

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
acting on behalf of herself and [REDACTED]

to Claimant [REDACTED 2]
acting on behalf of himself, [REDACTED] and [REDACTED]

in re Account of Helene Flesch

Claim Number: 216019/MO¹; 217675/MO

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the account of Helene Flesch and upon the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together, the “Claimants”) to the account of [REDACTED]. This Award is to the account of Helene Flesch (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

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her grandmother, Helene Sara Flesch, née [REDACTED], who was born to [REDACTED] and to [REDACTED] on 5 December 1884 in Vienna, Austria. Claimant [REDACTED 1] indicated that her grandmother was married to [REDACTED] on 10 October 1905. Claimant [REDACTED 1] further asserted that Helene and [REDACTED] Flesch had two children, [REDACTED], born in Vienna on 27 September 1907, and [REDACTED], born in Vienna on 8 May 1911. Furthermore, Claimant [REDACTED 1] indicated that the family resided in Vorlaufstrasse 4, Vienna from 1911 to 1934, in which year the Account Owner’s spouse died. According to Claimant [REDACTED 1], the Account Owner, who was a professional designer of crochet patterns, resided in Heinrichgasse 4, Vienna from

¹ Claimant [REDACTED 2] submitted two Claim Forms, which were registered under the Claim Numbers 216019 and 220024. The CRT has determined that these claims are duplicate claims and is treating them under the Consolidated Claim Number 216019. Furthermore, Claimant [REDACTED 2] has submitted three additional claims that are registered under the claim numbers 220023, 220025, and 220026. The CRT will treat these claims in separate decisions.

1938 to 1939, at which time she immigrated to the United States. Claimant [REDACTED 1] stated that her grandmother died in Elmhurst, New York on 7 November 1967 and that her father passed away on 5 October 1986. She indicated that she was born on 23 July 1951 in Dobbs Ferry, New York, and that her sister, [REDACTED], née [REDACTED], whom she represents in these proceedings, was born on 7 March 1957 also in Dobbs Ferry. In support of her claim, Claimant [REDACTED 1] submitted documents, including copies of her grandmother's birth certificate, marriage certificate, immigration papers, and death certificate.

Claimant [REDACTED 2] submitted two Claim Forms identifying the Account Owner as his maternal great aunt, Helene Flesch, née [REDACTED]. Claimant [REDACTED 2] indicated that his great aunt was the sister of his maternal grandfather, [REDACTED]. He further indicated that she was married [REDACTED] and that she had two children, [REDACTED] and [REDACTED]. He also stated that his great aunt was the daughter of [REDACTED] and [REDACTED]. Claimant [REDACTED 2] stated that he was born in New York, New York, the United States on 19 June 1957, and that he is representing his sister, [REDACTED], who was born in New York on 12 August 1954, and his father [REDACTED], who was born in New York on 6 November 1923.

Information Available in the Bank Records

The bank records consist of an account card. According to these records, the Account Owner was Helene Flesch (married name) from Vienna. The account card indicates that the Account Owner owned two demand deposit accounts and two custody accounts. The demand deposit accounts were closed on 10 February 1933, and 10 September 1938, and the custody accounts were closed on 7 February 1933 and 29 August 1938. The bank records do not show to whom the accounts in question were paid, nor do these records indicate the value of these accounts. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Helene Flesch, née [REDACTED], numbered 19765. These records show that Helene Flesch was born on 5 December 1884, that in 1939 she resided at Börsegasse 1/8 in Vienna I, and that she previously resided at Stübenbastei 10 in Vienna I and Heinrichsgasse 4 in Vienna I. The records state further that she was assessed a "Jewish Assets Tax" (*Judenvermögensabgabe*) of 79,374.00 Reichsmarks and a so-called "Flight Tax" (*Reichfluchtsteuer*) of 18,043.00 Reichsmarks. The records also show that Helene Flesch owned bonds valued at approximately 39,166.00 Reichsmarks and a savings account at an unknown bank.

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 claims of Claimant [REDACTED 1] and Claimant [REDACTED 2] in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their relative's name matches the published name of the Account Owner. Claimant [REDACTED 1] identified her grandmother's city of residence, which matches published information about the Account Owner contained in the bank records. Furthermore, Claimant [REDACTED 1] provided her relative's street address of Heinrichsgasse 4 which matches information about the Account Owner contained in the Austrian State Archives. Finally, the CRT notes that one other claim to this account was disconfirmed. In support of her claim, Claimant [REDACTED 1] submitted documents, including copies of her grandmother's birth certificate, marriage certificate, immigration papers, and death certificate.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 1] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. She stated that the Account Owner was Jewish and indicated that her grandmother fled from Austria in 1939, after the annexation of Austria to the Nazi Reich.

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 the Account Owner was the mother of her father. In support of her claim, Claimant [REDACTED 1] submitted copies of her and her father's birth certificates. Claimant [REDACTED 2] has plausibly demonstrated that he is related to the Account Owner.

According to the principles of distribution set forth in Article 29 of the Rules, the direct descendants of the Account Owner who have submitted claims to the account have priority over the other descendants of the Account Owner's parents. Therefore, Claimant [REDACTED 1], who is the grandchild of the Account Owner and thus her direct descendant, has a better entitlement to the account than Claimant [REDACTED 2], who is the great-niece of the Account Owner. Therefore, the claim of Claimant [REDACTED 2] is denied.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, within the same year, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks.

With respect to the accounts closed in 1938, given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and given the application

of Presumptions (a)(ii) and (j) contained in Appendix A² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her 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.

With respect to the accounts closed in 1933, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner or her heirs received the proceeds of these accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was her grandmother, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

The bank records indicate that the Account Owner held a demand deposit account closed 10 September 1938 and a custody account closed 29 August 1938. Pursuant to Article 35 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 a demand deposit account was 2,140.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs. The present value of these amounts is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an award amount of 25,680.00 Swiss Francs with respect to the demand deposit account and an award amount of 156,000.00 Swiss Francs with respect to the custody account. Consequently, the total award amount is 181,680.00 Swiss Francs.

Division of the Award

Claimant [REDACTED 1] is representing her sister in these proceedings. According to Article 29 of the Rules, her sister receives one-half of any payment made to Claimant [REDACTED 1].

Initial Payment

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 accounts values and 65% of the total award amount is 118,092.00 Swiss Francs.

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

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

December 31, 2002

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).