

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
and to Claimants [REDACTED 2] and [REDACTED 3], both represented by Claimant
[REDACTED 1]

in re Account of Julius Dembitz

Claim Numbers: 218030/MBC; 218031/MBC; 218035/MBC

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claims of Claimants [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) (collectively, the “Claimants”) to the account of Julius Dembitz (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 Claimants

The Claimants each submitted a Claim Form stating that the Account Owner was their relative, Julius Dembitz. Claimants [REDACTED 2] and [REDACTED 3] identified themselves as two of Julius Dembitz’s three children, whereas Claimant [REDACTED 1] identified herself as the granddaughter of his third child, [REDACTED]. The Claimants identified Julius Dembitz as an engineer and a shareholder in the Hungarian electric company, who was born on 9 October 1873 in Budapest, Hungary, and resided in Budapest from 1928 onwards. The Claimants stated that Julius Dembitz was married to Ilona Dembitz, née Berliner, with whom he had three children: [REDACTED], [REDACTED 2] (Claimant [REDACTED 2]), who was born 23 December 1910, and [REDACTED 3] (Claimant [REDACTED 3]), who was born 26 March 1914. The Claimants stated that [REDACTED] had two daughters, [REDACTED] and [REDACTED], both of whom are now deceased, and that Claimant [REDACTED 1], who was born on 30 April 1959, is [REDACTED]’s only grandchild.

The Claimants finally stated that Julius Dembitz was Jewish and that, between 1944 and 1945, he was forced to live in Jewish designated houses and later forced into a ghetto. According to

the Claimants' submissions, Julius Dembitz survived the war, and passed away in 1951 in Hungary.

In support of their claims, the Claimants submitted, among other things, birth and marriage certificates demonstrating that Claimants [REDACTED 2]'s and [REDACTED 3]'s parents and Claimant [REDACTED 1]'s great-grandparents were Julius (Gyula) and Ilona Dembitz.

Information Available in the Bank Records

The bank records consist of papers prepared by the Bank in connection with surveys of dormant accounts in the 1950s and 1960s, and extracts from the Bank's databases. According to these records, the sole Account Owner was Julius Dembitz, Ing., who lived in Budapest, and a power of attorney was granted to Ilona Dembitz (the "Power of Attorney Holder"). The bank records do not indicate the type of account held by the Account Owner. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The bank records disclose that the account was opened in 1928, and labeled as closed in 1973. According to the bank records, the balance of the account was 117.00 Swiss Francs in 1959, and 93.50 Swiss Francs on 15 November 1963. The bank records indicate that the last contact with the Account Owner was in 1939. The bank records do not indicate when exactly the account was closed, or who received the proceeds of the account.

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 CRT's discretion. In this case, the CRT determines it appropriate to join the Claimants' claims in one proceeding.

Identification of the Account Owner

The Claimants have provided plausible evidence that the Account Owner was their relative Julius Dembitz. Specifically, the Claimants' relative's name and place of residence match the published name and place of residence of the Account Owner. In addition, the Claimants stated that their relative was an engineer, which matches unpublished information about the Account Owner contained in the bank documents. Finally, the name of the Claimants' relative's wife matches that of the Power of Attorney Holder. The CRT therefore determines that it is plausible that the Claimants' relative and the Account Owner were the same person.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have provided plausible evidence that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and living in Hungary

during the Second World War. In addition, between 1944 and 1945 the Account Owner was forced to live in Jewish designated houses and later forced into a ghetto.

The Claimants' Relationship to the Account Owner

The Claimants have provided plausible evidence that they are the Account Owner's descendants. Claimants [REDACTED 2] and [REDACTED 3] submitted copies of their own birth certificates, which show that they are the Account Owner's daughters. Claimant [REDACTED 1] submitted copies of birth and marriage certificates demonstrating that she is the granddaughter of the Account Owner's son. In addition, the Claimants indicated that they are the Account Owner's only living descendants.

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 this case that Presumptions (b), (c), (h), (i) and (j) apply and it is therefore plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder or their heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claimed account belonged to a Victim of Nazi Persecution. Second, the Claimants have plausibly demonstrated that the Account Owner was, in relation to Claimants [REDACTED 2] and [REDACTED 3], their father, and in relation to Claimant [REDACTED 3], her great-grandfather. These relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

The bank records indicate that the value of the account as of 1959 was 117.00 Swiss Francs. In accordance with Article 37(1) of the Rules, this amount is increased by an adjustment of 225.00 Swiss Francs, which reflects standardized bank fees charged to the account between 1945 and 1959, giving an adjusted 1945 balance of 342.00 Swiss Francs. According to Article 35 of the Rules, if the amount in an account of an unknown type was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 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 47,400.00 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

¹ 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 16,590.00 Swiss Francs.

Division of the Award

According to Article 29 of the Rules, Claimants [REDACTED 1], [REDACTED 2] and [REDACTED 3] are each entitled to receive one third of this Award.

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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).