

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
acting on behalf of herself and [REDACTED]

in re Account of Marguerite Beretz-Dreyfus and Joseph Beretz

Claim Numbers: 219815/MBC; 219816/MBC

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the published accounts of Marguerite Beretz-Dreyfus and Joseph Beretz (the “Account Owners”) at the Basel branch of [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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted two Claim Forms to the CRT identifying the Account Owners as her maternal grandparents, Joseph Beretz and Marguerite Beretz, née Dreyfus. The Claimant stated that her grandfather, who was born on 5 January 1867 in Hattstatt, France, and her grandmother, who was born on 7 March 1893 in Erstein, France, married on 6 April 1920 in Erstein. The Claimant further stated that her grandparents lived in Colmar, France, at Route de Rouffach 3 and Rue Neuf Brisach 55, until 1939 and took refuge in Neris, France, in 1942, where they were arrested by the Nazis on 12 May 1944 and deported to Auschwitz. The Claimant indicated that her grandparents were Jewish, that Joseph perished in Auschwitz on 4 June 1944, and that Marguerite was presumed to have also died in Auschwitz.

The Claimant stated that her grandparents had two daughters: [REDACTED], who was born on 5 July 1926 in Strasbourg, France, and was presumed to have died in Auschwitz, and [REDACTED], the Claimant’s mother, who was born on 2 May 1921 in Colmar, and died on 31 January 1990 in Paris, France. [REDACTED] married [REDACTED], who died in Paris, and they had two daughters: [REDACTED], the Claimant, and [REDACTED], [REDACTED]’s late mother. In support of her claim, the Claimant submitted copies of numerous documents, including her birth certificate, her mother’s death certificate, and a notarized document attesting that [REDACTED], née [REDACTED], was the sole heir of Joseph Beretz, Marguerite Beretz, née Dreyfuss, and their daughter, [REDACTED]. The Claimant also submitted an excerpt of a certificate from the French Foreign Ministry attesting that her grandfather Joseph Beretz was

declared “enemy of the people and of the Reich” by the Nazi occupation authorities, and that his assets were confiscated by such authorities. The Claimant was born in Paris on January 30, 1946.

Information Available in the Bank Records

The bank records consist of a printout from an electronic database, a power of attorney form and the account-opening contract. According to these records, the joint Account Owners were Joseph Beretz and Marguerite Beretz, née Dreyfus, who held a custody account and a demand deposit account, and resided in Colmar, Haut-Rhin, at 8 rue Brisach, as of 19 March 1931, when the accounts were opened. The bank records also show that, on 19 March 1931, the Account Owners gave a power of attorney for the accounts to [REDACTED].

The bank records do not show if or when the accounts at issue were closed, or to whom they 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 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 they found no evidence of activity on these accounts after 1945. There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

The CRT’s Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the “Rules”), claims to the same or related accounts may be joined in one proceeding at the discretion of the Claims Judges. In this case, the CRT determines it appropriate to join the Claimant’s claims in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her grandparent’s names and the name of the street where they resided in Colmar, France, until 1939 exactly match the unpublished information about the Account Owners contained in the bank records.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and that they perished in Auschwitz.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting her own birth certificate and her mother's death certificate. These documents demonstrate that the Account Owners were the Claimant's grandparents. There is no information to indicate that the Account Owners have surviving heirs other than the Claimant and her nephew, [REDACTED].

The Issue of Who Received the Proceeds

Based on its precedent and the Rules, the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.¹ The CRT concludes in the case of the demand deposit account that Presumptions (h) and (j) apply, and it is therefore plausible that the account proceeds were not paid to the Account Owner or his heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were her maternal grandparents and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

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, and the average value of a demand deposit account was 2,140.00 Swiss Francs, giving a total 1945 value of 15,140.00 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 181,680.00 Swiss Francs.

In cases where the value of an account is based on the presumptions of Article 35 of the Rules, or where the CRT has determined that an account may be subject to later competing valid claims, claimants shall receive an initial payment of 35% of the total award amount. In this case, the value of the accounts at issue is based on the Article 35 presumptions. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 65% of the total award amount. In this case, 35% of the total award amount is 63,588.00 Swiss Francs.

Division of the Award

The Claimant is representing her nephew in these proceedings. According to Article 29 of the Rules, [REDACTED] is entitled to receive one-half (1/2) of any payment made to the Claimant.

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

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 claims to determine whether there are additional Swiss bank accounts to which she and her nephew 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

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).