

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Mireille Deseuzes, Lucile Dupuis, and Marie-Christine Ponthus
represented by Denis Delcros

in re Accounts of Paul Simon Dreyfus, Gabrielle Dreyfus and Mathieu Dreyfus

Claim Numbers: 221914/JT; 221915/JT; 221916/JT; 221917/JT; 221918/JT; 221919/JT

Award Amount: 353,520.00 Swiss Francs

This Certified Award is based upon the claim of Mireille Deseuzes (“Claimant Deseuzes”), Lucile Dupuis (“Claimant Dupuis”), and Marie-Christine Ponthus (“Claimant Ponthus”), (together the “Claimants”), to the accounts of Paul Simon Dreyfus and Gabrielle Dreyfus, née Berr (“Account Owners Paul and Gabrielle Dreyfus”) and the account of Mathieu Dreyfus (“Account Owner Mathieu Dreyfus”) at the Basel 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 Claimants

The Claimants submitted Claim Forms identifying Account Owners Paul and Gabrielle Dreyfus, née Berr as their grandparents, who were born on 26 December 1896 in Mulhouse, France and on 11 June 1880 in Oran, Algeria, respectively. The Claimants indicated that their grandparents were married on 24 September 1902 in Belfort, France and that they had two children, Roger Albert Dreyfus, later known as Roger Dupuis, who was the father of Claimants Lucile Dupuis and Mireille Deseuzes and was born on 23 September 1904 and died on 17 May 1993, and Jacqueline Marcelle Amar, née Dreyfus, who was the mother of Claimant Marie-Christine Ponthus and was born on 28 August 1913 and died on 25 June 2000. The Claimants stated that their grandfather, a cotton manufacturer and merchant, and their grandmother, a homemaker, were Jewish and that they lived at 5 rue Henri de Bornier, and later at 37 rue des Mathurins, in Paris, France. The Claimants further stated that at the beginning of the Second World War, their grandparents, along with daughter Jacqueline, found refuge in Avignon, France with Paul’s brother, Henri Dreyfus. The Claimants indicated that Henri Dreyfus was taken prisoner by the Nazis, at which time their grandparents left Avignon for a small village in the Rhône region of France. The Claimants stated that their great-uncle was imprisoned in l’Offlag 2B in Stettin (Szczecin), Poland, for the duration of the War, returning to Paris in April 1945. The Claimants further stated that their grandparents returned to Paris to live with relatives after the War. The

Claimants stated that their grandfather died on 6 December 1958 in Paris, and their grandmother died on 2 March 1973, also in Paris. Claimant Deseuzes indicated that she was born on 19 June 1947 in Paris, France. Claimant Dupuis indicated that she was born on 23 January 1946, and Claimant Ponthus indicated that she was born on 24 December 1945. Claimants Deseuzes and Dupuis are sisters and are the first cousins of Claimant Ponthus.

Information Available in the Bank Records

The bank records consist of customer-opening cards and printouts from the Bank's database. According to these records, Account Owners Paul and Gabrielle Dreyfus, who lived at 37 rue des Mathurins and later at 5 rue Henri de Bornier, held six accounts; one custody account, four demand deposit accounts, and one account of unknown type. The bank records indicate that there was an additional account of unknown type held by Mathieu Dreyfus. The records also indicate that Mathieu Dreyfus was the uncle of Paul Simon Dreyfus.

According to the bank records, the custody account, numbered 30111 was opened on 23 November 1923 and was closed on 8 February 1933. The account was then reopened on 26 April 1935 and was closed on an unknown date, unknown by whom. The amount in the account on the date of its closure is unknown.

Of the four demand deposit accounts, two consisted of pounds sterling, one contained both French and Swiss Francs, and one held United States dollars. The two pound sterling accounts were opened on 8 February 1936 and 7 May 1936, respectively. The account containing French and Swiss Francs was opened on 14 January 1936 and the account holding United States dollars was opened on 12 January 1937. All four demand deposit accounts were closed on unknown dates, unknown by whom. The amount in the accounts on the dates of their closure is also unknown.

The account of unknown type held by Account Owners Paul and Gabrielle Dreyfus was opened on 23 November 1923 and was later closed on an unknown date, unknown by whom. The amount in the account on the date of its closure is also unknown. The account of unknown type held by Account Owner Mathieu Dreyfus, numbered 4453, was opened on an unknown date. The account was closed on an unknown date, unknown by whom. The amount in the account on the date of its closure is also unknown.

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 ("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. These auditors indicated that there was 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 accounts 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 CRT's discretion. In this case, the CRT determines it appropriate to join the six claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owners. Their grandparents' names match the published names of Account Owners Paul Simon Dreyfus and Gabrielle Dreyfus, née Berr. The Claimants identified their grandparents' addresses in Paris and their marital relationship, which matches unpublished information about the Account Owners contained in the bank records. In support of their claim, the Claimant submitted documents, including their grandparents' marriage and death certificates and the death certificates of Roger Albert Dupuis and Jacqueline Marcelle Amar, née Dreyfus, the Account Owners' children.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners were Jewish and lived in France during the Second World War.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to Account Owners Paul and Gabrielle Dreyfus by submitting documents demonstrating that they are their granddaughters. The Claimants are therefore the great-nieces of Account Owner Mathieu Dreyfus, the brother of their grandfather Paul Dreyfus. There is no information to indicate that the Account Owners have other surviving heirs.

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 In this case, the Account Owners survived the War and returned to Paris afterward, raising the question of whether they were able to receive the proceeds of their accounts. Given the program of confiscation followed by the Nazis in Occupied France, the adoption of Nazi-style confiscation laws in Vichy France, the fact that Account Owners Paul and Gabrielle Dreyfus were in flight throughout the Second World War, and the application of Presumptions (h) and (j), the CRT concludes that it is plausible that the account proceeds were confiscated by the authorities during this period and were not paid to the Account Owners or their heirs.

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

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 23 of the Rules Governing the Claims Resolution Process (the "Rules"). Second, the Claimants have plausibly demonstrated that the Account Owners were their grandparents and great-uncle, 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 here with all seven accounts, 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, the average value of a demand deposit account was 2,140.00 Swiss Francs, and the value of an account of unknown type was 3,950.00 Swiss Francs. The present value of these amounts are calculated by multiplying them by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 353,520.00 Swiss Francs for one custody account, four demand deposit accounts and two accounts of unknown type.

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 65% of the Certified Award, and the claimant may receive a second payment of up to 35% 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 values and 65% of the total award amount is 229,788.00 Swiss Francs.

Division of the Award

Regarding the account of unknown type held by Account Owner Mathieu Dreyfus, Article 29(d) of the Rules states that if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the Award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. Accordingly, each of the Claimants is entitled to one-third of that portion of the Award amount attributable to Account Owner Mathieu Dreyfus' account. Each Claimant will therefore receive 15,800.00 Swiss Francs, which is one-third of the 47,400.00 Swiss Franc value of the account of Mathieu Dreyfus.

Regarding the remainder of the accounts, which were held by Account Owners Gabrielle and Paul Dreyfus, according to Article 29(c) of the Rules, where the spouse of an Account Owner has not submitted a claim, descendants of the Account Owner who have submitted a claim are entitled to equal shares of the Award by representation. Thus, Claimant Ponthus will receive a one-half share and Claimants Dupuis and Deseuzes will each receive a one-quarter share of that portion of the Award amount attributable to accounts held by Account Owners Paul and Gabrielle Dreyfus. Therefore, Claimants Dupuis and Deseuzes will each receive 76,530.00 Swiss Francs,

and Claimant Ponthus will receive 153,060.00 Swiss Francs, with respect to the accounts held by Account Owners Paul and Gabrielle Dreyfus.

The Claimants will therefore receive the following total amounts:

- Claimant Deseuzes: 92,330.00 Swiss Francs
- Claimant Dupuis: 92,330.00 Swiss Francs
- Claimant Ponthus: 168,860.00 Swiss Francs.

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
October 3, 2002

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).