

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Bernhard Goldstein and *Lilien-Leinwand-Unternehmung*

Claim Number: 222337/PY¹

Award Amount: 51,360.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Bernhard Goldstein and *Lilien-Leinwand-Unternehmung* (the “Account Owners”) 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 Claimant

The Claimant submitted a Claim Form identifying the Account Owners as his paternal great-great-uncle, Bernhard Goldstein, and his company. The Claimant stated that his great-great-uncle, who was Jewish, was born in Hungary and held both Austrian and Hungarian citizenship. The Claimant stated that Bernhard Goldstein was a textile manufacturer, and the managing director of a company by the name of *Lilien-Leinwand-Unternehmung* in Vienna, Austria, which was located at Schottenring 25 in Vienna I. The Claimant stated further that Bernhard Goldstein traveled to Switzerland for business purposes, that his business was sold to Swiss customers, and that he opened a Swiss bank account in order to conduct business. The Claimant stated that his father, [REDACTED] of Vienna, also held a Swiss bank account containing 13 “Maria Theresa” gold coins that was repatriated by the Nazis to pay a “flight tax” so that he could flee to Hungary. The Claimant submitted a letter, dated 31 July 1938 and signed by Bernhard Goldstein on the letterhead of *Lilien-Leinwand-Unternehmung*, stating that [REDACTED] worked for the company and that it was being liquidated. The Claimant also submitted a family tree. The Claimant added that his great-great-uncle died in 1938 in Austria after the *Anschluss*. The Claimant indicated that he was born on 2 June 1949 in Los Angeles, California, the United

¹ The Claimant submitted additional claims to the accounts of [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], which are registered under the claim numbers 222266, 222302, 222316, 222317 and 222338 respectively. The CRT will treat the claims to these accounts in a separate decision.

States. The Claimant previously submitted an Initial Questionnaire with the Court in 1999, assessing his entitlement to a Swiss bank account owned by *Lilien-Leinwand-Unternehmung* of Schottenring 25, Vienna, Budapest, and Prague, and stated the bank account contained a present value of approximately 100,000.00 United States Dollars.

Information Available in the Bank Record

The bank record consists of a customer card. According to this record, the Account Owners were Bernhard Goldstein and *Lilien-Leinwand-Unternehmung*² of Vienna I, Austria. The bank record indicates that the Account Owners held two demand deposit accounts.

The accounts were closed on 10 August 1938. The amount in the accounts on the date of their closure is unknown. The bank record does not show to whom they were paid. There is no evidence in the bank records that Account Owner Bernhard Goldstein or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His great-great-uncle's name and city of residence match the published name and city of residence of Account Owner Bernhard Goldstein. The Claimant identified the name of his great-great-uncle's company, *Lilien-Leinwand-Unternehmung*, which matches unpublished information in the bank record. Additionally, the Claimant identified the fact that *Lilien-Leinwand-Unternehmung* was located in Vienna I, which matches unpublished information in the bank record. In support of his claim, the Claimant submitted a letter written by Account Owner Bernhard Goldstein at the time the company was being liquidated, which was for the Claimant's father, [REDACTED], an employee of the company. This letter bears the company letterhead.

Status of the Account Owners as Victims Of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Bernhard Goldstein was a Victim of Nazi Persecution. The Claimant stated that Account Owner Bernhard Goldstein was Jewish and lived in Austria after its annexation by the Nazis. The Claimant further stated that his relative's business was liquidated.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to Account Owner Bernhard Goldstein by submitting a family tree demonstrating that the Account Owners are his great-great-uncle and his company.

² The CRT notes that only the name of Account Owner Bernhard Goldstein was published on the 5 February 2001 list of bank account owners, even though the accounts were held by him as well as his company.

The Issue of Who Received the Proceeds

The accounts were closed at a time when the precedents of the CRT indicate numerous accounts of Austrian Jews were closed and transferred to Nazi authorities. In this situation, given the application of Presumptions (a) and (j) contained in Appendix A,³ the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Bernhard Goldstein or his 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.

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 Account Owner Bernhard Goldstein was his great-great-uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither Account Owner Bernhard Goldstein nor his 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, 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. The total value of two demand deposit accounts is 4,280.00 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 51,360.00 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 33,384.00 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 his claim to determine whether there are additional Swiss bank accounts to

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

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

31 December 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).