

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Annaliese Haymann

in re Account of Frieda Haymann

Claim Number: 003583/LK¹

Award Amount: 165,960.00 Swiss Francs

This Certified Award is based upon the claim of Annaliese Haymann (the “Claimant”) to the accounts of Frieda Haymann (the “Account Owner”) at the Kreuzlingen 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 sister, Frieda Haymann, who was born on 28 March 1908 in Kostanz, Germany. The Claimant stated that her sister was not married and was a registered nurse. The Claimant indicated that her sister, who was Jewish, worked with their father, Max Haymann. The Claimant submitted a copy of the business letterhead from Max Haymann’s “Transmission and Raw Materials” business identifying ties to the Kreuzlingen and Frauenfeld branches of the Bank in Switzerland. The Claimant also submitted a copy of her own birth certificate, death certificates of her mother, father and sister, and her parents’ marriage certificate. These documents were either signed in Kostanz or show that her sister and her parents were in Kostanz. Additionally, her sister’s death certificate also indicates that she was unmarried, was born in Germany, and died on 26 April 1995 in Chiltern and South Bucks in the United Kingdom. The Claimant was born on 31 May 1916 in Kostanz, Germany and died on October 23, 2001 in Israel.

The Claimant submitted an alternative contact on her Claim Form, Michael Bloch, who identified himself as a friend and the executor of her estate. According to Michael Bloch, the Account Owner emigrated to England in 1936 or 1939 because of worsening conditions resulting from the rise of the Nazi regime in Germany. Upon request by the CRT, Michael Bloch

¹ The Claimant submitted additional claims to the accounts of Max Haymann and Sophie Haymann, which are registered under the claim numbers 003584 and 003585, respectively. The CRT will treat the claims to these accounts in a separate decision.

submitted the Claimant's will which divides her estate among several associations and individuals, including Michael Bloch.

Information Available in the Bank Record

The bank record consists of an account opening card. According to this record, the Account Owner was Fräulein Frieda Haymann. The bank record indicates that the Account Owner held a savings/passbook account and a custody account which was opened on 7 February 1933. The accounts were closed on 1 February 1937 and 8 February 1937, respectively, but the record does not indicate to whom they were closed. The amount in the accounts on the dates of their closures is unknown. 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. Her sister's name matches the published name of the Account Owner. The Claimant stated that her sister was from Kostanz, Germany, which matches unpublished information about the Account Owner contained in the bank records. Additionally, the Claimant indicated that her sister was not married, which also matches unpublished information contained in the bank records. In support of her claim, the Claimant submitted documents, including her birth certificate, death certificates of her mother, father and sister, her parents' marriage certificate, and a family tree. The Claimant also submitted her father's business letterhead indicating that invoices from the company were payable to an account at the Bank, including at the Kreuzlingen branch, where the accounts were located.

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. According to Michael Bloch, the Account Owner and her sister resided in Kostanz, Germany at the time of their father's death in 1934. He stated that the Account Owner and her sister left for England in 1936 or 1939 to study nursing, fleeing the Nazi regime in Germany and worsening conditions for Jews. The Claimant submitted a letter from the Association of Jewish Refugees in Great Britain stating that the Account Owner's mother was deported to Auschwitz on August 8, 1942.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is the sister of the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs. As the Claimant died on October 23, 2001 after submitting her claim to the CRT, Michael Bloch provided a copy of her will. The Claimant's estate was divided among several associations and individuals, including Michael Bloch.

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 one or more of these presumptions applies and it is therefore plausible that the account proceeds were not paid to the Account Owner or her 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. Second, the Claimant has plausibly demonstrated that the Account Owner was her sister, 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

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 savings/passbook account was 830.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs, giving a total value of 13,830.00 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 165,960.00 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 35% of the Certified Award, and the claimant may receive a second payment of up to 65% 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 35% of the total award amount is 58,086.00 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).

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

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).