

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of Aleksander Diamand

Claim Number: 203511/AA; 203512/AA; 221583/AA; 600186/AA¹

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) to the account of Aleksander Diamand (the “Account Owner”) 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 Claimants

Claimant [REDACTED 1] submitted a claim to the Holocaust Claims Processing Office (the “HCPO”), two claims to the CRT, and an Initial Questionnaire to the Court identifying the Account Owner as her father, Aleksander Samuel Diamand. Claimant [REDACTED 2] submitted a claim to the CRT identifying the Account Owner as her grandfather, Aleksander Diamand. According to the Claimants, Aleksander Diamand was born in 1874 and was married to [REDACTED], née [REDACTED]. Aleksander and [REDACTED] Diamand had three children: [REDACTED], who was born on 20 November 1910 in Lwow, Poland and died on 15 March 1968 in England; [REDACTED], who was born on 20 February 1912 in Lwow and died on 11 July 1988 in Sweden and is the mother of Claimant [REDACTED 2]; and [REDACTED 1] (Claimant [REDACTED 1]) who was born on 26 August 1914 in Vienna, Austria. The Claimants stated that Aleksander and [REDACTED] Diamand, who were Jewish, lived at 66 Kochanowskiego Street in Lwow before the Second World War. According to the Claimants, Aleksander Diamand remained in Poland during the Second World War and was killed there in August 1942. Claimant [REDACTED 1] recalled that her father deposited money in a Swiss bank before the War, and she stated that he probably opened accounts on behalf of his three children. According to the Claimants, Aleksander Diamand received correspondence from the

¹ Claimant [REDACTED 1] submitted a claim numbered B-00943 on 4 May 1998 to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600186.

Bank that was addressed to his three children. The Claimants stated that their relatives who survived the Second World War confirmed the existence of the accounts.

Claimant [REDACTED 1] stated that, after the Second World War, she and her siblings tried to locate accounts belonging to their father that could have been opened in their names. In 1967, Claimant [REDACTED 1]'s brother [REDACTED] tried to search for their father's accounts, and in 1984, Claimant [REDACTED 1] and her sister [REDACTED] contacted the Swiss Federal Banking Commission inquiring about the existence of these accounts, and were told to contact the Bank.² They were unsuccessful in their attempts to locate the accounts at the Bank. Two years later, in 1986, Claimant [REDACTED 1]'s son, [REDACTED] went to the Bank's branches in Zurich and in Bern, searching for the accounts, and he hired a law firm to help him look for the accounts, but he was also unsuccessful.

In support of their claims, the Claimants submitted their birth certificates and affidavits regarding the fate and circumstances of their relative during the Second World War. Claimant [REDACTED 2] indicated that she was born on 6 September 1948 in Warsaw.

Information Available in the Bank Records

The bank records consist of correspondence dated December 7, 2000 between the Bank and the HCPO and correspondence dated 1967 between the Bank and Claimant [REDACTED 1]'s brother. According to these records, the Account Owner was Aleksander Diamand of Lwow, Poland. The bank records indicate that the Account Owner held an unknown type of account, numbered 11294, which was opened on 12 July 1933.

The bank records do not show when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 claims of the Claimants in one proceeding.

² The Bank became a part of the [REDACTED] ("[REDACTED]") in 1945. Thus, in this Award, any references to the Bank after 1945 should be considered to be references to [REDACTED].

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The name and city and country of residence of their relative match the unpublished information about the Account Owner contained in the bank records.

The CRT notes that Claimant [REDACTED 1]'s brother contacted the Bank in 1967 and Claimant [REDACTED 1] and her sister [REDACTED] contacted the Bank in 1984, and Claimant [REDACTED 1] filed an HCPO claim form in May 1998 and an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Aleksander Diamand. However, it was not until December 2000, in response to inquiries from the HCPO, that the Bank provided documentary proof of the account's existence. This indicates that Claimant [REDACTED 1] based her present claim on knowledge that predated the Bank's production of account documents, which supports the credibility of the information she provided.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and was killed in Poland during the Second World War.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Aleksander Diamand. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimants' Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is the daughter of the Account Owner. These documents include her birth certificate, and affidavits about her family. Claimant [REDACTED 2] has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is the granddaughter of the Account Owner. These documents include her birth certificate, and affidavits about her family. According to the information provided by Claimant [REDACTED 2], the Account Owner is also survived by Claimant [REDACTED 2]'s brother, [REDACTED]. The CRT notes that it has not received a claim from [REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given the application of Presumptions (e), (h), and (j) as provided in Article 28 (see Appendix A) of the Rules, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs. Based on its precedent and 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.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was Claimant [REDACTED 1]'s father and Claimant [REDACTED 2]'s grandfather, and those 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

In this case, the Account Owner held one account of unknown type and value. Pursuant to Article 29 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 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 31(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

Division of the Award

According to the principles of distribution set forth in Article 23 of the Rules, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Accordingly, Claimant [REDACTED 1], who is the Account Owner's daughter, is entitled to one-half of the award amount, and Claimant [REDACTED 2], who is the daughter of the Account Owner's daughter [REDACTED], is entitled to one-half of the award amount. The CRT notes that Claimant [REDACTED 2] has indicated that she has a brother, who would be entitled to share her portion of the award. However, the CRT has not received a claim from her brother to this account. According to Article 24 of the Rules, as a general rule, the rights of individuals to an account who have not submitted claims to the CRT will not be considered.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 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
March 11, 2003

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).