

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Jadwiga Clarke-Bukowiecki
also acting on behalf of herself and of Christopher Bukowiecki

in re Account of Walery Kossowski

Claim Number: 221114/EZ¹

Award Amount: 73,080.00 Swiss Francs

This Certified Award is based upon the claim of Jadwiga Clarke-Bukowiecka, née Surgiewicz, (the “Claimant”) to the account of Walery Kossowski (the “Account Owner”) at the Bern 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 late husband’s maternal cousin, Walery Kossowski, who was born to Saul Kossowski and Sara Kossowski, née Stern, in 1894 in Warsaw, Poland. The Claimant stated that her relative, who was Jewish, was not married and had no children, and that Walery Kossowski was a business partner of her husband. The Claimant, who provided in her Claim Form detailed information about her husband, Henry Bukowiecki, stated that she had no information about Walery Kossowski’s fate since her husband’s partnership with Walery Kossowski was established and active prior to her marriage in 1945. The Claimant stated that her husband survived the Holocaust in hiding. His sister, Janina, died in approximately 1943 as a victim of Nazi persecution.

On 10 August 2002, subsequent to the CRT’s inquiry, the Claimant’s son, Christopher Bukowiecki, provided the CRT with the following information, collected by him after thorough research:

The Claimant’s husband, Henry Bukowiecki, was born to Boleslaw Bukowiecki (1862-1916) and Hannah Stern (1872-1894) in December 1894 in Warsaw, Poland. Hannah Stern died

¹ The CRT notes that the Claimant also submitted a claim to the account of H. Bukowiecki, which was included in the same Claim Form and was registered under the same Claim Number. The CRT has treated this claim in a separate decision.

shortly after her son's birth due to post-natal complications. Boleslaw Bukowiecki, unable to cope with the sudden death of his wife, abandoned his children, Henry and Janina, Henry's older sister. The Claimant's husband was raised by his maternal aunt, Sara Stern, and her husband Saul Kossowski, who were the parents of Walery Kossowski. Later, the two cousins, who grew up together, established a partnership and owned a plywood factory and a big apartment building at 18 Kaliska Street in Warsaw. The Claimant's son could not indicate the whereabouts of the his father's cousin during the Holocaust, but stated that he survived the Holocaust and lived in Poland after the Second World War. He died in the early 1980s in Warsaw. The Claimant submitted original photographs of Walery Kossowski.

The Claimant stated that she was born on 3 October 1921 in Warsaw, and is representing Christopher Bukowiecki, her son, who was born on 4 October 1952 in Warsaw.

Information Available in the Bank Records

The bank records consist of an opening card, bank statements and printouts from the Bank's database. According to these records, the Account Owner was *Herr* (Mr.) Walery Kossowski from Warsaw, Poland. The bank records indicate that the Account Owner held a demand deposit account and a time deposit account. The accounts were both opened on 16 May 1931. On the opening date, the Account Holder deposited 10,000.00 Swiss Francs in the time deposit account and 500.00 Swiss Francs in the demand deposit account. The bank records do not show whether or not any transactions were made on these accounts during the years. The demand deposit account was transferred to a collective account on 23 July 1955 and was later closed by the Bank on 30 September 1996, due to fees deducted from the account. The balance in the account on the date of its closure was 84.50 Swiss Francs.

Under the time deposit account agreement, the Bank paid an annual interest of two percent. The interest was compounded every quarter (three months). The time deposit account was transferred to a collective account on 7 June 1957 and again on 2 December 1965. The bank records do not show when the time deposit account was closed or to whom it was paid, nor do these records indicate the value of this account on the date of its closure. 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. There is no evidence in the bank records that the Account Owner or his heirs closed the time deposit account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her husband's cousin's name matches the published name of the Account Owner. The Claimant stated that and submitted documents indicating that her husband's family resided in Warsaw, Poland, which matches

published information about the Account Owner contained in the bank records. Furthermore, the Claimant previously claimed and identified unpublished information about the account of her husband, Henry Bukowiecki, for which Walery Kossowski from Warsaw, Poland, held a Power of Attorney, demonstrating Claimant's identification of the Account Owner. The CRT has already awarded the Claimant the latter account. The CRT notes that there are no other claims to this account.

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, that he lived in Nazi-controlled Poland during the Holocaust, and that his relatives were persecuted by the Nazis.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner. She submitted documents, including her marriage certificate and a family tree, indicating that her husband was the Account Owner's cousin. There is no information to indicate that the Account Owner has surviving heirs other than the Claimant and her son, whom she is representing in this proceeding.

The Issue of Who Received the Proceeds

With respect to the time deposit account, given the application of Presumptions (f), (h), (i) and (j) as provided in Article 28 (see Appendix A) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), 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, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

With respect to the demand deposit account, the bank records indicate the account was closed to fees by the Bank, and therefore it is clear 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 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 husband's cousin, and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the demand deposit account, and that it is plausible that neither the Account Owner nor his heirs received the proceeds of the time deposit account.

Amount of the Award

In this case, the Account Owner held one time deposit account and one demand deposit account. The original deposit in the time deposit account was 10,000.00 Swiss Francs on 16 May 1931, but the bank records do not indicate what the value was in 1945, fourteen years later. During the time period between 1931 and 1945, there could have been substantial changes to the account valuation by additions to the account or withdrawal of funds from the account, leaving an unknown valuation of the account in 1945. 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. Therefore, the CRT will use the average value for an account of unknown type. 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 the amount of the award is determined by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

The bank records indicate that the value of the demand deposit account as of 1996 was 84.50 Swiss Francs. According to Article 29 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The present value of the amount of the award is determined by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 25,680.00 Swiss Francs.

Consequently, the total award amount for both of the accounts is 73,080.00 Swiss Francs.

Division of the Award

According to Article 23(1)(e) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner's parents have submitted a claim, the award shall be in favor of any descendants of the Account Owner's grandparents who have submitted a claim, in equal shares by representation. The Claimant's son, Christopher Bukowiecki, who is represented by the Claimant, is the only descendant of the Account Owner's grandparents, who has submitted a claim, and therefore he is entitled to the full (100%) award amount.

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
March 5, 2003

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).