

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Dr. Peter Arthur Grünstein
also acting on behalf of Hildegard Fanny Grünstein

in re Account of Dr. Arthur Grünstein

Claim Number: 213038/MBC

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of Dr. Peter Arthur Grünstein (the “Claimant”) to the account of Dr. Arthur Grünstein (the “Account Owner”) at the Basel 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 is redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his father, Arthur Grünstein, who was born on 22 July 1900 in Gladenbach, Germany, and was married to Hildegard Fanny Grünstein, née Mattauch, on 28 July 1934, in London, Great Britain. The couple had one child: Peter Arthur, the Claimant, who was born on 12 February 1935 in Kaiserslautern, Germany. The Claimant indicated that his father was a medical doctor who lived in Gladenbach until 30 June 1932, and then at Marktstrasse 15/17 in Kaiserslautern until 1934. According to the Claimant, his father, who was Jewish, had a surgical practice in Kaiserslautern, which was vandalized by the Nazis. The Claimant also stated that the Nazis used intimidation and threats of violence against his father and his father’s patients. As a result of these actions, the Claimant’s father had to give up his practice. The Claimant’s father then decided to flee to London in 1934, where he stayed with relatives for a short time. The Claimant stated that, as a result of what his father had experienced, he died unexpectedly on 25 August 1934 in Lugano, Switzerland, en route to Cairo, Egypt, where he had been offered a job in a hospital. The Claimant stated that his mother decided to go back to Kaiserslautern, where she gave birth to the Claimant in February 1935. In 1936, the Claimant’s mother fled Kaiserslautern to Lisbon, Portugal, where she stayed until 1942. She then immigrated to Argentina, where she settled.

In support of his claim, the Claimant submitted documents, including his parents’ marriage certificate, his father’s birth and death certificates, his own birth certificate, his mother’s

certificate of nationality (*Heimatschein*), and an inheritance certificate issued by the Kaiserslautern Probate Court on 24 April 1935, showing that the Claimant and his mother are Arthur Grünstein's heirs, that the Claimant was bequeathed three-quarters of his father's estate, and that his mother was bequeathed the remaining quarter of the estate.

The Claimant indicated that he was born on 12 February 1935. The Claimant is also acting on behalf of Hildegard Fanny Grünstein, his mother, who was born on 10 April 1910.

Information Available in the Bank Records

The bank records consist of a death certificate, an inheritance certificate issued by the Kaiserslautern Probate Court on 24 April 1935, and a document recording the Account Owner's instructions with respect to correspondence with the Bank. According to these records, the Account Owner was Dr. Arthur Grünstein, a medical doctor from Kaiserslautern, Germany. The bank records indicate that the Account Owner died on 25 August 1934 in Lugano, Switzerland, and that his spouse, *Frau* (Mrs.) Hildegard Fanny Grünstein, née Mattauch, and his only child, Peter Arthur Grünstein, who was born in Kaiserslautern, Germany, on 12 February 1935, were his sole heirs. These documents state that the late Account Owner's spouse lived at Marktstrasse 15 in Kaiserslautern as of 17 June 1935. These records also indicate that the Account Owner held a custody account, numbered 33036. The bank records do not show when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account.

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 this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. These auditors also indicated that the Claimant filed a claim with the Swiss Banking Ombudsman prior to the publication of the 5 February 2001 list of account owners resulting from the ICEP investigation. There is no evidence in the bank record that the Account Owner or his 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 Owner. His father's name and city of residence match the published name and city of residence of the Account Owner. The Claimant indicated that his father passed away on 25 August 1934, which matches the Account Owner's unpublished date of death recorded in the bank records. The Claimant further indicated that his parents resided at Marktstrasse 15 in Kaiserslautern, which matches unpublished information about the Account Owner's spouse contained in the bank records. Furthermore, the information that the Claimant provided about himself, including his name, date, and place of birth, matches the unpublished information contained in the bank records about the Account Owner's son. The CRT notes that the inheritance certificate that the Claimant provided is identical to the one contained in the bank records.

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 Germany until 1934. The Claimant further indicated that the Nazis threatened his father and his father's patients and vandalized his father's surgical practice. The Claimant also indicated that he believes that his father died as a result of the actions he had to endure at the hands of the Nazis.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents, such as his parents' marriage certificate, his own birth certificate and an inheritance certificate showing that he is the Account Owner's only son, and that he and his mother, whom the Claimant is representing in these proceedings, are the Account Owner's heirs.

The Issue of Who Received the Proceeds

Given that the bank records show the Claimant made a claim to his father's account at the Swiss Banking Ombudsman, and given the application of Presumptions (h) and (j) contained 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 his 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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his father, 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 account.

Amount of the Award

In this case, the Account Owner held one custody 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 ICEP, 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 31(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

Division of the Award

According to Article 23(2)(a), if a claimant has submitted the Account Owner's will, or inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. In this case, the inheritance certificate, as it appears in the bank records, and as provided by the Claimant, shows that the Claimant was bequeathed three-quarters of the Account Owner's Estate and his mother, the spouse of the Account Owner, Hildegard Fanny Grünstein, whom the Claimant is representing in these proceedings, was bequeathed the remaining quarter of the Estate. Therefore, the Claimant is entitled to three-quarters and Claimant's mother is entitled to one-quarter of the total award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 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
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).