

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
acting on behalf of himself and [REDACTED]

in re Account of Oskar Heller

Claim Number: 221074/MD

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Oskar Heller (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 an Initial Questionnaire identifying the Account Owner as his great-uncle (the brother of his paternal grandfather). The Claimant stated that his great-uncle lived in Prostejov (Prossnitz), Czechoslovakia, at Mlynska 10 (Mühlgasse 10). The Claimant submitted a letter written in 1960 from a relative to his father indicating that the house at Mlynska 10 belonged to the Claimant’s family. The Claimant stated that his great-uncle remained unmarried and did not have children. According to the information in the Claim Form, Oskar Heller, who was Jewish, was deported to a concentration camp, where he perished.

The Claimant asserted that the beneficial owner of the account was his paternal grandfather, [REDACTED]. The Claimant stated that his grandfather was born in 1877 in Prostejov, went to Germany, obtained German nationality in 1909, and worked there as a civil servant. The Claimant stated further that his grandfather was afraid of keeping a bank account in Switzerland and requested his brother, Oskar, to open an account in Oskar’s name. The Claimant stated that his relatives, Oskar and [REDACTED] Heller, visited Switzerland in the late 1930s and withdrew some of their assets deposited in a Swiss bank.

Information Available in the Bank Record

The bank records consist of a bank customer card and printouts from the Bank's database. According to these records, the sole Account Owner was Oskar Heller who lived at Mlynska 10 in Prostějov. The bank records indicate that the Account Owner held a demand deposit account which was closed on 5 May 1939. According to a printout from the Bank's database, the balance of the account as of 1934 was 12,396.50 Swiss Francs. Information about who closed the account and who received the proceeds is not available. The amount in the account on the date of its closure is unknown.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant provided his great-uncle's address in Prostějov, which matches the unpublished address of the Account Owner contained in the bank documents.

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 that he was deported to a concentration camp where he perished.

The Claimant's Relationship to the Account Owner

The Claimant stated that the beneficial owner of the account was his grandfather, [REDACTED]. The CRT notes that there is no indication in the bank documents that [REDACTED] was entitled to the assets of the account because the sole Account Owner was Oskar Heller and no other person was authorized to access the account. Nevertheless, the CRT notes that the Claimant has plausibly demonstrated that he is related to the Account Owner by providing specific biographical information about him and by submitting documents indicating that his relatives came from Prostějov and that the house in which the Account Owner lived was in the Claimant's relatives' possession.

The Issue of Who Received the Proceeds

Given the existence of Nazi confiscatory legislation in Czechoslovakia at the time the account was closed and the application of Presumptions (a) and (j), contained in Appendix A¹, 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 Governing the Claims Resolution Process ("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.

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claimed account belonged to a Victim of Nazi Persecution. Second, the Claimant has plausibly demonstrated that the Account Owner was his great-uncle, 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

The bank records indicate that the value of the demand deposit account as of 1934 was 12,396.50 Swiss Francs. In this case, however, there is evidence to suggest that the Account Owner withdrew funds from the account after this date. For this reason, the CRT finds that the average value of a demand deposit account should be awarded in this case. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs. The present value of this amount is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case is 25,680.00 Swiss Francs.

Articles 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 of the demand deposit account and 65% of this amount is 16,692.00 Swiss Francs.

Division of the Award

The CRT notes that the Claimant has filed the claim also on behalf of his mother, the wife of the Account Owner's nephew. According to Article 29 of the Rules, in the absence of a written will, and absent claims of the Account Owner's spouse or children, the award shall be made in favor of the other children of the Account Owner's parents or their descendants. The CRT determines accordingly that the Claimant is entitled to 100% of the Award.

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 his claim to determine whether there are additional Swiss bank accounts to which he or his mother 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

November 26, 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).