The Issue of Who Received the Proceeds

Given that the Account Owner was a German national, her probable death in the Lodz Ghetto, the Nazi campaign to confiscate the foreign and domestic assets of its Jewish nationals, and the application of Presumptions (e), (f), (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the two accounts of unknown type proceeds 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.

The bank records indicate the demand deposit account was paid to Nazi authorities.

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 her aunt by marriage, 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 one demand deposit account and two accounts of unknown type. Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case of the two accounts of unknown type, the average value of the same or a

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

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 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 an amount, calculating two accounts of unknown type, of 94,800.00 Swiss Francs.

The bank records indicate that the value of the demand deposit account, as of 28 February 1939, was 7,415.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an amount of 88,980.00 Swiss Francs. Consequently, the total award amount in this case, combining all three accounts, is 183,780.00 Swiss Francs.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive payment of 100% of the total award amount.

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).