

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Bruno Fürst

Claim Number: 217010/JT

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Bruno Fürst (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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her uncle by marriage, Dr. Bruno Fürst, who was born in Metz, Germany on 13 March 1891, and was married to the Claimant’s paternal aunt, [REDACTED], née [REDACTED], in 1928. The couple did not have any children. The Claimant stated that her father, [REDACTED], who is now deceased, was the brother of [REDACTED], and therefore Bruno Fürst’s brother-in-law. The Claimant indicated that her uncle, who was Jewish, had a Ph.D. in law and practiced as a criminal lawyer in Frankfurt, Germany, where he also lived. The Claimant stated that her uncle had to leave Germany in 1933, because he publicly criticized Hitler. According to the Claimant, her uncle went to Switzerland and, due to his inability to practice law there, taught classes in various Swiss cities on the memory training system he developed. The Claimant stated that her uncle could not obtain an extension of his visa to practice his new vocation in Switzerland and thus left Switzerland for Prague, Czechoslovakia in 1934. According to the Claimant, her uncle lived in Prague where he worked as a professor at Masaryk University until 1938, when he emigrated to the United States. The Claimant indicated that while her uncle was living in Prague, his wife was still living in Frankfurt. The Claimant stated that her uncle arrived in New York, New York, United States, on 30 May 1938, his wife joining him a few months later. The Claimant further stated that after their arrival in 1938, her uncle and aunt stayed in New York where they founded a School of Memory and Concentration. The Claimant indicated that her uncle died in New York, New York on 28 March 1965 and that her aunt died in St. Petersburg, Florida, on 18 May 1999. In support of her claim, the Claimant provided her birth certificate as well as a detailed family tree. The Claimant further submitted excerpts from the [REDACTED] family history

written by her aunt [REDACTED], née [REDACTED], as well as an excerpt from the latter's trust. The Claimant also submitted pictures of her uncle and aunt, as well as an excerpt from a newspaper article about her uncle's book and her uncle's obituary that was published in the New York Times. The Claimant indicated that she was born in Los Angeles, California, on 8 March 1944.

Information Available in the Bank Records

The bank records consist of a customer-opening card, work papers prepared in connection with the 1962 survey on dormant accounts, files related to the 1945 Swiss freeze of German assets, and printouts from the Bank's database. According to these documents, the Account Owner was Dr. Bruno Fürst who lived at Niedenau 72 and Oederweg 20 in Frankfurt am Main, Germany. The bank records indicate that the Account Owner held three accounts, a custody account, numbered 35694, a demand deposit account, numbered 14469, and a safe deposit box account, numbered 913. The bank records further indicate that the Account Owner's last contact with the Bank was on 6 July 1937.

The bank records indicate that the custody account was closed on 21 December 1967. The bank records do not indicate to whom the account was paid, nor do they show the value of the account on the date of its closure. The bank records further indicate that the value of the demand deposit account was 1,391.50 Swiss Francs as of 8 September 1947 and that the account was closed on an unknown date. The bank records do not show to whom the account was paid, nor do they indicate the value of the account on the date of its closure. The bank records show that the safe deposit box was opened in 1932 and closed in 1933. The bank records do not show to whom the account was paid, nor do they indicate the value of the account on the date of its closure. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her uncle's name, along with his city and country of residence, match the published name of the Account Owner. Furthermore, the Claimant stated that her uncle was a lawyer who used the title "Dr.," which matches unpublished information about the Account Owner contained in the bank records. The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and that he had to flee Germany for Switzerland in 1933 and Czechoslovakia in 1934, after he publicly criticized against Hitler.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that her father, [REDACTED], was the Account Owner's brother-in-law, and that she is thus the Account Owner's niece. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With respect to the safe deposit box account opened in 1932 and closed in 1933, the CRT presumes that the Account Owner received the proceeds of that account as he was living in Switzerland at the time of the closure.

With respect to the custody account and the demand deposit account Given that (i) the demand deposit account was still open in 1947, (ii) the custody account was closed in December 1967, (iii) the application of Presumptions (b), (h), and (j) contained in Appendix A¹ to the custody account and Presumptions (h) and (j) to the demand deposit account, the CRT concludes that it is plausible that the account proceeds of both accounts were not paid to the Account Owner or his heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to determine whether 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 Claimant. 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 was her uncle, and that relationship justifies 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 accounts.

Amount of the Award

In this case the Account Owner had a custody account and a demand deposit account. Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here with regard to the custody account, 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 an amount of 156,000.00 Swiss Francs for the custody account.

The bank records indicate that the value of the demand deposit account was 1,391.50 Swiss Francs as of 8 September 1947. According to Article 35 of the Rules, if the amount in a demand

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

deposit account was less than 2,140.00 Swiss Francs and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 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 an amount of 25,680.00 Swiss Francs for the demand deposit account.

Consequently, the total Award amount for the custody account and the demand deposit account is 181,680.00 Swiss Francs.

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

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she 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).