

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the estate of Claimant [REDACTED 1]¹

and to Claimant [REDACTED 2],
represented by [REDACTED]

in re Accounts of Lotte Gross

Claim Number: 600025/MO²

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 2], née [REDACTED 2], (“Claimant [REDACTED 2]”) and [REDACTED 1] (“Claimant [REDACTED 1]”) (together the “Claimants”) to the accounts of [REDACTED].³ This Award is to the accounts of Lotte Gross (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

The Claimants submitted a claim to the Holocaust Claims Processing Office (“HCPO”) on 27 May 1999 identifying the Account Owner as their mother, [REDACTED] (Lotte) Gross, née [REDACTED], who was born on 18 April 1890 in Jägerndorf, Silesia, an administrative district of the Austro-Hungarian Empire (now Krnov, Czech Republic), and was married to [REDACTED] in November 1918. The Claimants indicated that their parents, who were Jewish, resided at Singerstrasse 14, Vienna I, Austria. The Claimants stated that their father was an attorney at law and an officer in the Austrian army during the First World War. The Claimants further indicated that, prior to the Second World War, their parents traveled to Switzerland for vacations and opened several bank accounts there, and in particular at the Bank. The Claimants stated that their parents fled Austria in 1939 or 1940, leaving behind all their assets, and

¹ [REDACTED 1] passed away on 18 June 2000.

² The Claimants submitted a claim, numbered B-01827, on 27 May 1999 to the Holocaust Claims Processing Office (the “HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned claim number 600025.

³ The CRT will treat the claim to this account in a separate decision.

immigrated to the United States. The Claimants indicated that their father died on 18 December 1942 in New York and their mother died on 6 May 1969 in Flint, Michigan. Claimant [REDACTED 1] was born on 14 April 1920 in Vienna, and Claimant [REDACTED 2] stated that she was born there on 16 June 1925. In support of their claim, the Claimants submitted copies of their birth certificates. The Claimants also submitted copies of correspondence with the Bank commencing on 15 September 1999, indicating that the Claimants filed a claim with the Bank asserting their rights to their parents' bank accounts.

Information Available in the Bank Record

The bank record consists of a customer card. According to this record, the Account Owner was *Frau* Lotte Gross, who resided in Vienna, Austria. The bank record indicates that the Account Owner held a custody account, numbered L47745, which was opened on 26 June 1932 and closed on 24 September 1938, and a demand deposit account, which was closed on 10 January 1939. The bank record does not show to whom the accounts at issue were paid, nor does this record indicate the value of these accounts. There is no evidence in the bank record that the Account Owner or her 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, numbered 14253, concerning the assets of [REDACTED] and his spouse, [REDACTED] (Lotte) [REDACTED] Gross, née [REDACTED]. According to these documents [REDACTED], who was born on 30 September 1872, was an attorney-at-law and resided at Singerstrasse 14, Vienna I, Austria. In a letter dated 28 November 1938, [REDACTED] reported changes in the assets belonging to him and his wife. Among those assets, [REDACTED] reported that his wife, [REDACTED], held 1,861.80 Reichsmarks in “Swiss and Italian accounts” on that date. The letter does not detail where these accounts were held, or how much was in each account. The letter also indicates that the total value of the Gross’ assets decreased by 1,372.80 Reichsmarks because they had to turn over Swiss railroad bonds (*Schwiezerische Bundesbahnobligationen*) with a nominal value of 2,400.00 Swiss Francs. There is no indication as to where these bonds were held.

The CRT’s Analysis

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their mother’s name matches the published name of the Account Owner. The Claimants identified their mother’s city of residence, which matches unpublished information about the Account Owner contained in the bank records. The Claimants also asserted that their mother opened an account at the Bank,

which matches unpublished information about the name of the bank at which the account was held.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and that she fled Austria in 1939 or 1940.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents, including their birth certificates, showing that the Account Owner was their mother. There is no information to indicate that the Account Owner has other surviving heirs.

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, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. Given the application of Presumptions (a) and (j), provided in Article 28 (see Appendix A) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), 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.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their mother, 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

In this case, the Account Owner held one custody account and one demand deposit account. Pursuant to Article 29 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a custody account was 13,000 Swiss Francs and the average value of a demand deposit account was 2,140 Swiss Francs. The total 1945 value for the two accounts is, accordingly, 15,140.00 Swiss Francs. The present value of this amount is

calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an award amount of 181,680.00 Swiss Francs.

Division of the Award

According to Article 23 of the Rules, the estate of Claimant [REDACTED 1] is entitled to one-half of the award amount and Claimant [REDACTED] is entitled to the other one-half of the award amount.

Scope of the Award

Claimant [REDACTED 2] and the heirs of Claimant [REDACTED 1] should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on the claim at issue 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
March 5, 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).