

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Dr. Gerald Jayson
acting on behalf of himself and Edith Bown

in re Accounts of *Braunsberg & Co. AG*

Claim Number: 205864/MBC¹

Award Amount: 51,360.00 Swiss Francs

This Certified Award is based upon the claim of Dr. Gerald Jayson (the “Claimant”) to the accounts of *Braunsberg & Co. AG* (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 a company owned by his mother’s sister, Hertha Braunsberg, née Gutmann, who was born in Dessau, Germany, in 1886, and was married to Max Braunsberg. The Claimant further stated that Hertha and Max Braunsberg had two children: Hugo and Rosie, and that the Braunsberg family lived in Berlin, Germany in the 1930s. The Claimant asserted that his aunt and uncle owned a company named *Braunsberg & Co. AG*, which manufactured textiles. According to the information submitted by the Claimant and his sister, the company offices were located in Berlin and the factory was located near Leipzig, Germany. The Claimant stated that Max Braunsberg died in 1936, and that Hertha Braunsberg was the sole company owner thereafter. The Claimant further stated that his aunt, who was Jewish, was deported to the concentration camp in Auschwitz where she was killed by the Nazis in 1943, and her son Hugo was deported to a concentration camp in Nazi-occupied France, where he perished. The Claimant asserted that the daughter of Max and Hertha Braunsberg, Rosie, died childless in France in 1991.

In his Initial Questionnaire, the Claimant stated that the shop belonging to his parents, Wilhelm and Else Jacobowitz, née Gutmann, and other belongings were aryanized after the *Kristallnacht* (“the Night of Broken Glass”) and that his parents were arrested in March 1939 for transferring

¹ The Claimant has submitted an additional claim that is registered under the claim number 205862. The CRT will treat this claim in a separate decision.

money to Switzerland. The Claimant's parents were murdered in Auschwitz. In the Initial Questionnaire, the Claimant included a document in which he identified Hertha Braunsberg as his aunt. The Claimant stated that he was born on 18 November 1928 in Berlin and that his parents sent him and his sister with a *Kindertransport* ("children's transport") to the United Kingdom shortly after the *Kristallnacht*. The Claimant submitted his German passport issued on 19 June 1939 in Berlin stamped "J" for *Jude* ("Jew"). The Claimant is representing his sister Edith Gertrude Bown, née Jacobowitz, in these proceedings, who was born on 16 September 1924 in Berlin.

Information Available in the Bank Records

The bank records consist of bank statements, lists of dormant accounts, documents relating to the freeze of German assets in Switzerland in 1945 and printouts from the Bank's database. According to these records, the Account Owner was a company named *Braunsberg & Co. AG*, which was located in Berlin, Germany. The bank records indicate that the Account Owner held two demand deposit accounts.

The balance of the first account as of the date of the freeze of German assets on 17 February 1945 was 169.50 Swiss Francs. The account was released from the freeze in 1955, when the value was reported to be 96.00 after the deduction of bank fees. The balance of the second account, as of 1938 when the last date of contact is listed, was 69.00 Swiss Francs. This account was included on a 1959 list of dormant accounts prepared by the Zurich branch pursuant to an internal bank survey.

The bank records do not show when the accounts at issue were closed, or to whom they were paid. The auditors who carried out the investigation of the 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 these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. There is no evidence in the bank records that the Account Owner closed the accounts and received the proceeds itself.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant stated that his uncle and aunt, Max and Hertha Braunsberg, owned a textile manufacturing company named *Braunsberg & Co. AG* in Berlin, which matches the published information about the Account Owner.

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, which was a company, was wholly

owned by his aunt Hertha Braunsberg after 1936. The Claimant further stated that his aunt was Jewish, and that she was deported to the concentration camp in Auschwitz, where she perished.

The Claimant's Relationship to the Account Owner

According to the Article 29(3) of the Rules Governing the Claims Resolution Process (the "Rules"), if the account owner is a legal entity, the award shall be made in favor of those claimants who establish a right of ownership to the assets of the entity. The Claimant has plausibly demonstrated that he and his sister are related to Hertha Braunsberg, who was the sole owner of the company. The Claimant further stated that the children of Hertha Braunsberg died without issue, and there is no information to indicate that other persons would be entitled to the assets of the company.

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.² The CRT concludes in this case that Presumptions (h) and (j) apply, and it is therefore plausible that the account proceeds were not paid to the Account Owner.

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 he and his sister would be entitled to the assets of the company. Finally, the CRT has determined that it is plausible that neither the Account Owner nor other authorized party received the proceeds of the claimed accounts.

Amount of the Award

The bank records indicate that the value of the first demand deposit account as of 17 February 1945 was 169.50 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 40.00 Swiss Francs, which reflects hold mail fees and standardized bank fees charged to the account in January and February 1945. Consequently, the adjusted balance of the account at issue is 209.50 Swiss Francs. The bank records indicate that the value of the second demand deposit account as of 1938 was 69.00 Swiss Francs. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. Consequently, the total historic value for the two accounts is 4,280.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 51,360.00 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

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

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 and 35% of the total award amount is 17,976.00 Swiss Francs.

Division of the Award

The Claimant is representing his sister in these proceedings. According to Article 29 of the Rules, his sister is entitled to receive 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 or his sister 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).