

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED]

in re Accounts of Paul and Ella Berlescu

Claim Number: 216570/LK, 216760/LK

Award Amount: 709,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Paul and Ella Berlescu (the “Account Owners”) at the Zurich branch of 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 Owners as his paternal grandfather’s brother and his wife, Paul A. Berlescu and Ella Berlescu, née [REDACTED], who were born in 1885 in Bucharest, Romania and in 1892 in Romania respectively, and who were married in 1913 in Bucharest. The Claimant stated that Paul Berlescu was a trademark and patent consultant and agent whose business was called *Ing. Marcus & Berlescu* and was located in the center of the city, at Piata St. Gheorghe 1 in Bucharest. The Claimant further stated that the childless couple, who were Jewish, lost their home and business in Bucharest during the Second World War as a result of anti-Jewish legislation. According to the Claimant, Paul Berlescu died in 1956 in Bucharest and Ella Berlescu, née [REDACTED], died in 1966 in Israel. The Claimant, who changed his surname from [REDACTED] to [REDACTED] in 1967, indicated that he was born on 8 March 1930 in Bucharest and that his brother, [REDACTED], whom he is representing, was born on 30 December 1925 in Bucharest.

Information Available in the Bank Records

The bank records consist of a registry card and printouts from the Bank’s database. According to these records, the Account Owner of the first account was Paul A. Berlescu, who held a safe deposit account, and the Account Owners of the second account were Paul and Ella Berlescu,

who held a custody account. The registry card identifies the number of the Account Owners' street address as 1, in the city of Bucharest; the street name is crossed out and unreadable. The safe deposit account, numbered 1821, was forcibly opened by the Bank and closed on 27 December 1939. The custody account, numbered 9593, was opened on 8 December 1937, and its balance on 27 December 1939 was 57,900.00 Swiss Francs. This custody account was transferred to a suspense account on 30 March 1948 and closed on 23 November 1961. The bank records do not show to whom the accounts at issue were paid or the value or opening date of the safe deposit account. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His grandfather's brother's name, his wife's name, and their city of residence match the published names and cities of the Account Owners. Additionally, the Claimant identified the street number of Paul Berlescu's business address and his middle initial, which matches unpublished information contained in the bank records. In support of his claim, the Claimant submitted documents, including a family tree, his and his brother's birth certificates, and certification of the Claimant's name change.

Status of the Account Owners as a Victim 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 their residence and business had been confiscated as a result of anti-Jewish legislation in Romania.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes people named Paul Berlescu and Ella Berlescu, née [REDACTED] of Bucharest, which matches the information about the Account Owners 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 Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners. He submitted copies of his and his brother's birth certificates.

The Issue of Who Received the Proceeds

Based on its precedent and the Rules Governing the Claims Resolution Process (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 this case that, given the persecution of Jews in Romania and the confiscation of

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

Jewish assets during the War, the Communist dictatorial regime after the War, and the application of Presumptions (a), (f), (h) and (j), it is plausible that the account proceeds were not paid to the Account Owners or their heirs. In fact, Account Owner Paul Berlescu died in 1956, before the custody account was closed, and after his wife, Account Owner Ella Berlescu, left Romania for Israel, it is plausible that she would have not been able to obtain information about the accounts from the Bank due to the Swiss banks' practice of withholding or misstating account information in response to inquiries by account owners.

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 Owners were his grandfather's brother and his wife, and those relationships justify 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 of the safe deposit account, 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 safe deposit account was 1,240.00 Swiss Francs. Additionally, the bank records indicate that the value of the custody account as of 27 December 1939 was 57,900.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic values by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case for the custody account and the safe deposit account is 709,680.00 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 35% of the Certified Award, and the claimant may receive a second payment of up to 65% 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 value of the safe deposit account and 35% of that award amount is 5,208.00 Swiss Francs. Consequently, the initial payment will be 700,008.00 Swiss Francs.

Division of the Award

The Claimant is representing his brother, [REDACTED] in these proceedings. According to Article 29 of the Rules, his brother is entitled to one half of any payment made 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

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).