

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Amalie Horn

Claim Number: 213346/MO

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of [REDACTED].¹ This Award is to the accounts of Amalie Horn (the “Account Owner”) at the Zurich branch of 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 indicating that he is the son of Rose Heimann, née [REDACTED]. In a telephone conversation with the CRT, the Claimant identified the Account Owner as his maternal grandmother, Amalie Horn, who was married to [REDACTED] and resided in Breslau, Germany. The Claimant stated that his grandfather, who was a physician, owned several houses in Breslau. The Claimant further stated that his grandparents, who were Jewish, had two daughters: Rose, who was the Claimant’s mother, and Else. According to the Claimant, his grandfather died of natural causes in December 1932. The Claimant stated that his aunt Else married [REDACTED] and immigrated with him to Palestine in the early 1930s. The Claimant indicated that his mother married [REDACTED] on 1 December 1918 in Breslau and that they resided from 1920 to 1939 at Hochalle 45 in Hamburg, Germany. The Claimant stated that his father owned a company by the name of *Schlesische Furnierwerke, GmbH*, located on Viktoriastrasse in Hamburg, and that his father maintained business connections in Switzerland. The Claimant indicated that after the Nazis came to power, his parents were forced to sell the family home in Hamburg and their business was eventually confiscated. The Claimant indicated that his parents fled Germany to the United States via England in 1939 or 1940. The Claimant stated that his grandmother was also forced to sell her property and that she fled from Germany to the United States via Cuba in the early 1940s. The Claimant explained that his grandmother

¹ The CRT will treat the claim to this account in a separate decision.

resided with his parents in New York, New York, the United States, where she died in 1944. According to the Claimant, his father died in New York in 1950, and his mother died there on 31 July 1997. The Claimant indicated that his aunt and uncle died in Israel. He stated that his brother, [REDACTED], was born on 2 December 1920 in Hamburg and died on 5 December 1998 in Fort Lauderdale, Florida, the United States, and his other brother [REDACTED] was born in Hamburg in 1926 and passed away in 2002. The Claimant stated that he was born on 23 September 1919 in Breslau.

In support of his claim, the Claimant submitted copies of his birth certificate, a letter from the Claimant's father's company, dated 15 September 1938, and the Claimant's naturalization certificate.

Information Available in the Bank Records

The bank records consist of a customer card, a list of custody accounts that were transferred to German banks in 1936 and 1937, pursuant to the Seventh Ordinance regarding implementation of the Foreign Exchange Control Law (*Siebente Durchführungsverordnung zum Gesetz über die Devisenbewirtschaftung*), which entered into force on 19 November 1936, and the First Announcement regarding the Custody of Foreign Securities (*Erste Bekanntmachung über die Verwahrung ausländischer Wertpapiere*), which entered into force on 20 November 1936, related memoranda from the Bank dated 11 February 1937, and printouts from the Bank's database. The bank records also consist of a letter from the *Deutsche Bank und Disconto-Gesellschaft* in Konstanz to the Bank dated 25 November 1936 which informs the Bank that, pursuant to this law, all custody accounts containing foreign securities that are noted on the German Stock Exchange should be transferred to a *Devisenbank* in Germany. The *Deutsche Bank* offered their services at the Bank's disposal.

The bank records additionally include correspondence between the main branch of the Bank and its Zurich branch describing the preparation of lists of account owners who are subject to this law. In one letter, the Bank's General Director agrees to the Zurich branch's suggestion to charge their clients a fee, in addition to the usual securities charge, of ½ % - 1 % of the total value of the securities that are being transferred to a German *Devisenbank*.

According to these records, the Account Owner was "Widow" Amalie Horn, née Friedeberg, and the Power of Attorney Holders were Mrs. Rosa Heimann and Mrs. Else Hirsch, the Account Owner's daughters. It is indicated that the Account Owner gave the following addresses in Breslau, Germany, all except the last of which were crossed off of the customer card: Königstrasse 1, Sadowastrasse 69, Schwingstrasse 45/47 and Kürassierstrasse 28. The bank records indicate that the Account Owner held a custody account and a demand deposit, both numbered 35883, which were opened in 1933 and were closed on 21 December 1936. The bank document listing accounts that were transferred to German banks indicates that the Bank transferred securities of a value of 13,000.00 Swiss Francs from the custody account at issue to the *Dresden Bank* in Breslau and indicates that this transfer took place on 23 December 1936. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holders, or their 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. The names of his grandmother, his mother, and his aunt match the published names of the Account Owner and the Power of Attorney Holders. The Claimant identified the relationships between the Account Owner and the Power of Attorney Holders and the marital status of the Account Owner in 1933, which match unpublished information about the Account Owner 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 that she fled Europe due to Nazi persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that he is the son of Rose Heimann, née [REDACTED], the daughter of the Account Owner.

The Issue of Who Received the Proceeds

With regard to the custody account, the CRT concludes that it was paid to the Nazi authorities.

With regard to the demand deposit account, given the application of Presumptions (f) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holders or their heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to determine whether 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 his grandmother, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holders nor their heirs received the proceeds of the claimed accounts.

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

Amount of the Award

The bank records indicate that the value of the custody account as of 23 December 1936 was 13,000.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an award amount of 156,000.00 Swiss Francs for the custody account.

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here with respect to the demand deposit account, 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 demand deposit account was 2,140.00 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 an award amount of 25,680.00 Swiss Francs per the demand deposit account.

Consequently, the total award amount in this case is 181,680.00 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 value of the demand deposit account, and 65% of this amount is 16,692.00 Swiss Francs.

As a result, the initial payment is 172,692.00 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 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
October 24, 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).