

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Joan Sinowitz

in re Account of Helmut Koppel

Claim Number: 201128/AY¹

Award Amount: 203,400.00 Swiss Francs

This Certified Award is based upon the claim of Joan Sinowitz, née Koppel, (the “Claimant”) to the account of Helmut Koppel (the “Account Owner”) at the Basel branch of [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 and Initial Questionnaires identifying the Account Owner as her father, Helmut Koppel, who was born to Erich and Rosa Koppel on 31 August 1908 in Berlin, Germany and was married to Ilsa Koppel, née Cohen, on 20 December 1938 in Basel, Switzerland. The Claimant indicated that her father, together with the Claimant’s grandfather, was the principal of *Gebrüder Besas, G.m.b.H.* Berlin, which was a family owned company. The Claimant indicated that the business was located on Spittelmarkt 11, Berlin SW 11, Germany. The Claimant indicated that her father escaped Germany in 1938 and attempted to enter Switzerland. The Claimant further indicated that her father was arrested by the Swiss police upon leaving the train in Switzerland and that he was later released into the custody of Hans Erich, a Swiss banker from Zurich, with whom he had done business. The Claimant indicated that in 1940 her father left Switzerland to go to the United States after the death of her grandfather, who also resided in Basel. The Claimant indicated that her father died in 1984 in the United States.

The Claimant submitted bank documents issued by the *Reichsbank Direktorium* indicating the name and address of her father’s company, and indicating the partial transfer of funds in 1931 and 1932 to her father’s company from the [REDACTED] in Zurich. The funds were transferred from the

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 201128 and 212826. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 201128.

company's account at the Zurich branch of the *American Express International Banking Corp.* into the account of the *Reichsbank* at the Zurich branch of the [REDACTED].

In support of her claim, the Claimant submitted her father's death certificate, indicating that he was Jewish of German origin and that he was the son of Erich Koppel. The Claimant submitted the death certificate of her grandfather, Erich Koppel, which indicated that he died on 16 April 1940 in Basel, Switzerland. The Claimant also submitted her birth certificate, which indicated she was the daughter of Helmut Koppel and Ilse Koppel, née Cohn. The Claimant indicated that she was born on 3 October 1943 in Jersey City, New Jersey, United States.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1997, asserting her entitlement to a Swiss bank account owned by Helmut Koppel.

Information Available in the Bank Records

The bank records consist of a power of attorney form signed on 30 November 1939, a declaration of German citizenship with permanent residency in Basel, Switzerland and a form dated 30 November 1939, indicating that any correspondence was to be sent to Strassburgerallee 93, Basel, Switzerland. This mailing address was crossed out on an unknown date, and was replaced with an address of American Express in New York. According to these bank records, the Account Owner was Mr. (*Herr*) Helmut Koppel who resided at Strassburgerallee 93, Basel. The bank records indicate that the Power of Attorney Holder was Mr. (*Herr*) Erich Koppel who resided at Sonnenweg 19, Basel. The bank records indicate that on 2 December 1939, Mrs. (*Frau*) Koppel visited the bank and declared that she and her husband had become stateless. The bank records indicate that the Account Owner held a custody account. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves. There is no indication as to the value of the account, whether the account at issue was closed or to whom it was paid.

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, and her grandfather's name matches the unpublished name of the Power of Attorney Holder. The Claimant identified her father as a German national, which matches unpublished information about the Account Owner contained in the bank records. In support of her claim, the Claimant submitted documents, including bank documents issued by the *Reichsbank Direktorium* indicating the name and address of her father's company, and indicating

the partial transfer of funds between 1931 and 1932 to her father's company from the [REDACTED] in Zurich. The Claimant further submitted her father's death certificate, indicating that he was Jewish of German origin and that he was the son of Erich Koppel. The Claimant submitted the death certificate of her grandfather, Erich Koppel, which indicated that he died on 16 April 1940 in Basel, Switzerland. The Claimant also submitted her birth certificate, which indicated she was the daughter of Helmut Koppel and Ilse Koppel, née Cohn.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1997, asserting her entitlement to a Swiss bank account owned by Helmut Koppel, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, 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 other claims to this account were disconfirmed because the claimed account owners were from different countries and cities of residence.

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 escaped from Nazi Germany to Switzerland where he was arrested as he left the train.

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 he was her father and that the Power of Attorney Holder was her grandfather. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With regard to the custody account and the account of unknown type held by the Account Owner's business, given the application of Presumptions (h) and (j) as provided by Article 28 of the Rules Governing the Claims Resolution Process (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs. Based on its precedent and 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.

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 18 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, the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held a custody account and the Account Owner's business held an account of unknown type. Pursuant to Article 29 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 Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs. The total value of these accounts was 16,950.00 Swiss Francs. The current value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 203,400.00 Swiss Francs

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 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).

Certification of the Award

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

Claims Resolution Tribunal
April 21, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).