

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of Otto Hojetas

Claim Number: 600702/AA; ENG-0575-085/AA

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], ("Claimant [REDACTED 1]") and [REDACTED 2], ("Claimant [REDACTED 2]") (together the "Claimants") to the account of Otto Hojetas¹ (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

Claimant [REDACTED 1] submitted an Initial Questionnaire and a claim to the Holocaust Claims Processing Office in New York (the "HCPO").² Claimant [REDACTED 1] also submitted a claim to ATAG Ernst & Young as part of the CRT I claims resolution process that refers to her sister, [REDACTED 2], as a person who could claim co-rights to the account of Otto Hojetas. Claimant [REDACTED 2] separately submitted an Initial Questionnaire to the Court in 1999. The Claimants' claims identify the Account Owner as their paternal uncle, Otto Hojetas, who was Jewish and was born on 3 August 1898 in Czechoslovakia, and was married to [REDACTED], née [REDACTED]. According to the Claimants, their uncle and aunt had one child, [REDACTED], who was born in 1939 in Prague, Czechoslovakia. The Claimants explained that their uncle was a businessman who was a manufacturer of military uniforms and supplies and sold to many international clients. The Claimants stated that their uncle's business was called *Hynek Hojtaš* and was located at Vitezna 14 in Prague. The Claimants explained

¹ The bank records indicate that the last name of the Account Owner was Hojetas. The Claimants' submissions indicate that the last name of the claimed account owner was Hojtas or Hoytash. The CRT has determined that the names "Hojtas" and "Hojetas" refer to the same person. In this award, the CRT uses the name "Hojetas," as it appears in the bank records, to refer to the claimed account owner.

² Claimant [REDACTED 1]'s claim, numbered B-01757, was referred by the HCPO to the CRT and has been assigned claim number 600702/AA. Claimant [REDACTED 2] is listed on the HCPO database as a joint claimant.

further that their uncle and his wife and child were deported to concentration camps during the Second World War and that all three of them were killed at Auschwitz in approximately 1942.

The Claimants explained that, during the Second World War and before her uncle was deported to Auschwitz, their father and his brother established a system of code words regarding their foreign accounts, so they could conceal the existence of their assets from the Nazis and from the Czechoslovakian government. The Claimants submitted a document that contains information, written in their uncle's and their father's code, about a Swiss bank account owned by their uncle that includes the name of the Bank, his account number, and the name of a bank officer. The Claimants submitted further that their uncle could have used several alternative spellings of his last name, including Hojetas. The Claimants stated that their father tried to locate an account belonging to his brother after the Second World War but was unsuccessful in his attempts to locate such an account.

Claimant [REDACTED 1] stated that she was born on 1 July 1932, and Claimant [REDACTED 2] stated that she was born on 16 July 1935.

Information Available in the Bank Records

The bank records consist of an excerpt from an account ledger dated 1939, a letter from the brother of the Account Owner to the Bank dated 1962, and correspondence between the Bank and the HCPO. According to these records, the Account Owner was Otto Hojetas. The bank records indicate that the Account Owner held an account of an unknown type, which was numbered DU 61468. The bank records do not show when the account at issue was closed. There is a note in the account ledger that the account had probably been closed at some point in 1939, but there is no definite information regarding the account's closure. The records do not show to whom the proceeds were paid, nor do these records indicate the value of this account. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

In the letter from the Account Owner's brother to the Bank, the Account Owner's brother asks about his late brother's account and whether the Bank could locate the account. He also names an employee of the Bank and asks whether this person was still employed by the Bank, indicating that this employee may have known about his brother's account. There is a stamp on the letter indicating that the Bank received this letter on 12 June 1962, but the Bank records do not contain the Bank's response.

The CRT's Analysis

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their uncle's name matches the unpublished name of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and was killed by the Nazis at Auschwitz in 1942.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Otto Hojetas and indicates that his place of birth was Czechoslovakia, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that they are the nieces of the Account Owner. The CRT notes that the Account Owner's other brother, [REDACTED], had children who survived the Second World War, but the Claimants stated that they do not know where they are living. As of the date of this award, the Claimants are the only ones of Otto Hojetas' heirs who have submitted claims to his account.

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.³ The CRT concludes in this case that Presumptions (e), (h), and (j) apply and it is therefore plausible that the account proceeds were not paid to the Account Owner or his heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 23 of the Rules Governing the Claims Resolution Process (the "Rules"). Second, the Claimants have plausibly demonstrated that the Account Owner was their 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

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. The present value of this amount is

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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 47,400.00 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 30,810.00 Swiss Francs.

Division of the Award

According to Article 29 of the Rules, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. Accordingly, Claimant [REDACTED 1] and Claimant [REDACTED 2] are each entitled to half of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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 30, 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).