

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Dr. Yehudit Grünberger
represented by Paul Kertes, Advocate

in re Account of Clara G. Grünberger

Claim Number: 217417/EZ¹

Award Amount: 94,800.00 Swiss Francs

This Certified Award is based upon the claim of Dr. Yehudit Grünberger née Gruber (the “Claimant”) to the accounts of Clara G. Grünberger (the “Account Owner”) 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 Owner as her mother-in-law, Clara G. Grünberger, née Peterffy, who was born on 7 May 1898 in Medias, Romania, to Mor and Fanny Peterffy, and was married to Josef Grünberger on 23 August 1921 in Sibiu, Romania. Clara and Josef Grünberger had one child, Paul Grünberger, who is the Claimant’s late husband. Clara and Josef Grünberger lived in different addresses in Sibiu and in Timisoara, Romania, including at Ocnei Street 31 in Sibiu, where Josef Grünberger worked as a merchant. During the Second World War Josef Grünberger and his son, Paul, were interned in a slave labor camp by the Nazis, and their business, home, and possessions were confiscated. They survived the Holocaust. Clara G. Grünberger and Josef Grünberger lived in Romania until 1950, when they immigrated to Israel. Clara G. Grünberger died on 19 March 1985, in Haifa, Israel, and Josef Grünberger died on 7 March 1961, in Haifa.

¹ The Claimant submitted two additional claims to the accounts of Paul Grünberger and Josef Grünberger, which are registered under the claim number 217408 and 217409, respectively. The CRT will treat the claims to these accounts in separate decisions.

The Claimant indicated that she was born on 20 July 1925 in Brasov, Romania. She married Paul Grünberger in 1948, in Romania. They lived in Romania until 1962, when they immigrated to Israel. Paul Grünberger died on 27 May 1998 in Jerusalem, Israel.

The Claimant submitted her marriage certificate, her husband's death certificate and will, her mother-in-law's birth certificate, and documents indicating that her parents-in-law were Victims of the Holocaust and were compensated by the German government pursuant to the original West German Federal Indemnification Law (*Bundesentschädigungsgesetz or BEG*), which was enacted in 1952.

Information Available in the Bank Record

The bank records consist of a power of attorney form signed in April 1940 in Sibiu, signature samples, bank correspondence, and printouts from the Bank's database. According to these records, the Account Owner was Clara G. Grünberger, née Peterffy, who used the business address Ocnei Street 11 in Sibiu, Romania, for her company *Magazin Reclama*, and the Power of Attorney Holders were Josef and Paul Grünberger. The bank records indicate that the Account Owner held two accounts of unknown type. One account was opened in 1940, when the power of attorney form was signed. In a letter to the Account Owner, dated 1 May 1940, the Bank requested the Account Owner to provide additional opening documents for the first account, and also requested instructions in relation to a deposit of 96.63 United States Dollars that had been already deposited in a second account. The bank records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts on their respective closure dates.

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 these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945.

There is no evidence in the bank records that the Account Owner or her 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. The names of her mother-in-law, her father-in-law, and her late husband match the published names of the Account Owner and the Power of Attorney Holders, respectively. The Claimant stated that her mother-in-law resided at Ocnei Street in Sibiu, which matches unpublished information about the Account Owner contained in the bank records. The Claimant further stated that her mother-in-law's maiden name was Peterffy, which matches unpublished information about the Account Owner. The

Claimant supported the information she provided with the documents submitted with her claim form and described above.

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 lived in Romania after the Nazi invasion. Her husband and her son were interned in a slave labor camp by the Nazis.

Furthermore, the Claimant stated that her parents-in-law were Victims of the Holocaust and were compensated by the German government.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents, including her marriage certificate and her late husband's will, demonstrating that the Account Owner was the Claimant's mother-in-law. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Based on its precedent and the Rules, the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.² The CRT concludes in this case that Presumptions (h), (i) and (j) apply, and it is therefore plausible that the accounts proceeds were not paid to the Account Owner, the Power of Attorney Holders or their heirs.

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 Governing the Claims Resolution Process (the "Rules"). Second, the Claimant has plausibly demonstrated that the Account Owner was her mother-in-law, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holders, or their 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 an account of unknown type was 3,950.00 Swiss Francs. Consequently, the total value of the two accounts was 7,900.00 Swiss Francs. The present value of this amount is calculated by

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 94,800.00 Swiss Francs.

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 value, and 65% of the total award amount is 61,620.00 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
October 3, 2002

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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).