

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Manuel Henry Gordon

in re Account of Avram and Natalia Goldenberg

Claim Number: 200925/SH

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Manuel Henry Gordon (the “Claimant”) to the account of Avram and Natalia Goldenberg (the “Account Owners”) at the Zurich 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 Claimant

The Claimant submitted a Claim Form identifying the Account Owners as his parents, Avram (Abraham) and Nathalia Goldbenberg. According to the Claimant, Avram Goldenberg was born on 18 November 1889 in Galati, Romania, and was married in 1920 in Bucharest, Romania, to Nathalia Goldenberg, née Sommer, who was born on 25 December 1902. The Claimant stated that he is the only child of Avram and Nathalia Goldenberg. The Claimant stated that his parents resided at 71 Popa Tatu in Bucharest until the Romanian authorities expropriated their house in or around 1940. The Claimant further stated that his father, who owned several iron and steel businesses in Romania, was detained several times during the Second World War because he was Jewish and refused to hand over his business to the Romanian government. The Claimant further stated that in 1939 he heard his father talking about opening a Swiss bank account. The Claimant indicated that his father opened the account from Bucharest with the help of a Dr. Wyss who was an insurance agent with connections to a Swiss finance institution. The Claimant stated that his family immigrated to Israel in 1951 and moved to Sao Paulo, Brazil in 1953, where his father died in 1973. The Claimant submitted his own birth certificate, his father’s birth and death certificates, his father’s Israeli identification card, and a declaration by the German consulate in Sao Paulo with regard to the family’s change of last name from Goldenberg to Gordon. The Claimant indicated that he was born on 16 September 1924 in Bucharest, and that he and his mother still live in Sao Paulo.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Abraham Goldenberg. With his Initial

Questionnaire, the Claimant submitted a sworn statement signed by his father on 31 December 1968 in Sao Paulo showing that the Claimant's father owned three companies in Romania prior to 1941.

Information Available in the Bank Records

The bank records consist of a bank registry card and printouts from the Bank's database. According to these records, the Account Owners were Avram and Natalia Goldenberg who resided in Romania. The bank records indicate that the Account Owner held an account of unknown type, numbered 7536. The bank records indicate that the bank was instructed to hold all correspondence to the Account Owner and that the account was closed in 1949. The bank records do not show to whom the account was paid, nor do these records indicate the value of this account. There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners as his parents, Abraham and Nathalia Goldenberg. His parents' names and country of residence match the published names and country of residence of the Account Owners. In support of his claim, the Claimant submitted documents, including a family tree, his own birth certificate, his father's birth and death certificates, and a declaration by the German consulate in Sao Paulo concerning the family's change of last name.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Abraham Goldenberg, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his father, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his father owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and that his father was detained and had property confiscated by the Romanian regime during the Second World War, at a time when the Romanian regime was collaborating with the Nazi regime to persecute Romanian Jews.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting his own birth certificate, which indicates his parents' names.

The Issue of Who Received the Proceeds

The Romanian authorities repeatedly detained Account Owner Avram Goldenberg during the War because he was Jewish and refused to give up his business. The Romanian authorities also expropriated the Account Owners' house around 1940. Given the persecution of Jews in Romania and the confiscation of Jewish assets during the War, the Communist dictatorial regime and the Swiss banks' practice of withholding or misstating account information to account owners and heirs after the War, and the application of Presumptions (h), (i), and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners or their heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (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.

It is also possible that the proceeds of the Swiss accounts of the Account Owners, who were Romanian nationals, were paid by Switzerland to Romania, as part of an arrangement between the two countries concluded in 1951. Swiss banks froze Romanian assets in 1948 pursuant to a Decree of the Swiss Federal Council. Romanian accounts were unfrozen in October 1950 and approximately one year later, in August 1951, Switzerland and Romania entered into an agreement whereby unclaimed assets held by Romanian citizens in Swiss banks were to be transferred to the Romanian Government in return for compensation for Swiss property that had been nationalized by Romania's communist regime. The Account Owners' accounts, which were closed in 1949, could have been held for use in this arrangement.

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 Owners were his parents and that relationship justifies 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 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 an account of unknown type was 3,950.00 Swiss Francs. The present value of this amount is

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

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 47,400.00 Swiss Francs.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive 100% of the total award amount.

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 his claim to determine whether there are additional Swiss bank accounts to which he 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).