

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and

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

in re Account of Milan Freund

Claim Number: 216244/IG; 222958/IG¹

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) to the account of Milan Freund and upon the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) to the account of [REDACTED].² This Award is to the account of Milan Freund (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case Claimant Freund has, 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 his father, Milan Otmar Freund, who was born on 24 July 1910 in Zagreb, Croatia, Yugoslavia, and the Power of Attorney Holder as his mother, Gertrude (Trude) Esther Freund (now known as Trude [REDACTED]), née [REDACTED], who was born on 13 October 1911. Claimant [REDACTED 1] stated that his parents were married on 3 January 1937 in Zagreb, and that they honeymooned in Arosa, Switzerland and often went on ski vacations in Switzerland. Claimant Freund indicated that his parents, who were Jewish, lived in Zagreb until 1940, when they fled to

¹ Claimant [REDACTED 2] submitted three additional claims to the accounts of [REDACTED], [REDACTED], and [REDACTED], which are registered under the Claim Numbers 222955, 222956, and 222957, respectively. The CRT will treat the claims to these accounts in a separate decision.

² The CRT will treat the claim to this account in a separate decision.

the United States. The rest of his family members, who stayed in Zagreb, were murdered by the Nazis. Claimant [REDACTED 1] stated that his father was a stationery manufacturer and that he died on 16 April 1956 in New York, New York, the United States. Claimant [REDACTED 1] indicated that he was born on 28 September 1937 in Zagreb and submitted his own passport in support of his claim.

Claimant [REDACTED 1] previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his maternal grandfather, [REDACTED], who was killed in Auschwitz.

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as his maternal uncle, Milan Freund, and the Power of Attorney Holder as his uncle's wife, Gertrude (Trude) [REDACTED], née [REDACTED], whom he is representing. Claimant [REDACTED 2] submitted a sample of his aunt's signature.

Claimant [REDACTED 2] indicated that he was born on 27 February 1925 in Zagreb. Claimant [REDACTED 2] is representing the following individuals: [REDACTED], his mother, who was born on 13 August 1908 in Zagreb; [REDACTED], his maternal cousin, who was born on 20 April 1940 in Tel-Aviv, Palestine; [REDACTED], his brother, who was born 19 February 1929 in Zagreb; [REDACTED], née [REDACTED], his aunt, who was born on 13 October 1911 in Budapest, Hungary; and Claimant [REDACTED 1].

Represented party [REDACTED] previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by [REDACTED].

Information Available in the Bank Records

The bank records consist of a power of attorney form, dated 16 June 1938 in Basel, and a form directing correspondence, dated 22 February 1938 in Basel. According to these records, the Account Owner was Milan Freund and the Power of Attorney Holder was Gertrude (Trude) Freund, who both resided in Zagreb, Yugoslavia. The bank records indicate that the Account Owner held a custody account numbered 41634. 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.

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 this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, or their heirs closed the account 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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner and the Power of Attorney Holder. The names of Claimant [REDACTED 1]'s parents match the published names of the Account Owner and the Power of Attorney Holder. Claimant [REDACTED 1] identified his parents' city of residence, which matches published information about the Account Owner and the Power of Attorney Holder contained in the bank records. The Claimants also identified the variation of Power of Attorney Holder's first name, Trude, which matches the unpublished signature contained in the bank records. The CRT notes that there are no other claimants to this account. Finally, Claimant [REDACTED 2] submitted a sample of his aunt's signature, which matches the signature sample contained in the bank records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner and the Power of Attorney Holder were Victims of Nazi Persecution. The Claimants stated that the Account Owner and the Power of Attorney Holder were Jewish, and that they had to flee Yugoslavia in 1940.

The Claimants' Relationship to the Account Owner

Claimant [REDACTED 2] has plausibly demonstrated that he is related to the Account Owner by stating that he was his maternal uncle. Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owner and the Power of Attorney Holder by stating that they were his parents. The Claimants have also plausibly demonstrated that represented party [REDACTED] is related to the Account Owner by stating that he was her husband. There is no information to indicate that the Account Owner has other surviving heirs.

According to the principles of distribution set forth in Article 29 of the Rules, the spouse and the direct descendants of the Account Owner, who have submitted claims to the account, are entitled to the award in equal shares by representation. Therefore, represented party [REDACTED], who is the spouse of the Account Owner, and Claimant [REDACTED 1], who is his child, are entitled to share the entire award amount. Claimant [REDACTED] 2, who is the nephew of Account Owner, and represented parties [REDACTED], [REDACTED] and [REDACTED], who are the sister of the Account Owner and his nephew and niece, respectively, are not entitled to share in the award.

The Issue of Who Received the Proceeds

Given the fact that the Account Owner and the Power of Attorney Holder fled Yugoslavia in 1940, after the imposition of Swiss visa requirements on 20 January 1939, and given the application of Presumptions (h) and (j) contained in Appendix A,³ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their 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 Claimant [REDACTED 1]. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner and the Power of Attorney Holder were his parents, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

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 custody account was 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

Division of the Award

As indicated above, as Claimant [REDACTED 1] and represented party [REDACTED] are entitled to the award to the account of Milan Freund. Claimant [REDACTED 2] and represented parties [REDACTED], [REDACTED] and [REDACTED] are not entitled to share in the award. Claimant [REDACTED 1] and represented party [REDACTED] are each entitled to one-half the total award amount, or 78,000.00 Swiss Francs each.

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, however, because

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

represented party [REDACTED] is age 75 or older, she is entitled to receive payment of 100% of her portion of the total award amount. Accordingly, the initial payment amount is 128,700.00 Swiss Francs, which is comprised of 100% of represented party [REDACTED]'s portion of the award (78,000.00 Swiss Francs) and 65% of Claimant [REDACTED 1]'s portion of the award (50,700.00 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

January 28, 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).