

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Moritz Guttman

Claim Number: 208637/MBC¹

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Moritz Guttman (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 Claimant

The Claimant submitted a Claim Form and Initial Questionnaires identifying the Account Owner as her father, Moritz (or Morice) Guttman, who was born on 26 November 1889 and was married to [REDACTED] in 1921 in Budapest, Hungary. The Claimant stated that she and her parents, who were Jewish, lived at Franz Josephskai 49 in Vienna, Austria. The Claimant identified her father as the co-owner of a stocking factory, *Brüder Guttman Strumpffabrik*. In her Initial Questionnaire, the Claimant stated that her father traveled frequently to Switzerland to deposit his assets in a Swiss bank account, but that her parents did not discuss the details of these transactions with her because she was too young.

The Claimant stated that the Nazis confiscated her father’s business and imprisoned him. After he was released from prison, he fled to Budapest. The Claimant further stated that both her father and her mother were shot by the Nazis and thrown into the Danube River in December 1944. In her Initial Questionnaire, the Claimant indicated that she was deported to Auschwitz and Mauthausen by the Nazis.

The Claimant stated that she is the only child of Moritz and [REDACTED] Guttman and that she was born on 22 June 1922 in Budapest.

¹ The Claimant submitted two Claim Forms which were registered under the Claim Numbers 208637 and 217156. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 208637/MBC.

Information Available in the Bank Records

The bank records consist of a customer card. According to this record, the sole Account Owner was Moritz Guttman from Vienna, Austria. The bank records indicate that the Account Owner held a custody account which was closed on 6 August 1938 unknown by whom and a demand deposit account which was closed on 10 August 1938 unknown by whom. The amount in each account on the date of its closure is unknown.

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 50240, concerning the assets of Moritz Guttman. These documents indicate that Moritz Guttman was born on 26 January 1889, that he was Jewish, that he was a stocking manufacturer, that he resided at Franz Josef Kai 49/III/18, Vienna I, Austria, that he was married to [REDACTED], and that he was a Hungarian citizen.

According to these records, Moritz Guttman and his company were the subject of an investigation by the German auditing and trust company (*Deutsche Wirtschaftsprüfungs- und Treuhandgesellschaft*) in Berlin regarding alleged questionable accounting practices and tax evasion. In its report, dated 22 July 1938, that is included in the census records, the auditors stated that Moritz Guttman's "Jewish advisor" wrote to the authorities and offered to pay any overdue taxes so that Moritz Guttman could be granted "tax amnesty." The auditors stated that in May 1938 "the Jew" [Moritz Guttman] admitted evading taxes totaling 150,000.00 Austrian Schillings. A report to the "Economic Police" on 30 June 1938 led to Guttman's arrest on 5 July 1938. The auditors estimated that Moritz Guttman and his three brothers (the joint owners of the company) would have to pay a penalty of around 50,000.00 Reichsmarks, not only for the crime of tax evasion, but also for other offences. Furthermore, the report indicates that the total value of the Guttman company was 33,917.36 Reichsmarks, from which the above-mentioned penalty had already been deducted. It appears from the records that Moritz Guttman's detention lasted until August or September 1938.

Moritz Guttman submitted his census form on 2 August 1938, while he was still in detention. In the documents, he indicated that he owned 22 percent of the stocking manufacturing company *Brüder Guttman*, Schladgasse, Vienna XVI, and that he could not provide an accurate listing of his assets and their value without being able to use his account books. Included among the numerous letters and memoranda in Moritz Guttman's file is a letter dated 19 November 1938 stating that Moritz Guttman and his three brothers had already left the country; a blank form for the mandatory transfer of foreign securities to the *Reichsbank* dated 12 December 1938; an internal memorandum from the Public Prosecutor's Office at the Court of Second Instance, Vienna, dated 7 February 1940, indicating that the temporary manager (*kommissarischer Verwalter*) of the Guttman company had made a formal statement that the criminal charges against the Guttman brothers should be dropped, as they were in prison when they had had to submit their incomplete census forms, and that other bookkeeping irregularities had been detected for which the Guttman brothers were not responsible; as well as a decision of the

Public Prosecutor's Office, dated 18 March 1940, not to continue the prosecution of the Guttman brothers. These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her father's name matches the published name of the Account Owner. The Claimant stated that her father's city of residence was Vienna, which matches unpublished information about the Account Owner contained in the bank documents.

Moreover, the CRT notes that the Claimant filed two Initial Questionnaires with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Morice and [REDACTED] Guttman, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of Victims of Nazi Persecution (the "ICEP list"). This indicates that the Claimant has based her claim not simply on the fact that a person identified on the ICEP List as owning a Swiss bank account bears the same name as her relative's, but rather on a direct family relationship that was known to her before the publication of the ICEP list. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP list. This supports the credibility of the information provided by the Claimant.

The CRT notes that there were three other claims to this account, and one was disconfirmed because the claimed account owner lived in a different country than Account Owner Moritz Guttman, one was disconfirmed because the claimant did not provide the correct name of the Account Owner, and the last was disconfirmed because the claimed account owner died before this account was opened.

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, that his company was confiscated, that he was imprisoned, and that he was shot by the Nazis.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting detailed biographical information demonstrating that the Account Owner is her father. 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, within the same year, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the

account proceeds were paid to the Nazis, and the application of Presumptions (a) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds in this case were not paid to the Account Owner or his heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the “Rules”), the CRT applies presumptions to assist in determining 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 the Account Owner was her 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 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 custody account was 13,000.00 Swiss Francs and the average value of a demand deposit account was 2,140.00 Swiss Francs. The combined value of the two accounts is 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 37(1) of the Rules, to produce a total award amount of 181,680.00 Swiss Francs.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive payment of 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 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).

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

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal

December 27, 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).