

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED]

in re Account of Wolf Lipszyc

Claim Number: 222801/AH

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Wolf Lipszyc (the “Account Owner”) at the Basel 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 identifying the Account Owner as her maternal grandfather, Wolf Kopel Lipszyc, who was born in approximately 1880 in Poland, and was married to [REDACTED]. Wolf and [REDACTED] Lipszyc had two daughters: [REDACTED], the Claimant’s mother, who was born on 28 December 1912, in Kalisz, Poland, and [REDACTED], who studied fine arts and owned a workshop in Berlin, Germany. The Claimant stated that her grandmother [REDACTED], had an older son from a previous marriage, whose name the Claimant did not know. The Claimant stated that her grandfather, who was Jewish, was a wealthy bank agent who traveled frequently, and that until 1937 he lived in Narutowicza Street, Czestochowa, Poland, and then in Kilinskiego Street, Czestochowa until 1941, when he was sent to the Czestochowa ghetto. The Claimant indicated that her great-grandfather was the representative of the French owners of the *Paryz* coal mine in Sosnowiec, Poland. The Claimant indicated that during the Second World War, her grandparents and [REDACTED] died in Treblinka, her grandfather’s stepson died in Buchenwald, and that her mother, who died on 19 May 1993 in Wroclaw, Poland, was the only member of her family to survive the Holocaust. The Claimant provided various documents, including her mother’s birth, marriage, and death certificates, indicating her father’s name, which also appears without the middle name Kopel. The Claimant indicated that she was born on 26 June 1948, in Zabkowice Slaskie, Poland. The Claimant is representing [REDACTED], her brother, who was born on 22 November 1952, in

Sarbinowo, Poland. The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Wolf Lipszyc.

Information Available in the Bank Record

The bank record consists of a printout from the Bank's database. According to this record, the Account Owner was Wolf Lipszyc and the Power of Attorney Holder was Dr. Adolf Lipszyc, both of whom registered under an address in Lodz, Poland. The bank record indicates that the Account Owner held an account of unknown type, numbered 32171, which was opened on 12 June 1926. The bank record does not show when the account at issue was closed, or to whom it was paid, nor does this record indicate the value of this 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 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 record that the Account Owner, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her maternal grandfather's name and country of residence, as shown in the Claimant's documents, match the published name and domicile of the Account Owner. The Claimant also indicated that her grandfather traveled frequently in his work as a bank agent, that he was wealthy, and that his family had business connections in other European countries, all of which render the assumption that he deposited money in a Swiss bank more plausible. The CRT notes that the Claimant did not mention in her Claim Form the name of the Power of Attorney Holder; however, since the Claimant was born after the Second World War and never knew her grandfather or his family, the CRT deems it plausible that Dr. Adolf Lipszyc could have been a relative of whom the Claimant was not aware. The CRT further notes that the Account Owner's residence is registered as Lodz and the Claimant indicated that he lived in Czestochowa; however, since Lodz is located less than 100 kilometers from Czestochowa and since the Claimant's grandfather traveled frequently, the CRT concludes that it is plausible that the Claimant's grandfather had used an address in Lodz, which was a larger city. Furthermore, the CRT deems it plausible that the Lodz address could have been that of the Power of Attorney Holder, which the Claimant could not have known. In support of her claim, the Claimant submitted documents, including her mother's birth, marriage, and death certificates.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Wolf Lipszyc, 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.

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 in 1941 he and his family were deported to the Czestochowa ghetto, and then to Treblinka where all except the Claimant's mother perished.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting a family tree and various documents demonstrating that the Account Owner was her maternal grandfather. There is no information that the Account Owner has surviving heirs, other than the Claimant and her brother, [REDACTED], whom the Claimant represents in these proceedings.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h), (i), and (j), contained in Appendix A,¹ 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 Governing the Claims Resolution Process ("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. Second, the Claimant has plausibly demonstrated that the Account Owner was her maternal grandfather, 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 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

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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 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 the principles of distribution set forth in Article 29 of the Rules, the Award will be in favor of any entitled relatives who have submitted claims to the account, in equal shares by representation. Therefore the Claimant and [REDACTED] are each entitled to one-half of the account at issue.

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 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).