

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Shoshana Jakar

in re Accounts of Samuel Krausz

Claim Number: 224264/EZ

Award Amount: 312,000.00 Swiss Francs

This Certified Award is based upon the claim of Shoshana (Susanne) Jakar née Krausz (the “Claimant”) to the accounts of Samuel Krausz (the “Account Owner”) at the Zurich 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 herself and her father as the Beneficial Owner and the Account Owner, respectively. Her father was born on 8 May 1879, in Sombor, Yugoslavia, and was married to Ilonka Krausz née Rothschild on 16 September 1919 in Vienna IX, Austria. They had two daughters, Eveline and Susanne (the Claimant). The Claimant’s father was a representative for a wool factory. They resided in Vienna at Rossauerlande 23 until 1938, when they fled to Yugoslavia in order to escape the Nazis. During the Holocaust, the Claimant’s entire family, including her father, mother and sister, were murdered in the gas chambers at the Jasenovac concentration camp, Yugoslavia.

The Claimant stated that she was born on 1 July 1920, in Vienna. She married Benco Mandil in 1939, and they had one son, Johanan, who was born in 1940. She was interned with her husband and son in a concentration camp. She and her son survived the Holocaust, but her husband was murdered in the concentration camp. She married her second husband, Albert Jakar, in 1947, and they emigrated to Israel in 1948. She lives today in Netanya, Israel. The Claimant stated that she had not previously made a claim to a Swiss bank account owned by her family, and that she had never received any money from the Swiss banks.

Information Available in the Bank Records

The bank records consist of power of attorney forms and printouts from the Bank's database. According to these records, the Account Owner was Samuel Krausz, the custodial parent of Eveline and Suzanne Krausz, and the Power of Attorney Holder was Ilonka Krausz, the Account Owner's wife. The bank records indicate that the Account Owner held two custody accounts.¹ One power of attorney form was signed on 2 August 1931 and indicates that the Beneficial Owner of one custody account was the Account Owner's daughter, Eveline Krausz. The second power of attorney form was signed on 3 August 1931 and indicates that the Beneficial Owner of the second custody account was the Account Owner's daughter, Susanne Krausz. The bank records do not show when the accounts were closed, or to whom they were paid. Neither do these records indicate the value of these accounts. 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 these accounts in the Bank's system of open accounts, and therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the bank records that the Account Owner, the Beneficial Owners, or their heirs, closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archives

By a decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Samuel Krausz, numbered 2874. According to these records, Samuel Krausz, who was born on 8 May 1879, and was a company representative, lived in Vienna IX at Rossauerlande 23. His wife was Ilonka Krausz née Rothschild. These records specified Samuel Krausz's assets, which included securities and personal property which were confiscated by the Nazis. These records also contain a signature sample of Samuel Krausz. However, there is no indication that Samuel Krausz owned Swiss bank accounts.

The CRT's Analysis

Identification of the Account Owner

The Claimant has identified the Account Owner. Her parents' names and her own name match the respective published names of the Account Owner, the Power of Attorney Holder and the Beneficial Owner of one custody account. Her sister's name matches the unpublished name of

¹ The bank records contain two power of attorney forms that reference a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the accounts in question were in fact custody accounts. Although this power of attorney forms therefore do not necessarily demonstrate that the Account Owner held custody accounts, in the absence of evidence to the contrary, the CRT concludes that it is plausible that he held such accounts.

the Beneficial Owner of the second custody account. The Claimant stated that she lived with her family in Vienna at Rossauerlände 23, which matches unpublished information about the Account Owner contained in the bank records. The Claimant identified the relationships between the Account Owner, the Power of Attorney Holder and the Beneficial Owner, which matches unpublished information contained in the bank records. Finally, Samuel Krausz's signature sample contained in the Austrian Census records is similar to the signature sample of 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 was murdered with his wife and one of his daughters in a concentration camp. The Claimant was interned in the concentration camp where her first husband was murdered.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Samuel Krausz, and indicates that he was born on 8 May 1879 in Yugoslavia and resided in Vienna, which matches 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 Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents, including a copy of her identity card, demonstrating that she is the Account Owner's daughter. There is no information to indicate that the Account Owner has any other surviving heirs.

The Issue of Who Received the Proceeds

Given the fact that the Account Owner, his wife, and one daughter died in a concentration camp during the War; the Account Owner's other daughter, the Claimant, was interned in a camp during the War and, as an heir of the Account Owner, would plausibly have been denied access to the accounts by the Bank after the War; and the application of Presumptions (h) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the accounts' proceeds were not paid to the Account Owner, the Power of Attorney Holder, the Beneficial Owners 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 23 of the Rules Governing the

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

Claims Resolution Process (the “Rules”). Second, the Claimant has plausibly demonstrated that the Account Owner was her father and that she and her sister were the Beneficial Owners of the accounts, and these relationships justify 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 accounts.

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 a custody account was 13,000.00 Swiss Francs. Consequently, the total value of both of the custody accounts was 26,000.00 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 a total award amount of 312,000.00 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 values and 65% of the total award amount is 202,800.00 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 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
October 3, 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).